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ORGANS:
AN UNTAPPED SOURCE

SAŽETAK: Prodavatelj i kupac dobrovoljno se dogovaraju o cijeni za razmjenu dolara X za predmet prodaje Y . Trgovina će zadovoljiti neke od njihovih ljudskih želja. Obje strane su zadovoljne zbog toga što su izvršile profitabilnu razmjenu, u suprotnom ne bi došlo do transakcije. Jednom kada predmet prodaje Y postane spasonosni organ, poput bubrega, sve oklade otpadaju, u skladu s trenutnom zabranom spasonosne trgovine između dviju strana koje se žele poboljšati razmjenom. Tvrdimo da organi potječu od svojih voljnih vlasnika koji žele prodati dio sebe za cijenu koja je prisutna u dosad nekorištenoj trgovini, a koja bi trebala biti legalizirana odmah.

KLJUČNE RIJEČI: transplantacija, tržišta organa, ekonomska sloboda, medicinska etika

ABSTRACT: A willing seller and buyer voluntarily agree upon the price for the exchange of X dollars for one Y widget. The trade satisfies some of their human wants. Both parties are better off for having made the profitable exchange or they would not have transacted. Once the Y widget becomes a life-saving organ, like a kidney, all bets are off according to the present prohibition on life-saving trades between two parties seeking to better themselves through an exchange. We contend that organs sourced from their willing owners seeking to sell part of themselves for a price present hitherto untapped life-saving trades that should be legalized forthwith.

KEY WORDS: transplants, organ markets, economic freedom, medical ethics

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ORGANI: NEKORIŠTENI IZVOR¹

Sve ima svoju cijenu. Praktički, sve je na prodaju, za adekvatnu cijenu.² Pa zašto ne i organi? Ograničavanje prodaje tih ljudskih dijelova tijela dovelo je do stvaranja ilegalnog tržišta organa diljem svijeta. Trenutno je na crnom tržištu moguće kupiti jetru za otprilike 200 000 dolara.³ Zašto onda ne dopuštamo prodaju bubrega ili drugih organa na legalnom tržištu? Jedan od odgovora je postojeće zakonodavstvo koje ograničava prodaju ljudskih organa.

Trenutno zakonodavstvo medicinskih usluga ograničava prodaju bubrega ili bilo kojeg organa, čineći donacije jedinom dostupnom legalnom opcijom.⁴ Jedina zakonski dopuštena naknada za doniranje organa je osjećaj zadovoljstva koji osoba osjeća nakon doniranja bubrega i nadoknada sekundarnih troškova kao što su zrakoplovne karte ili hotelske sobe. Mane sadašnjeg sustava vidljive su u nedostatku dostupnih bubrega, jer mnogi inače voljni ljudi ne vide donaciju kao opciju zbog trenutnog nedostatka kompenzacije. Prema Tayloru (2020, str. 5): “2013. godine u SAD-u je obavljeno samo 16 896 transplantacija bubrega, dok je više od 100 000 ljudi bilo na listi čekanja za operaciju.” Trenutni sustav kompenzacije organa iznevjerit će⁵ brojne Amerikance kojima je potrebna transplantacija bubrega, a zakonodavstvo, koje tvrdi da pomaže, zapravo šteti američkom narodu, zabranjujući prodaju organa onima koji su spremni platiti za njih; slobodno tržište trgovine organa spasilo bi mnogobrojne živote.⁶

Američka javnost se zalaže za pravnu naknadu za donacije bubrega ako bi to dovelo do spašavanja još života. Prema istraživanju Elíasa, Lacetera & Macisa (2019, Sažetak), “...oko 18 posto ispitanika zalaže se za plaćanje ako bi to značilo velik porast transplantacija.” Javnost podržava zakonito plaćanje organa i otvaranje slobodnog tržišta organa sve dok to vodi ka povećanju broja transplantacija. Efektivno, ako slobodno tržište funkcionira, ljudi podupiru privatnu prodaju bubrega.

ORGANS: AN UNTAPPED SOURCE¹

Everything has a price. Practically everything is for sale for the right amount of compensation.² So why not organs? Limiting the sales of these human body parts has caused an illegal market for them to be created all around the world. Currently, a liver can be found for around \$200,000 on the black market.³ So why are we not allowing the sales of these kidneys on the legal market or any organ for that matter? One answer is current legislation that limits the sale of human organs.

Current regulation of medical services restricts the sales of kidneys or any organ, rendering donations the only legal option available.⁴ The only compensation legally allowed for the donation of an organ is the sense of satisfaction a person feels after donating a kidney and the reimbursement of incidental costs such as air flights or hotel rooms. The flaws of the current system are evident in the lack of available kidneys, with many otherwise willing people not seeing donation as an option due to the current lack of compensation. According to Taylor (2020, para. 5): “In 2013, only 16,896 kidney transplants were performed in the US while over 100,000 people were on the waiting list for surgery.” The current system for organ compensation is failing⁵ many Americans in need of kidney transplants and the legislation that claims to be helping are actually hurting the American people by prohibiting the sale of organs to those willing to pay for them; a free market for organ sales would save lives.⁶

The American public is in favor of legal compensation for kidney donations if it would lead to more lives being saved. According to research done by Elías, Lacetera & Macis (2019, Abstract), “...about 18 percent of respondents would switch to favoring payments for sufficiently large increases in transplants.” Allowing legal payments for organs and opening up a free market for organs is supported by the public as long as it leads to an increase in transplants. Effectively if the free market is allowed to function, people support private kidney sales.

