

WHY NO COMMERCE WITH KIDNEYS? MICHAEL SANDEL'S SUGGESTIONS AND AN ANSWER FROM ETHICAL THEORY

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'Ultimately, it is a value judgement: can one have on one's conscience the fact that every year people die because they have no chance of receiving a donor organ?'

(P. Oberender 2011)

In his recent best-sellers M. Sandel (2010, 2012) has endorsed the position that is considered proper in most countries and that most people intuitively hold to be correct: that there should be no commercial trade in organs. But the discussion cannot be closed so simply, for it is also important that the black market for organs should disappear. How can this be achieved? Given that there is no solution in sight so far, some economic theorists have broken the taboo and pled openly for a regulated market with organs, in particular with live donation of kidneys. Can these theories deliver what they promise? And even if this turns out to be an effective method against the black market, does it conceal dangerous consequences for our structuring of values? Is the market solution at heart evil? It is important to make an honest assessment of the legitimacy of commercial trade in organs by confronting the various ideologies with their pros and cons. The controversial normative positions must disclose their underlying source of values, as required methodologically by Max Weber.

On the one hand we find market models that freely concede their utilitarian or libertarian source of values. Confronting these models with Sandel's powerful market criticism discloses a weakness in his argument. This weakness can be cured by the methodological supplement proposed in this paper. To this end the following steps will be taken: 1.) An introduction to the black market dilemma; 2.) an overview of the market models; 3.) Sandel's response to the market models; 4.) a preliminary assessment of the market models; 5.) the deficit in Sandel's methodology and the ethical supplement; and finally, 6.) some conclusions.

1. THE BLACK MARKET DILEMMA

Patients waiting for an organ are in such urgent need that circumstances arise for the black-market to flourish due to international scarcity and long waiting periods (as for example on the list of Eurotransplant). This is further exasperated by social difficulties, particularly in poor countries. Removal of a kidney from a living adult for a small sum, so that their children do not have to prostitute themselves, forced removals from prisoners, post-mortem removals after euthanasia without secure establishment of death, or after execution for victims of political persecution in China are all sources for this criminal black market.¹

According to the WHO Report 2012 the international black market is supplied with about 10,000 transplants every year by harvesting organs from living persons, primarily in China. While the donor of a kidney – with bad medical facilities and often inadequate aftercare – receives about 3,000€, organ recipients have to pay up to 160,000€ on the black market.² Illegal dealers employ criminal methods to exploit the poverty of the people, using fear, exploitation and murder to pressure deals. The aim must be to eradicate such markets by providing sufficient transplants by legal and legitimate means. As long as people worldwide who could be helped with a donor organ continue to die every day, it remains urgent to uncover all possibilities for saving lives and, at the same time to eradicate the black market in the poorest regions of the globe. Models used up until now to increase post-mortem donations (club model, opting out or consent solutions) show two serious weaknesses: 1.) a fundamental ethical problem, which will not be discussed in this paper: the brain death criterion involved in these models remains highly controversial;³ 2.) the economic problem: even if doubts concerning the ethical legitimacy of the brain-death criterion can be put aside, which is the widespread practice in western countries, there still remains a shortage of donor organs, above all kidneys - and as a consequence the black-market flourishes.

‘Since creating a market in cadaver organs is uneconomic and is more likely to reduce supply than increase it’ (C. A. Erin & J. Harris 2003, 137), we will discuss models that promise to increase living donations of kidneys.

A political purity at the cost of human life is unacceptable. This position must face the provocation of the German health economist P. Oberender (2011): ‘In the end, it is a value judgement: can one have it on one’s conscience that people die each year because they have no chance of receiving a donor organ?’⁴ Is the answer permission for a (regulated) market with kidneys removed from living donors? Bearing in mind the lack of donor kidneys, the question of whether such a regulated market can be a solution must be discussed openly and without prejudice. There are moral questions, however, which participants must always keep in mind: What consequences for our stance toward personhood and social virtues in society arise if kidneys become tradable market goods? Will the number of kidney transplants increase adequately through this legal change? Can the black-market problem thereby be removed?

2. THE MARKET MODELS

Proposals for a solution to the organ trade aligned along free market lines remain largely taboo (cf. E. Nagel 2012 and A. Schuster 1998, 805), partly because of the question of an ethical applicability of economic models to health and life, but also due to the wheeling and dealing on the black-market and deceitful procedures in transplantation centres. A commercialized trade with organs is forbidden in nearly all countries (except Iran). However, a blanket condemnation of every market solution for the problem of scarcity of donor organs presents a dilemma. It contradicts scientific honesty. After all, proponents of such models claim to be able to deliver the desired increase in kidney transplants through commercialization while safeguarding human self-determination. Targeting living donors is recommended through advantages in the quality of organs, improved minimally invasive techniques, and a lower potential for misuse.⁵

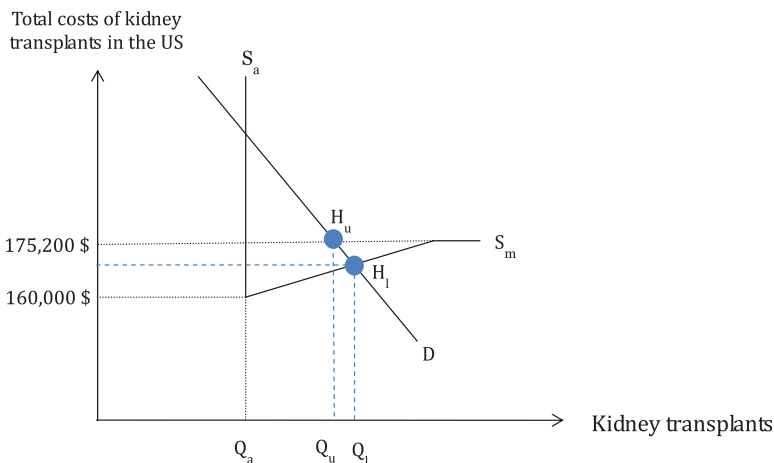
There are two ideological schools of market models. One is the utilitarian model of economic imperialism proposed by G. S. Becker & J. J. Elías (2006).⁶ The other is the libertarian stock market model of rewarded donation as put forward by Oberender, which seems close to the market model of C. A. Erin & J. Harris (2003). Both theories oppose government regulation - the

utilitarian in the name of economic efficiency, the libertarian in the name of human freedom (cf. M. Sandel 2010, 59).

2.1 *The utilitarian position*

The utilitarian position starts with the idea that economic efficiency is the primary source of legitimacy. Becker's proposal for a solution to the monetization of organ donation derives from his utilitarian model of economic imperialism. According to normative individualism, ethical verdicts cannot be justified through a collective interest or national pressure and coercion, but only through egoistic motives of a person maximizing their own benefit. Unjust dependence of sick people on networks – where altruistic people are willing to make a living donation – is to be replaced with a just distribution by a regulated market. If potential organ donors could expect monetary compensation for their sacrifice, the supply of transplants on the market would be elastic, and shortage would shrink.⁷ Becker & Elías (2006, 9) propose an algorithm for calculating what a kidney-donation might cost: 'We estimate the value of price of an organ from living donors by computing how much additional income or market consumption an individual will require in order to be indifferent between selling an organ or not ... Adding all components together gives a total expected cost of donors ... This means that the total supply of live donors would be essentially infinitely elastic at a cost that adds together all the component costs of live transplants, including the amount that must be paid to donors.' The supposed inelastic supply of altruistic living donation will no longer be necessary.⁸ Therefore the price of a living donation of a kidney is the sum of surgery costs and opportunity costs.⁹

Becker & Elías no longer include altruistic donors; rather they set their supply curve to the market at the y-axis to the rate of \$160,000, a sum at which no utility maximiser would accept live organ donation, as there is no compensation for their opportunity costs. The number of transplants in the supply curve S_m increases with rising financial compensation. If the compensation for opportunity costs reaches \$175,200, they assume an absolute flexibility of supply, and the curve subsequently becomes horizontal (which supposes total elasticity).¹⁰ Sufficient organs would then be available. Every recipient who is willing to pay this price should be able to find a transplant. With this, a realised market trade of the set Q_u in point H_u is achieved. Because health insurance funds may also be considered as purchasers, the relevant equity gap in distribution would be closed by this institutionalization.