Predstavimo situaciju u kojoj dijete iz bogate obitelji umire od bolesti bubrega. Neće dobiti bubreg za transplantaciju na vrijeme da spasi svoj život. Njegovi bi roditelji vjerojatno bili spremni platiti gotovo bilo koju cijenu koju mogu priuštiti⁷ kako bi nabavili bubreg za svog sina. Netko drugi bi bio više nego sretan donirati odgovarajući bubreg, ali samo uz plaćanje. Donator ima dva bubrega i treba samo jedan da preživi, tako da je spreman osigurati jedan bubreg ovom djetetu. Obje strane u transakciji su zadovoljni trgovci: roditelji cijene život svog djeteta više od novca kojeg su se spremni odreći kako bi ga zaštitili, a prodavatelj cijeni novac koji dobiva više nego što cijeni bubreg, jer bez njega može živjeti. Slobodno tržište olakšalo bi mnoge takve slučajeve, omogućujući nesmetanu dobrovoljnu trgovinu koja bi spasila mnoge živote. Pogled na statističke podatke koje navodi Taylor (2002; 2005; 2006; 2007; 2020) pokazuje da biti na listi čekanja za transplantaciju trenutno predstavlja smrtnu kaznu. Manje od 17 posto onih koji se nalaze na listi čekanja dočeka bubreg.⁸ Slobodno tržište prodaje ljudskih organa omogućilo bi ljudima da zaobiđu čekanje na listi za transplantaciju i nadmaše vjerojatnost od 17 posto da prime bubreg direktnim odlaskom do izvora života: dobrovoljnog prodavatelja. Ukidanje zabrane prodaje organa uvelike bi povećalo stopu preživljavanja bolesnika s bolešću bubrega kojima je potrebna transplantacija i pomoglo bi donatorima da ostvare financijsku dobit.

Ako je čovjek spreman prodati svoj bubreg uz novčanu naknadu, onda bi mu to trebalo biti i dopušteno. Nijedna zakonska zabrana ne bi smjela diktirati što netko smije, a što ne smije učiniti sa svojim tijelom.⁹ Ako je čovjeku zakonski dopušteno reći što god želi sve dok to ne predstavlja prijetnju, onda bi trebao biti u mogućnosti učiniti što god želi sa svojim tijelom, a time i organima, sve dok to ne predstavlja prijetnju drugoj osobi.¹⁰ Posjeduje svoje tijelo, budi se svako jutro i ide na posao, zarađuje svoj novac, plaća stvari svojim novcem da bi ostao živ, posjeduje svoje tijelo. Ako koristi svoju moždanu funkciju da se probudi i kaže svom

Let us present a situation in which a child from a wealthy family is dying due to kidney disease. He will not receive a kidney for transplant in time to save his life. His parents would presumably be willing to pay virtually any price they could afford⁷ to procure a kidney for their son. Someone would be more than happy to donate a suitable kidney, but only for payment. The donor has two kidneys and only needs one to live, so he is willing to provide one of them to this child. Both parties in the transaction are happy traders: the parents value their child's life more than the money they are willing to give up to protect it, and the seller values the money he receives more than the one kidney with which he could live without. A free market would facilitate many instances like this, allowing voluntary trades to save many lives. A look at the statistics provided previously from Taylor (2002; 2005; 2006; 2007; 2020) demonstrates that being put on a transplant waiting list currently amounts to a death sentence. Fewer than 17 percent of those on this queue ever receive kidneys.⁸ A free market for organ sales would allow people to bypass the wait on the transplant list and surpass their 17 percent likelihood of receiving a kidney by going directly to the sources of life: willing sellers. Repeal of the prohibition on organ sales would greatly increase the survival rate for patients with kidney disease in need of transplants and would help donors gain financially as well.

If a person is willing to sell his kidney for financial compensation, then he should be allowed to do so. No legal prohibition should dictate to a person what he can or cannot do with his own body.⁹ If a person is legally allowed to say whatever he wishes as long as it constitutes no threat, then he should be able to do whatever he wants with his body, and therefore organs, as long as it constitutes no threat to another person.¹⁰ He owns his body, he wakes up every morning and goes to work, makes his own money, pays for things with his own money to keep himself alive, he owns his body. If he uses his brain function to wake up and tell his body it needs food to fuel it for the rest of the day then he is in charge

tijelu da mu treba hrana da ga hrani ostatak dana, onda je on zadužen za svoje tijelo i posjeduje ga. Ako ima moć da kaže svom tijelu što da radi, tada ga ništa ne bi trebalo spriječiti da kaže svom tijelu da proda bubreg i bude nagrađen za tu radnju. Nitko drugi ne plaća ovom čovjeku da ostane živ, on je svoj čovjek i plaća da ostane živ sam radeći i brinući se za svoje tijelo. Nitko ne raspravlja o pravu vlasništva kada ljudi odluče prodati kosu kako bi napravili periku. Pa zašto se uskraćuje potpuno vlasništvo kada je u pitanju prodaja bubrega? Isto se može reći i za uklanjanje tumora; nema ozbiljnih primjedbi kada netko ima operaciju u tu svrhu; ljude se zapravo potiče da to učine. Zašto se, onda, vlasništvo ne brani kada govorimo o prodaji organa? Prema feministkinjama, “moje tijelo, moja prava”. Da, i muškarcima i ženama.

Kao što nabava bubrega može biti pitanje života ili smrti za pacijenta, prodaja bubrega također može biti pitanje preživljavanja za prodavatelja. Slobodno tržište bubrega je neto dobit, a obje strane koje su sudjelovale u transakciji odlaze s osjećajem profita: jedna strana s produljenim vijekom trajanja, a druga s uplaćenim iznosom. Svaka trgovina, svaka komercijalna interakcija je, bez iznimke, uzajamno korisna u *ex-ante* smislu (u smislu fiktivne potražnje).