2.2 *The libertarian positions*

Libertarian positions start from the *liberal conception of man*, which allows supernumerary organs to be taken from the living and traded because of each person's liberty and self-determination with respect to their bodies. P. Oberender & T. Rudolf (2003: 24) produce a normative claim from this: 'as we explained in detail, a ban on commercial organ donation limits the individuals' liberty rights considerably, as they are no longer able to decide freely about the use of their own organs. From the background of a liberal-democratic conception of man the abolition of the organ trade ban does not require a justification but an introduction.' Oberender & Rudolf share the fundamental assumptions of economic imperialism, which include the private ownership of the body and organs as potential articles of trade, normative individualism, and a concern to strengthen the supply-side in conditions of scarcity. The libertarian focus is no longer orientated towards utilitarian profit-making, but rather towards increasing the supply of transplants, a step legitimated through the liberal principle of self-determination and self-ownership. Oberender & Rudolf elaborate, along the lines of J. E. Barr (1991), a regulated market model of 'Rewarded Gifting'. This supposes that donors of organs may still be motivated altruistically even if they receive rewards for their 'gift'. The key point is that the motivation for such 'gifting' is not a utilitarian compensation. This position comes close to the so called 'ethical market in human organs' proposed by C. A. Erin & J. Harris (2003).

In contrast to Becker & Elías, the dangers of a so-called 'health-imperialism' that exploits poor countries and people for the benefit of the rich are taken more seriously (cf. M. Beutin 2013, 192-200). The ability to pay should not be the primary criterion for allocation controlled by health insurance funding: Trade on an organ stock-market is only to be allowed under strict supervision of the partners and compliance with publically determined standards. These would include the following: health insurance funds acting as buyers represent potential recipients of organs. An organ donor contacts a broker operating on the stock market under the supervision of public health authorities. Participants in the international market must belong to countries with sufficient quality control of standards of provision, operation and aftercare, and where social systems are active that prevent the sale of organs under pressure (particularly because of social hardship).¹¹ In addition to controlling medical standards, such regulation should also prevent health insurance funds or brokers from acting as a trafficking ring and exploiting their market power. Any surplus should be passed on immediately by health insurance bodies for use in relevant research. The allocation of transplants is therefore intended to be transparent, reputable and competent. This will not mean, however, that the price for a live donation will be the same everywhere. People in poorer countries receive less money for organs of equal quality. This is not seen as an injustice, however. It is – as in the utilitarian model – blamed on the different price levels between countries. The danger of a race to the bottom of the healthcare and social systems will be prevented by, on the one hand, the relevant defined standards, and on the other hand by the self-healing powers of markets that force out inferior (health) quality at excessive prices.

Another defect in economic imperialist organ trade is that altruism plays no motivational role. K. Arrow (1972: 355) has argued previously for its rehabilitation. Altruism should not be replaced by monetarisation: 'I do not want to rely too heavily on substituting ethics for self-interest. I think it best on the whole that the requirement of ethical behaviour be confined to those circumstances where the price system breaks down. . . We do not wish to use up recklessly the scarce resources of altruistic motivation.' The non-utilitarian argument of Rewarded Gifting is then – as seen by S. Satel (2006) – that this motivation, as an important pillar of willingness to donate, should and will survive, even under a market solution: 'The best answer is by creating a market arrangement to exist in parallel with altruistic giving.' As is the case with blood donations, the donation of a kidney by a person should also be remunerated; this does not diminish,

however, the good feeling of having saved a life. By this use of an enduring altruism with added financially motivated provision of kidneys for transplantation, the shortage until now dominant could be solved efficiently without commercialising the social spirit. The number of traded organs will increase towards a lower price in the fixed point H_1 , in contrast to that of economic imperialism.¹² It is assumed that any crowding-out-effect will remain ineffective. Furthermore, possible feelings of guilt amongst recipients can be diminished by an appropriate payment. Finally more intense cost pressure can also be expected to lead to positive incentives for currently stagnant research into artificial substitutes, especially as decreasing the need for dialysis would release associated financial and personal potential.