Postoje li ikakve granice u komodifikaciji rabljenih dijelova ljudskog tijela? Što kada je netko na rubu bankrota? On vidi prodaju bubrega kao priliku za financijski oporavak. Dworkin (2014, str. 151) je protiv pozicije ekstremnog slobodnog tržišta: “Kao što od osiguravajućih društava zahtijevamo da ne koriste genetske informacije za odbijanje pokrića pacijenata, možemo zahtijevati od centara socijalne skrbi ili stečajnih sudova da ne uzimaju u obzir moguću prodaju organa.” Dworkin sugerira da se na organ ne gleda kao na imovinu, kao što je to novac u banci. To ograničenje spriječilo bi ljude da budu prisiljeni prodati jedan od svoja dva bubrega kako bi dobili socijalnu pomoć ili izbjegli stečajni status. Čim više prodaje bubrega, tim bolje, ali svaka prevencija koja štiti ljude od osjećaja da je prodaja organa njihova konačna financijska opcija je dobrodošla. Ako

of his body and owns his body. If he has the power to tell his body what to do, nothing should stop him from telling his body to sell a kidney and be compensated for this action. No one else is paying this man to stay alive, he is his own man and pays to stay alive himself by working and providing for his body. No one is arguing about the rights of ownership when people decide to sell their hair to make a wig. So why is full ownership rejected when it comes to kidney sales? The same can be said about removing a tumor; no serious objections are raised when someone has surgery for this purpose; people are actually encouraged to do so. Why, then, is ownership not defended when we discuss organ sales? According to the feminists, “my body, my rights.” Yes, to both males and females.

Just as procuring a kidney can be a matter of life or death for a patient, selling a kidney could also be a matter of survival for the seller. A free market for kidneys is a net gain, with both sides of the transaction leaving it feeling like they have profited: one with prolonged life and the other with payment. All trades, all commercial interaction, without exception, are mutually beneficial in the *ex-ante* sense.

Are there any limits to the commodification of used human body parts? What about the case where someone is on the brink of bankruptcy? He sees selling his kidney as an opportunity to financially recover. Dworkin (2014, p. 151) argues against this extreme free-market position: “Just as we require insurance companies not to use genetic information to refuse patients coverage, we can require that welfare agencies or bankruptcy courts not to take possible organ sales into consideration.” Dworkin is suggesting that an organ should not be viewed as an asset as would be money in the bank. This limitation would prevent people from being pressured into selling one of their two kidneys in order to receive welfare or avoid bankruptcy status. While the more kidney sales, the better, every protection to keep people from feeling that an organ sale is their final financial option is welcome. If a person

osoba želi prodati svoj bubreg uz novčanu naknadu, to je pozitivno, ali ako se osjeća pod pritiskom i prisilom prodati svoj bubreg, to bi bilo negativno. U tom slučaju prodavatelj ne bi imao osjećaj da je zaradio transakcijom u smislu fiktivne potražnje. Ne bi u potpunosti želio prodati svoj bubreg, ali bi se osjećao primoran na to. Ako slobodno tržište prodaje bubrega bude podržano od strane javnosti, to mora dovesti do povećanja života te do toga da, posljedično, obje strane koje su sudjelovale u transakciji budu zadovoljne svojim odlukama.

Dworkinov stav dodatno je ojačan mogućnošću da vrlo siromašni ljudi u nerazvijenim zemljama prodaju svoje bubrege u bescjenje, a zatim žale zbog toga.¹¹

Nasuprot tome, slučaj iznesen u ime slobodnog tržišta upućivao bi na sljedeće: ako čovjek nešto posjeduje, trebao bi moći otuđiti tu stvar, uključujući dijelove tijela kao što su organi. Prikladan aforizam glasi: “Ako nešto ne možete prodati, onda to ne posjedujete u potpunosti.”¹² Dakle, vlasnik bi se mogao naći u poziciji da proda organ kako bi vratio dug ili iz bilo kojeg drugog razloga. Takva situacija ne mora imati posebnu odredbu unutar *laissez-faire* tržišta organa. Nema posebnih izuzetaka od ovog općeg pravila. Voljni prodavatelji organa nužno se bore sa subjektivnim osjećajima prilikom vaganja svojih mogućnosti kao zaduženi vlasnici suočeni s tjelesnom prodajom radi vraćanja kredita. Prodati ili ne prodati svoj organ trebao bi biti izbor pojedinca, a ne predmet državne regulative, kao što je sada slučaj.¹³

Svi smo nesavršeni. Bogati i siromašni, stari i mladi, svako ljudsko biće. Svi činimo greške, u konačnici. Svi žalimo zbog odluka koje smo donijeli. Dworkinovo “rješenje” za ovo ljudsko stanje je da spriječi neke od nas da uopće donose odluke. To nije u skladu s demokratskom etikom koju prihvaća većina. Ova pozicija također je podložna svodenju do apsurdna: ako smo toliko glupi da nam se ne vjeruje dovoljno da prodamo dio tijela, kako možemo, kao nesavršena ljudska bića, mudro izabrati političare da donesu te odluke umjesto nas?

wants to sell his kidney for payment, this is again a positive, but if he feels pressured to sell his kidney and feels forced to, this would be a negative. It would leave the seller not feeling profitable about the transaction in the ex-ante sense. He would not wholly want to sell his kidney but feel forced into it. If the free market for kidney sales is going to be supported by the public, it has to lead to an increase in life and leave both parties in the transaction happy with their decisions.

The Dworkin position is further strengthened by the prospect of very poor people in underdeveloped countries selling their kidneys for a pittance, and then regretting it ever after.¹¹

In contrast, the case made on behalf of the free market would make the following point: If a person owns something, he should be able to alienate that thing, including body parts such as organs. The apropos aphorism is: “If you can’t sell it, you really don’t fully¹² own it.” Therefore, a self-owner could find himself in the position of selling an organ in order to repay a debt or for any other reason he wishes. Such a situation need not obtain a special provision within a strictly *laissez-faire* market for organs. There are no special exceptions to this general rule. Willing sellers of organs necessarily grapple with subjective feelings when weighing their options as indebted self-owners who are faced with bodily sales to repay loans. To sell or not to sell one’s organ should be the individual’s choice, and not the province of government regulation as is the current case.¹³

We are all imperfect. Rich and poor, old and young, every human being. We all make mistakes, *ex-post*. We all regret choices we have made. Dworkin’s “solution” to this human condition is to preclude some of us from making decisions in the first place. This is not compatible with the democratic ethic embraced by most. This position is also subject to a *reductio ad absurdum*: if we are so stupid so as not to be trusted enough to sell a body part or not, how can we imperfect human beings wisely elect politicians to make these choices for us?

Otuđenje tijela neizravno kroz rad i izravno kroz prodaju dijela tijela – čiji gubitak neće ubiti prodavatelja – dvije su strane medalje samovlasništva. Razmotrimo situaciju u kojoj hipotetski privatni sud donosi presudu o dužniku. Takav sud može ponuditi dužniku nekoliko opcija: odraditi dug kao rob zajmodavcu, prodati bubreg na tržištu i iskoristiti novac za otplatu zajma, ili biti protjeran iz zajednice i biti označen kao sramotni dužnik.

Također, *caveat emptor* odnosi se jednako na prodavatelja bilo čega kao i na kupca. Organi nisu iznimka. Osjećaji pritiska da se nešto proda nisu nešto što se može kontrolirati na burzama slobodnog tržišta, niti su ograničeni na to tržište. Jer ekonomska sloboda pruža priliku za sklapanje poslova koji su korisni *ex-ante*, iako ne nužno *ex-post*. Prodavatelji osjećaju grižnju savjesti jednako često kao i kupci. Nema razloga za pretpostavku da bi prodaja organa trebala biti iznimka od istine koja vrijedi za sve vrste trgovine.

Barnett, Blair, and Kaserman (1992, str. 372) pišu: “Tržišni sustav se bavi i problemom potencijalnih donatora koji odbijaju donirati i problemom da ih se ne pita žele li donirati organ, dok se altruistički sustav ne bavi nijednim problemom, a sustav kompenzacije samo prvim.”¹⁴ Plaćanje naknade za doniranje organa može ići samo do točke gdje slobodno tržište rješava problem nedostatka donatora koji se nameće zabranom, nudeći prodavateljima plaćanje. Posljedica ovog rješenja slobodnog tržišta bila bi također ta da bi problem nedostatka donatora, koji bi bili pozvani da sudjeluju u toj prodaji, bio trenutno riješen. Na primjer, u slučaju slobodnog tržišta, kupci bi mogli legalno kontaktirati prodavatelje; kupci bi mogli pronaći prodavatelje i zatražiti od njih da sudjeluju u predloženim transakcijama. Drugim riječima, zahtjev za prodajom organa bio bi legalan. Svaka osoba bi posjedovala vlastiti potencijal za poduzetništvo vlastitim organima. Tako bi sustav slobodnog tržišta riješio mnoge postojeće probleme koji su svojstveni sadašnjem, zabranjivačkom sustavu.

Alienation of bodies indirectly through labor and directly through the sale of a part – the loss of which will not kill the seller – are two sides of the self-ownership coin. Consider a situation in which a hypothetical private court is passing judgment on a debtor. Such a court could offer the debtor some options: work off the debt as the slave of the lender, sell off a kidney on a market and use the money to repay the loan, or be banished from the covenant community and be labeled a shameful debtor.

Also, *caveat emptor* applies just as much to the seller of anything as it does to the buyer. Organs are no exception. Feelings of pressure to sell are not something that can be controlled for in free-market exchanges, nor are they limited to this one market. For economic freedom provides an opportunity to make trades that are beneficial *ex-ante*, albeit not necessarily *ex post*. Sellers experience remorse just as buyers often do. There is no reason to suppose that organ sales should be an exception to this truism of all trades.

Barnett, Blair & Kaserman (1992, p. 372) write: “A market system would address both the problem of potential donors refusing to donate and that of their never being asked, whereas the altruistic system addresses neither problem and a system of compensation addresses only the former.”¹⁴ Providing compensation for an organ donation can only go so far, a free market would solve the problem of the prohibitionist-imposed shortage of donors by offering willing sellers payments. A corollary to the free-market solution would also address the current lack of donors being asked to engage in this sale. For in the case of a free market, buyers could legally contact sellers; buyers could find sellers and ask them to partake in proposed transactions. In other words, solicitations for the sale of organs would be legal pursuits. Every person would possess their own potential for organ-preneurship, that is, entrepreneurship regarding his own organs. Thus, the free-market system would solve many of the existing problems inherent in the current, prohibitionist system.

Štoviše, Barnett, Blair & Kaserman (1992, str. 372) također kažu: “Empirijski dokazi ukazuju na to da je ovo potonje (ne biti pitan da doniraš organe) prevladavajući uzrok trenutnog nedostatka organa.”