In analogy to the Rewarded Gifting Model, Erin & Harris (2003, 137-138) have postulated that there is no effective crowding-out-effect. In common with Oberender & Rudolf they propose ‘a strictly regulated and highly ethical market in live donor organs and tissue.’ ‘This commercial scheme must have built in safeguards against wrongful exploitation and show concern for the vulnerable, as well as taking into account consideration of justice and equity.’ Two market restrictions are proposed for its implementation: 1.) There must be only a single legal public purchaser (the National Health Service) who buys and distributes organs, to avoid private commerce or exploitation. 2.) The market must be confined to a self-governing geopolitical area to strengthen the willingness of the vendors contributing a benefit to the people living amongst them. Surprisingly, in their response to the criticism of J. Redcliffe Richards (2003), Erin & Harris (2003, 141) relativized these restrictions as bare pragmatic steps to break the ‘market-in-organs-taboo’. This model in the end therefore lacks not only a transparent principle, but also a coherent argument to make clear the relevance of superficially emphasized social values such as justice and equity for the implementation rules. The Rewarded Gifting Model presents a higher level of ideological coherence.

3. SANDEL’S ANSWER TO THE MARKET MODELS

Sandel (2013, 124) lists the main pros and cons of a market model on kidney supply: ‘some object to the buying and selling of kidneys on the grounds that removing an organ from one person and transferring it to another violates the sanctity and integrity of the human body. Others object on the grounds that buying and selling kidneys objectifies the human person by encouraging us to view our bodies as property, as collections of spare parts to be used for profit. Still others favor a market in kidneys on the grounds that we own ourselves and should be free to profit from our bodies in whatever way we choose.’

The pros of the Utilitarian approach bring up two crucial problems: 1.) Justice and rights are a matter of calculation, and not of principle. 2.) As there is only a uniform measure of value, no qualitative difference remains between values. Sandel (2010, 260) sees the first problem solved in the libertarian theory, because the liberal conception of man is the inviolable libertarian principle. The so called *fairness argument* as objection to markets is – for Sandel – refuted by the libertarian position. This argument rejects the trade in organs, when the buyer or seller are not free in their decisions. The creation of a regulated market – as required by Oberender et al. – eliminates illegitimate coercion (cf. Sandel 2012, 110f.). The second problem remains, however. In libertarian theory, individual preferences are respected as they are. As a consequence of the libertarian concept of man, a commercial trade with kidneys would even be allowed even if these kidneys were not needed to save a life, but, for example, to play absurd games (cf. Sandel 2010, 70-72). Arguments against such abuses would have to be found *outside* the libertarian theory. Here we touch on the so called *corruption argument*: when ‘markets promote a degrading, objectifying view of

the human person' (Sandel 2012, 110). For this reason normative 'principles of justice that are neutral among competing conceptions of good life' should be used to weigh the relevant values (cf. Sandel 2010, 220). Such a debate presupposes, however, civic virtues and thinking about the common good, the integrity and sanctity of the human body, and most basically a coherent concept of man. Illegitimacy or legitimacy of market solutions cannot be the result of consensus, as e.g. required by the left discourse ethics theory (J. Habermas 1996). The set of moral ideals has to be derived rather from a civic deliberation that accepts ideological disagreement in society and appreciates the enduring different religious and secular ideologies. But Sandel wants justice to be *neither* secular *nor* religious (cf. Sandel 2010, 268). So what, finally, is Sandel's proposed ethical theory, from which an answer to the black market dilemma is supposed to be derived? He admits (ibid, 261): 'I don't have a fully worked out answer. . . , but I can offer a few suggestions.'

4. PRELIMINARY ASSESSMENT OF THE MARKET MODELS

Taking into account intuitive arguments and Sandel's suggestions we come to a preliminary assessment of the market models. 1.) The utilitarian model: Whether there will actually be more transplants under the terms of economic imperialism remains uncertain, not only because this assertion is a mere prognosis, but also because the altruistic motivation to donate will be supplanted. The trade of organs on the market should be of benefit to people in isolation, perhaps beyond the reach of an altruistic network. Insured persons whose health insurance is unable to cover the costs – primarily in poor countries – could be cut off. Body and life are seen as articles measured in \$; body parts therefore move towards a price that is decreed by the market. This price is derived from the average added value of a single person. This allows the monetization not only of a single organ but also of life as a whole. In line with the corruption argument, this goes against the liberal concept of man.¹³

2.) The libertarian model: Rewarded Gifting offers a mature, systematic theory. Whether the expected increase in the number of transplants with the introduction of a regulated market will occur is not certain, despite the notion of rewarded altruism. Sandel (2012, 114-117), for example, has questioned the projected results. As a cautionary precedent he cites the negative incentives of a bonus offered to Swiss citizens if they agreed with the placement of a nuclear installation near their places of residence, mentioned in a study of B. Frey & R. Jegen (2001: 590). Consent to this nuclear reactor was greater *before* a monetary reward was offered than afterwards. This crowding-out-effect shows there *are* moral values and motives that are destroyed by self-serving financial incentives. This is also to be seen, for example, with (Nobel) prizes, friendship, and children, but also with the altruistic motivation to donate blood or a kidney, and other suggestions. Altruism is by definition an *added* benefit that cannot be monetised. Sandel supposes that if a financial bonus comes into play, it necessarily destroys altruism. This matches an experience, for example, from a market model realized in Iran (cf. Broumand 1997, 9). Must this always be the case, however? As long as the market model of Rewarded Gifting stays untested, such a prognosis remains speculation. The potential power of the crowding-out-effect at least raises questions about its title to efficiency, and thereby the problem-solving competence of 'Rewarded Gifting'. Furthermore, there is no evidence of the alleged push for research into substitutes. The current costs for dialysis are building up considerable pressure on the search for alternatives, but this is hardly likely to be strengthened in the long term by the introduction of stock exchange dealing (with supposed lower costs for dialyses). With regard to the conditions of entry into the international market, which ultimately is also required by Erin &

Harris, many countries would fail to achieve this, as their health-care and the social systems are below the requirements. If, for example, a kidney in one country is fifteen times cheaper than it is in another country, the danger remains of an exploitative concentration of market pressure on people with health or social needs. If the question of a social status quo is taken into account, we must ask how, for instance, poor people from poor countries that cannot fulfil such standards stand any chance of receiving a donor organ. At the moment there are no answers to the dilemma of such a two-tier care system. And if the crowding-out-effect becomes active, one would find no difference between the consequences on the social spirit with those associated with the implementation of a market for kidneys under the terms of economic imperialism. Although according to D. Witschen (2005, 285) the idea is: ‘With such actions the donation shall be rewarded subsidiarity but not originally motivated.’, the motivations here become blurred. ‘If the agreement is commercially motivated you cannot call it a donation, as the motivation is not altruistic.’ This means that the fear of R. Titmuss (1971: 277) of an economic displacement of social consciousness remains: the ‘commercialization of blood and donor relationships represses the expression of altruism’ and ‘erodes the sense of community!’ The logic of monetization is likely to produce other negative consequences for subsidiary tasks in the area of social infrastructure (for example care, family, school etc.).

5. THE DEFICIT IN SANDEL’S METHODOLOGY AND THE ETHICAL SUPPLEMENT

5.1 *The methodological deficit*

Sandel’s criticism of the market models is incomplete. He offers an unfinished search for a set of moral ideals as principles, an ultimately ungrounded ideal of virtue, and, once again, a composition of suggestions.¹⁴ What this argumentation lacks is a transparent ethical foundation in a concept of man or an ultimate principle as the transparent source of values or the weighting of values. My response to Sandel is that a mature (political) theory of ethics cannot be neutral. Essentially and inevitably it must be grounded in ideological postulates, either secular or religious. I propose an appropriate ideology that fits well with Sandel’s normative suggestions, even if the wished-for neutrality must be sacrificed.