Doista, od ljudi se trenutno ne traži da doniraju svoje bubrege. Prema *status quo*, državni dužnosnici samo zapisuju imena onih koji su se prijavili za darivatelje organa i koji se odvajaju od svojih organa nakon smrti.¹⁵ S obzirom na to da slobodno tržište aktivno potiče kupce da traže potencijalne prodavatelje i osiguravaju oblik plaćanja, broj transplantacija bubrega vjerojatno bi bio znatno veći.

Rippon (2014, str. 146), piše: “Ponekad možete naštetiti ljudima ako im date mogućnost koja je dobra za njih i koju im je bolje iskoristiti.”

Ovaj stav je teško braniti. Pružanje dodatne opcije samo toj osobi daje dodatnu slobodu izbora.¹⁶ Iako bi uspostava sustava slobodnog tržišta ljudima pružila novu mogućnost za dobivanje novčanih sredstava putem prodaje bubrega, ta opcija nije štetna. Pružanje ove alternative može biti samo korisno, jer ljudima daje dodatni izbor, a ljudi bi se mogli osjećati prisiljenima prodati bubrege zbog financijskih poteškoća. Ipak, imaju izbor prodati bubrege ili ne izvući se iz spomenutih financijskih teškoća, dok bez slobodnog tržišta ne bi ni bilo te alternative. Ova opcija pomaže; ne škodi, jer je pružena ljudima u sustavu slobodnog tržišta, ali izbor je i dalje na pojedincu hoće li prodati svoj organ ili ne. Bez obzira na vanjske pritiske koje može osjetiti, izbor je na kraju na njemu. To uključuje sve ishode koji mogu nastati prodajom bubrega. Ako netko proda bubrege, a kasnije u životu njegov posljednji preostali bubrege otkáže, onda je ovo ishod o kojem je trebalo unaprijed razmisliti. Odluka o ponudi bubrega na prodaju nije jednostavna i potrebno je odvojiti sve potencijalne ishode. Postoje samo dva negativna ishoda na slobodnom tržištu trgovine bubrežima. Jedan od mogućih ishoda je taj da prodavatelj posljednji preostali bubrege u jednom trenutku kasnije u životu otkáže i da on

Moreover, Barnett, Blair & Kaserman (1992, p. 372) also say, “Empirical evidence suggests that the latter (not being asked to donate) is the predominant cause of the current shortage of organs.”

Indeed, people are currently not being asked to donate their kidneys. Under the *status quo*, government officials just take down the names of those who sign up to be organ donors and part with their organs upon death.¹⁵ With a free market actively encouraging buyers to solicit potential sellers as well as provide a form of payment, the number of kidney transplants would likely be substantially greater.

Rippon (2014, p. 146), writes: “Sometimes you can harm people by giving them an option that they would be better off taking.”

This is a difficult position to defend. Providing someone with an additional option merely gives that person additional freedom of choice.¹⁶ While the formation of a free market system would provide people with a new option to obtain funds through kidney sales, this option cannot harm. Providing this alternative can only be beneficial as it grants people an additional choice, and people might feel pressured into selling a kidney due to financial hardships. Still, they have the choice to pursue the sale of their kidney or not to get out of said hardships, while without the free market, they would not have this alternative. This option helps; it does no harm because the option is provided to people with the free market system, but the choice still lies with the individual to sell his organ or not. No matter what external pressures he might feel to do so, the choice should ultimately lie with him. This includes all outcomes that might occur from the sale of a kidney. If someone were to sell a kidney then later on in life his last remaining kidney failed, this is an outcome that should be thought about beforehand. The choice to offer a kidney for sale is not a small one to make, all possible outcomes must be weighed. There are only two negative outcomes in a free market for kidneys, that being the seller’s

sam tada zatreba transplantaciju. Drugi ishod je da operacija uklanjanja bubrega pođe po zlu i, na koncu, prodavatelj umre. U bilo kojoj situaciji, prodavatelj bi trebao voditi računa o mogućim posljedicama prije sklapanja takvih komercijalnih aranžmana. Ali pod režimom ekonomske slobode barem bi imao slobodu izbora da odvagne opcije i odabere hoće li prodati bubreg ili neće.

Rippon (2014, str. 146) također razmišlja ovako: “Tvrdit ću da mogućnost prodaje organa može rezultirati, u okolnostima koje su predvidljivo uobičajene među onima koji žive u siromaštvu, pojedincima koje će drugi smatrati odgovornima ako odaberu, i što je još važnije, ako ne odaberu dostupnu opciju.” Problem s Ripponovim argumentom protiv slobodnog tržišta za prodaju organa jest da je jedina osoba koja se može smatrati odgovornom za prodaju bubrega ta osoba osobno. Nitko drugi ne može tu osobu smatrati odgovornom za postupke koje odluči poduzeti ili ne poduzeti. Ako osoba odluči da je u njezinom interesu prodati svoj bubreg, ona je odgovorna za gubitak bubrega. Dakle, banka bi mogla organ dužnika smatrati imovinom, odrediti cijenu i ponuditi olakšicu dužniku zbog toga što se odrekao organa za dio ili cijeli dugovani iznos.¹⁷

Harris & Erin (2002, str. 114) brane sadašnji sustav jer funkcionira tako da “... sprječava bogate da koriste svoju kupovnu moć za iskorištavanje tržišta na račun siromašnih”.