5.2 *An ethical supplement and assessment*

I propose for this purpose Christian social ethics, including its concept of man, which opposes the liberal anthropology we find in market models. The Christian stance towards the body, human personhood, and social culture is close to Sandel’s arguments regarding virtues and inviolable principles. Such an ideological alliance opens the door to Sandel’s suggestions so as to create a methodologically coherent ethical theory.

The Christian concept of man we propose here is in line with that of Aristotle and Thomas Aquinas, who made this philosophy available for Christian theology.¹⁵ Aristotelian philosophy postulates a human nature which, while avoiding a naturalistic reductionism, has normative implications, as the responsibilities, entitlements and obligations of man are implicit in his nature. From an Aristotelian viewpoint virtuous reason succeeds in recognising man’s extraordinary and privileged natural law. This insight beyond our immediate physical surroundings does not succeed in grasping clearly the unmoved mover left vague by Aristotle, which is the origin of truth and goodness. But the recognition of a distinctive and unchanging law allows an analogous orientation of justice towards this objective truth, based on deeper principles that are detected, but not constructed, by man himself. From this perspective social ethics must always orient itself towards such objectives and dynamics, with a constantly evolving virtuous

cognition of the elusive absolute. This allows us to set up unconditional human rights, entitlements and obligations, that may not be subordinated to any social forces, e.g. to economic principles or to the liberal concept of man when the latter challenge this concept. This concept of personhood specifies that:

- Human beings do not receive their inseparable dignity, nor their moral responsibility towards God, to themselves and to others by vote or by social consensus. Dignity and moral responsibilities are presumed to be universal and objective, because given by God the Creator. This metaphysical foundation derives from the Christian belief in Creation, and that man was created in the image of God. Without such a religious dimension there still remains the bond to a foundational normative Humanum (cf. Aristotle or A. Sen 1993).
- Human beings are dialogic social beings, substantiated ultimately by their dialogic relationship to their Creator and the practised love of Jesus Christ.
- They have a conscience and free will. Human liberty essentially involves responsibility and morality. Liberty is relationally tied to the basic values of truth and justification as well as to first principles of solidarity and subsidiarity.
- Boundaries result from *Natura corrupta* grounded on the Fall, the imperfection and weakness that tempts humans to a utilitarian mentality without altruistic or deontological motivations and virtues.¹⁶
- God calls man to eternal happiness. Man transcends his respective Being-so. This vocation creates resistance towards any prophecy of this-worldly salvation. There is a more basic hope of finality inherent in humans to realise through virtue their nature, and with this also God's call. A non-Christian can share at least the fulfilment of their postulated nature as a humane aim.

The primary responsibility of man before God demands a non-negotiable protection of the life of each person who is appreciated as an image of God. Because of the responsibility we hold to ourselves, removal of an organ was initially appreciated as an intrusion in personal integrity and rejected by the Catholic Church as an 'Intrinsece Malum'. Such a perspective was revised by Pope Pius XII. in continuity with natural law reasoning (cf. A. W. Bauer 2013, 22). Protection of the personal unity of the body was left as before.¹⁷ Our body is not owned as a product, for we *are* our body. The monetization and tradability of organs which flows from a liberal anthropology contradicts the Christian idea of Creation. The approach of rewarded gifting also competes with the Christian concept of man, even if one of its primary concerns is the saving of a human life. To interpret a bonus payment as grounds for a good feeling or the reduction of guilt would, moreover, contradict the conviction that there can be no price for organs and altruism.¹⁸ A conscious and therefore morally responsible self-injury to personal integrity is from a Christian point of view only possible as a trade-off with moral values of comparable importance. This is analogous to Sandel's corruption argument. If love of one's own body competes with the desired charity, then such a self-injury is morally legitimate because in this instance the love of Jesus re-establishes the personal integrity, as stated in Gal 2,20: 'The life I now live in the body, I live by faith in the Son of God.' A sacrifice understood in this way (that is more than a human duty) is only imaginable as a voluntary and free act of love in service of the divine mission for charity.¹⁹ Moreover, there can be no force or coercion to donate an organ.²⁰ This is because no one has legitimate demands on parts of another's body. This is analogous with the fairness argument. From a Christian point of view our body is no more a common good than it is a saleable private good. The donation of a kidney is an altruistic sacrifice

(that is, without pressure or coercion). For the virtual culture encouraged by Sandel, this means that a social spirit of helping should be enhanced, even without expectation of reward. The logic of monetization strangles the spirit of voluntary giving as a moral responsibility before God and before one's fellow man. If then it is not certain that more transplants will become available, ethical consideration of this path must stop here; because of the clear contradiction with a Christian concept of man, any trade-off is unacceptable from a Christian point of view. For as long as the expectation of an increase of transplants is not demonstrable, the ethical judgment must be negative, not because it is only a suggestion, but because of a contradiction between such a transparent and the normative principle on which the ethics is based.