To je uobičajena kritika sustava slobodnog poduzetništva: siromašni pate, dok bogati brutalno jašu nad njima. Površno gledano, ova kritika ima nekog smisla. Jer, danas se bubrezi dijele ljudima na temelju dobi, zdravlja, potreba, a ne bogatstva.¹⁸ To je zapravo donekle od koristi siromašnima, jer je veća vjerojatnost da će siromašni biti u lošijoj formi te će samim time biti više na listi čekanja na transplantaciju. Čak i da to nije tako, još uvijek, siromašni imaju jednaku šansu dobiti ovaj dio tijela kao i dobrostojeći. Nasuprot tome, strah koji su iznijeli Harris i Erin kaže da će pod režimom ekonomske slobode potonji nadmašiti prvoga.

last remaining kidney fails later in life and he himself now need a transplant or the surgery to remove the kidney goes wrong and the seller dies as a result. In either situation, the seller should beware of the possible consequences before making any such commercial arrangements, but they are at least provided with the freedom of choice to weigh the options and choose whether or not to sell a kidney under a regime of economic freedom.

Rippon (2014, p. 146) also opines, “I will argue that having the option to sell an organ may result, in circumstances which are predictably common among those in poverty, in individuals being held to account by others for taking, and more importantly, for failing to take the available option.” The problem with Rippon’s argument against the free market for organ sales is that the only person who can hold himself accountable for the sale of a kidney is that person himself. No one else can hold that person accountable for the actions he chooses to take or not to take. If a person decides it is in his best interest to sell his kidney, he is accountable for its loss. Ditto, the other way around. Thus, a bank could properly view a debtor’s organ as an asset, price it and offer relief to the debtor for giving up the organ for part or all of the owed amount.¹⁷

Harris & Erin (2002, p. 114) defend the present system since it functions so as to “... prevent the rich using their purchasing power to exploit the market at the expense of the poor.”

This is a variant of the usual criticism of the free enterprise system: the poor would suffer, while the rich would ride roughshod over them. On a superficial level, this critique does make some sense. For, presently kidneys are doled out to people on the basis of age, health, need, not wealth.¹⁸ This actually helps the poor somewhat, since they are likely to be less fit, and thus to be placed higher on the queue awaiting a transplant. Even if this were not so, still, the poverty-stricken have as much of a probability of obtaining this bodily part as the more well-to-do. In sharp contrast, the fear articulated by

Jedan od odgovora na ovo jest da je to sve dobro. Ako bogati ne mogu nadmašiti siromašne u ovome ili u bilo kojoj drugoj robi ili usluzi, koja je uopće svrha bogatstva?¹⁹ A ako je poticaj atrofiran, narušava se gospodarstvo u cjelini. U vrlo siromašnim zemljama, nakon svega, transplantacije su praktički nepoznate. Relativno bogati tamo dobivaju ove tretmane među nacijama koje potiču ljude da se obogate. To, nesumnjivo, zvuči bešćutno, ali činjenica je ekonomskog života da je bogatstvo rijetko. Sustav slobodnog tržišta za trgovinu bubrezima ne bi naštetio siromašnima niti bi ih iskorištavao, kao što mnogi autori sugeriraju. Predloženi sustav omogućio bi im izbor: da ostanu siromašni kao i u slučaju da sustav i nije uspostavljen ili da prodaju bubrege i ostave siromaštvo iza sebe. Iako ovo zvuči bezosjećajno, istina je. Prema našem sadašnjem sustavu, siromašni jednostavno moraju ostati siromašni, ali sustav slobodnog tržišta pružio bi im mogućnost da prodaju bubrege i dobiju priličnu naknadu za to, pomažući im da se izdignu iznad siromaštva. Nitko ne bi prisiljavao siromašne da prodaju bubrege, to bi bio slobodan izbor. Neki bi mogli tvrditi da to zapravo nije slobodan izbor te da bi zbog svog niskog ekonomskog statusa morali prodati bubrege kako bi preživjeli. Međutim, to ne može biti dalje od istine. Pri preispitivanju te mogućnosti, prodavatelji prvo moraju odvagati rezultate svojeg djelovanja; oni i dalje donose slobodan izbor. Samo zato što siromašni ljudi odluče prodati svoj bubrege, to ih ne čini žrtvom; naprotiv, to ih čini imućnijima. Čak i da se ne uspostavi slobodno tržište prodaje bubrega, što sprječava siromašnu osobu da proda sve što posjeduje, ma koliko to malo bilo, kako bi stekla bogatstvo? Još bolje, što ih sprječava da prodaju svoj bubrege na crnom tržištu? To je daleko opasnije od prodaje bubrega u sustavu slobodnog tržišta i transplantacijske operacije u sterilnom okruženju koju će izvesti visoko obučeni stručnjaci. Ako je problem legalizacije prodaje organa ono što bi se moglo dogoditi siromašnima, njima bi bilo daleko bolje pod režimom ekonomske slobode. Ništa se ne bi promijenilo u njihovom svakodnevnom životu,

Harris and Erin is that under a regime of economic freedom the latter will outbid the former.

One response to this is that this is all to the good. If the rich cannot outbid the poor for this or indeed any other good or service, what is the point of becoming wealthy in the first place?¹⁹ And if the incentive to do so is atrophied, the economy as a whole is undermined. In very poor countries, after all, transplants are virtually unknown. The relatively wealthy there receive these treatments in nations that encourage people to become rich. This, to be sure, sounds callous, but it is a fact of economic life that wealth is necessarily scarce. A free-market system for kidney sales would also not hurt the poor nor exploit them as many suggest. The proposed system would provide them with a choice, either remain in poverty as if the system were not in place or sell a kidney and leave poverty behind. While this sounds callous it is true. Under our current system the poor must just simply remain poor, but a free market system would provide them with an option to sell a kidney and receive a fair bit of compensation for doing so, therefore helping them rise above poverty. No one would be forcing the poverty stricken to sell a kidney, it would be a free choice. Some might argue that it is actually not a free choice but that because of their lowly economic status it would be a necessity to sell a kidney in order to survive. This could not be further from the truth. When investigating this prospect, the sellers must first weigh the outcomes of their action; they still make a free choice. Just because poor people sell their kidney this does not make them a victim; rather, this makes them wealthier. Even if a free market for kidney sales was not adopted, what is stopping a poor person from selling everything they own, however little that might be, in order to gain wealth? Even better yet, what is preventing them from selling their kidney on the black market? Doing so would be far more dangerous than selling a kidney in a free market system and having the transplant surgery in a sterile environment and performed by highly trained professionals. If the issue in the way of legalization of organ sales is what

osim što bi imali zakonsku mogućnost primanja znatnog iznosa odštete.