6. CONCLUSIONS

This stance toward personhood and social virtue fits Sandel's position well: In this alliance I have identified the fairness and the corruption arguments. Opposing the liberal source of values, it presents an alternative concept of man as a normative source of values, which are inviolable. Not the free choice, but the moral responsibility of man is – by principle – the foundation for legitimate rules and decisions. This requires a social virtue to be seen, which has its normative roots in the social nature of man. Rights and obligations are not derived from social consensus. They derive from natural law. It appears to me that such an objective foundation provides the set of moral ideals desired by Sandel. The alliance with Christian ethics permits Sandel's composition of suggestions to develop into a methodologically coherent ethical theory.²¹

Because the black-market is also inhuman, there are now two evils confronting one another. There exists only the choice between these alternatives, and we are exposed to the fate of Ulysses in the face of Scylla and Charybdis. We must therefore weigh things up. As long as the opposite is not proved, one is allowed to ask whether a regulated market can be an effective means to eliminate the black market. As I choose not to use this instrument, victims of the black market and the shortage of organs will continue to blemish this position. I entertain the hope nonetheless that we may find a way out of this dilemma, even if, like Ulysses, through painful sacrifice. This would be possible if the irremovable infringement on human dignity can in the future be overcome without the price of other infringements on this same dignity. An increase in post-mortem donations of kidneys without payment could be achieved through intensified dissemination of information and consequent practice of the social virtues through education and teaching. Medical progress may even raise the hope that someday transplants will no longer be necessary. But for the time being this promise leaves us unsatisfied. The discussion followed here leads to an ethically grounded rejection of the economic model, but without providing an ethically ideal solution for this dilemma.²²

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Notes

1 Cf. IGFM (2012), *Hinrichtungen von Lagerhäftlingen für Organhandel?* Medieninformation der Internationalen Gesellschaft für Menschenrechte. November 7, 2012.

2 Cf. <http://derstandard.at/1336698138449/Schwarzmarkt-Illegaler-Organhandel-boomt-Bis-zu-60000-Euro-fuer-eine-Niere>.

3 According to the neurologist, D. A. Shewmon (2009), so-called brain-dead persons are still able to conceive and give birth, and body-temperature regulation remains functional, as does the body's resistance against infections. The acceptance of brain death as a sure indicator of a human's death merely simplifies a legalization of the organ removal at the expense of a clear definition of death. In addition to Shewmon a variety of those involved with medical ethics consistently hold that such legalistic pragmatism is not a criterion of ethical legitimacy as from this view one life is saved at the cost of another. A potential rejection of brain death as a certain criterion for the death of a human must lead to a rejection of the legitimacy of the current legal definition of post-mortem organ donation. Cf. a theses paper of P. A. Byrne/ C. G. Coimbra/ R. Spaemann/ M. A. Wilson (2005), especially theses No. 13: 'The termination of one innocent life in pursuit of saving another, as in the case of the transplantation of unpaired vital organs, does not mitigate the evil of taking an innocent human life. Evil may not be done that good might come of it.'

4 Cf. C. A. Erin and J. Harris (2003, p. 137): 'It is clear that loss of life, due in large measure to shortage of donor organs, is a major crisis, and a major scandal.'

5 Cf. C. A. Erin and J. Harris (2003, p. 137) and M. Lintner (2007).

6 Cf. for the systematics of economic imperialism I. Pies & M. Leschke (1998).

7 Cf. the horizontal part of the curve S_m in the figure in the annex of this paper, which follows Figure 5 in the annex of G. Becker and J. Elías (2006).