Vidiš nekog beskućnika na ulici sa svim svojim stvarima koje su stale u košaru za namirnice. Što gubi prodajom jednog bubrega? On nema gotovo ništa za izgubiti; ova transakcija mogla bi mu osigurati znatnu količinu novca koji bi mu mogao pomoći da prestane živjeti na ulici i da stekne vlastiti krov nad glavom. To bi mu moglo spasiti život, uzevši u obzir neizvjesnost beskućništva.

Cohen (1999, str. 136) govori o određenoj medicinskoj praksi u Indiji koja je proglašena nezakonitom. Kada netko postane klijent ordinacije, ordinacija pronalazi kupca i obavještava prodavatelja o mogućim komplikacijama operacije i mogućim nuspojavama te osigurava dvogodišnju besplatnu dodatnu skrb. Operacija se većinom izvodila na ženama, koje nisu radile ni približno teško kao njihovi muževi, tako da su muževi zadržavali oba svoja bubrega da bi i dalje bili maksimalno radno sposobni, dok su žene podvrgavane operaciji i prodavale bubreg za protuvrijednost 1200 dolara. Ljudima koji su podvrgnuti operacijama trebao je novac, ali prodaja je bila njihov izbor i upoznati su s mogućim posljedicama svojih odluka prije izvođenja operacije. No te su žene ipak odlučile podvrgnuti se operaciji i nakon što su operirane bile su više nego sretno što su dobile novac od prodaje. Čak im je bilo žao što nemaju još jedan bubreg za ponuditi.

Manje je bezosjećajno misliti da u sadašnjim institucionalnim uređenjima bogati i siromašni pate zajedno. Mnogi s oba kraja ovog spektra umiru zbog nedostatka bubrega. U okviru režima slobodnog poduzetništva ne bi bilo nestašica; nestašice proizlaze iz gornjih granica cijena, trenutačno postavljenih na cijenu blizu nule. Svatko bi imao koristi od funkcionalnog sustava utvrđivanja cijene bubrega.²⁰

Ovaj prohibicionistički sustav ne uzima u obzir činjenicu da bi ljudi još uvijek mogli besplatno donirati svoje organe. U najmanju ruku, dobrovoljne donacije bile bi opcija za osobe koje žele dijeliti svoje dijelove tijela potrebitima.

might happen to the poor, they would be far better off under a regime of economic freedom. Nothing would change in their day to day life, except they now have a legal option of receiving a considerable amount of compensation.

You see someone homeless on the street with all of his objects able to fit in a grocery basket. What does he lose from selling one of his kidneys? He has virtually nothing to lose; this transaction would provide him a substantial amount of money that could help him to get his life back together off the street and into an apartment. That might well save his life, given the precariousness of homelessness.

Cohen (1999, p. 136) discusses a particular medical practice in India which was made illegal. When someone became a client, the practice would find a buyer and also inform the seller about the possible complications of having the surgery and the possible side effects as well as provide two free years of follow up care. The surgery was overwhelmingly performed on women who would not do nearly as much labor-intensive work as their husbands, so the husbands kept both kidneys in order to sustain peak work performance, while the wives underwent the surgery and sold one kidney for the equivalent of \$1,200 USD. The people that underwent these surgeries needed the money but the sale was a choice and the possible consequences of their decisions was laid out before them before the surgery was performed. These women still decided to undergo the surgery and once performed they were more than happy to have the money from the sale and even wished they had another kidney to offer.

Less heartless is the consideration that under present institutional arrangements, the rich and the poor, together, suffer. Many from both ends of this particular spectrum die, from the shortage of kidneys. Under a regime of free enterprise, there would be no shortages; these stem from price ceilings, presently set at near-zero prices. Everyone would benefit from a functioning price system for kidneys.²⁰

Kapitalistički sustav dopustio bi održavanje lista za transplantaciju za one koji su presiromašni da bi platili. Svatko tko treba bubrege mogao bi biti stavljen na listu, ali ako netko s liste dogovori kupnju bubrege i dobije organ od privatnog prodavatelja, bio bi će uklonjen s liste. Ovaj sustav ni u kojem slučaju ne vodi k tome da omogućiti bogatima da iskorištavaju svoju kupovnu moć i uzimaju bubrege od onih manje povlašćenih. To bi jednostavno spasilo živote dodavanjem trenutnoj ponudi. Sadašnji broj ljudi koji žele donirati bubrege mogao bi ostati konstantan, ako se održavaju jednaki altruistički motivi, ali taj bi sustav bio kombinacija altruizma neznanaca i mogućnosti kupnje bubrege na slobodnom tržištu.