8 Cf. the figure in the annex of this paper: The vertical curve S_a represents this inelasticity. The suggested evidence of this inelasticity is: Beyond a market solution the number of donated organs is completely independent on prizes, because prices do not exist and only altruistic donors receiving no payment are available. Becker and Elías transform this market-free idea into their market model without a more detailed explanation of the supposed inelasticity.

9 The mortality risk is calculated from the average value of life for a young person (in \$) multiplied by the operative mortality rate of one per thousand. Since Becker and Elías (2006, p. 10) estimate the 'value of statistical life' of a young person in the US in the year 2004, for example, to be 5 m. \$, they arrive at a bonus of 5,000\$ for the mortality risk. The premium of 4 weeks of loss of working hours is 2,700\$, taking an average annual income of 35,000\$ as a basis. The costs for a possible reduction in quality of life due to the loss of a kidney are estimated to be 7,500\$, so the price for one kidney is 15,200\$ and an average young citizen of the US would give their kidney at this price because they receive compensation for the accruing opportunity costs. The actual price for a kidney sold legally in the 1990s in India amounted to about 1,200\$ at 2005 prices. Since the ratio of the cost of living between India and the US at that time was 1 to 15, it results a trade price for one kidney in the US of 17,000\$. Becker and Elías regard this as a confirmation of his estimated calculation. The demand for kidneys (D) is relatively inelastic. In the situation at the outset, without a market, the vertical supply curve S_a is supposed to be inelastic. A supply shortage of transplants is the consequence. Cf. G. Becker and J. Elías (2006, p. 10) referring to K. Viscusi and J. Aldy (2003, pp. 18–24).

10 We do not find here any more detailed argument explaining these supposed elasticity at all.

11 P. Oberender and T. Rudolf (2003, p. 13) point out that about 80% of the legal commercial transplant donors in the 90s in India regretted their decision. The reason was not the bonus, but mainly the lack of medical care and health-education.

12 Cf. the figure in the appendix.

13 This unresolved problem of modern market economies recognize even the exponents of economic ethics like K. Homann (1993, p. 1294) in the fact that 'more and more social relationships are converted into monetized market relations in modern market economies. This erodes the emotional core of society, which is indispensable'.

14 The concept of virtue e.g. leaves unconsidered that even the market promotes intrinsic virtues that promote social feelings (e.g. self-help, universality). Cf. L. Bruni and R. Sugden (2013).

15 Cf. E. Nass (2012).

16 Cf. for this distinction of human motivations the anthropology of A. Smith (2006, p. 4). According to Smith man is in nature egoist and altruist at the same time. The anthropology of A. Sen (1993) comes still nearer to the Christian point of view. In this line deontological, altruistic and egoistic motivations constitute the human

nature. Self-love is one of the three great virtue-demands of Jesus Christ. But this love must be accompanied by the love towards God and by charity.

17 Beyond an explicit Christian point of view J. Beckmann (2012, p. 127) postulates an analogue objection.

18 Becker and Elías (2006, 21f.) object to the argument that organs may not be considered as consumer goods for a payment. In their opinion this is practiced already, for example in a volunteer army. This cannot be said to be a breach of taboo. Putting aside the fact that an already existing breach of taboo is not a strong argument for the legitimacy of another breach of taboo, it must be stated that the soldier is paid for his occupational hazards and not as a bonus for mutilations. Otherwise he would get a piecework rate per limb. Instead he would not save his comrades under enemy fire to get as large a bonus as possible for wounded body parts, but rather to save the life of his comrades. This represents a serious difference that can be used to reject these economic imperialistic arguments.

19 Cf. Nationaler Ethikrat (2007, p. 29); E. Schockenhoff (2013, p. 425).

20 Cf. Deutsche Bischofskonferenz and Rat der EKD (1990, p. 2). For the meaning of state coercion cf. P. Batthyány (2007, p. 201).

21 Obviously on the other hand this alliance is an opportunity for Christian ethics to attract some more attention in the recent ethical debates.

22 My thanks for translation assistance goes to Sophie Zintl and Stuart Fellows.