Amerikanci bi vjerojatno podržali legalizirano plaćanje bubrege ako bi to dovelo do većeg broja spašenih života, a to je upravo ono što kapitalistički sustav čini. Bogati neće eliminirati broj bubrege na tržištu i smanjiti nečije životne šanse. Ako ništa drugo, kupnjom bubrege zasebno i transplantacijom – dakle, uklanjanjem sebe s popisa za transplantaciju – bogati *povećavaju* vjerojatnost preživljavanja onima koji se još nalaze na tom popisu. To čine tako što *smanjuju* ukupan broj potrebitih koji ostaju na popisu. To bi rezultiralo time da broj primatelja doniranih organa ostane isti, a istodobno bi brojni životi bili spašeni kupovinom bubrege. Neto broj spašenih života bi porastao. Na primjer, ako je od 100 ljudi kojima je potrebna hitna transplantacija bubrege njih 20 u financijskom položaju da si mogu priuštiti bubrege, onda bi to značilo da je moguće izvršiti 20 transplantacija od maksimalnih 100, a donirani bubrezi tada mogu biti transplantirani onima koji si ne mogu priuštiti kupnju bubrege. Ako ništa drugo, u kapitalističkom sustavu, bogati pomažu siromašnjima a ne štete im, kao što Harris i Erin sugeriraju.

Rid, Bachmann, Wettstein & Biller-Andorno (2009, str. 562) proveli su istraživanje u kojem je sudjelovalo 178 sudionika iz Švicarske. Na anketno pitanje jesu li voljni donirati bubrege, samo je jedan sudionik rekao da bi donirao

This prohibitionist system does not account for the fact that people might still donate their organs *gratis*. At a minimum, voluntary donations would be an option for persons who wanted to share their body parts with the needy. The capitalist system would allow for the maintenance of transplant lists to benefit those too poor to pay. Everyone who needs a kidney could be placed on such a queue, but if someone on the list made a deal to purchase a kidney and received a transplant from a private seller, he would be removed from it. This system would by no means lead to the rich being able to use their purchasing power to take kidneys from those less fortunate. It would simply save lives by adding to the current supply. The present number of people who volunteer for kidney donation might well remain constant given no change in altruism, but this system would combine the altruism of strangers with the ability to purchase kidneys in a free market.

Americans would likely support legalized payment for kidneys if it leads to an increase in lives saved, and that is exactly what a capitalist system would do. The rich are not going to be removing kidneys from the market and worsening someone else's chances at life. If anything, by purchasing a kidney separately and getting a transplant - therefore removing themselves from the transplant list - the rich are *increasing* the likelihood of survival for those still on the transplant list. They do so by *decreasing* the total number of those in need who remain on the list. This would lead to the same number of people receiving donated kidneys while also saving lives through the purchase of kidneys, leading to a net increase in lives saved. For instance, if of the top 100 people who are in need of an emergency kidney transplant, 20 of them are in the financial position to be able to afford a kidney, then that would mean that 20 transplants of the top 100 were able to be performed and the freely donated kidneys could then go to those unable to afford a kidney. If anything, in a capitalist system, the rich help those less fortunate instead of hurting them, as Harris and Erin suggest.

Rid, Bachmann, Wettstein & Biller-Andorno (2009, p. 562) performed a survey involving 178

bubreg neznancu, a samo dvadeset i pet ih je reklo da bi ga doniralo voljenoj osobi i neznancu. Na pitanje bi li razmotrili prodaju bubrega, četrdeset osam od 178 sudionika odgovorilo je potvrdno. Ovaj rezultat ide u korist argumenta da u sadašnjem sustavu nedostaje bubrega. Uostalom, samo dvadeset i šest ljudi od 178 bi razmotrilo doniranje bubrega nepoznatoj osobi, ali ako bi prodaja bila legalna, četrdeset i osam ljudi bi se vjerojatno složilo. U ovom malom uzorku to bi bilo neto povećanje od 22 bubrega koji bi mogli spasiti još 22 života.

Harris & Erin (2002) iznose još jedan argument protiv sustava slobodnog poduzetništva: “Dopuštanje živim ljudima da budu plaćeni za svoje organe moglo bi dovesti do toga da društvo počne gledati siromašne ljude kao ljude koji posjeduju kapital i stoga ne ispunjavaju uvjete za isplatu socijalne pomoći” (str. 115). Opet, ovaj problem bi se mogao riješiti Dworkinovima (2014) argumentom, “Kao što od osiguravajućih društava zahtijevamo da ne koriste genetske informacije za odbijanje pokrivača pacijenata, isto tako možemo tražiti od centara socijalne skrbi ili stečajnih sudova da ne uzimaju u obzir moguću prodaju organa” (str. 151). S Dworkinovima argumentima riješio bi se problem koji Harris i Erin opisuju. Organi koje osoba posjeduje ne mogu se promatrati kao financijska imovina, a novčanu vrijednost stječu tek kad se prodaju. Dok su u tijelu, organe se može tretirati jednostavno kao organe, a ne kao imovinu koja će ograničiti ili zaustaviti isplatu socijalne pomoći ili utjecati na odluku stečajnog suda.²¹

Mogao bi se iznijeti i argument da bi se pod *laissez faire* kapitalizmom broj dostupnih bubrega mogao smanjiti, ali to nije točno. Iako je točno da bi građani koji su prije prelaska na slobodno tržište bili altruistični sada imali novu mogućnost, da prodaju svoje bubrege, čak i da neki odluče prodati svoje bubrege umjesto da ih doniraju, oni i dalje dodaju broj bubrega dostupnih za transplantaciju, doniranih ili kupljenih, što i dalje dovodi do povećanja broja spašenih života.

participants from Switzerland. In the survey, when the participants were asked if they would donate a kidney, only one participant said he would donate a kidney to a stranger and only twenty-five said they would donate to a loved one and stranger. When asked if they would consider selling a kidney, forty-eight of the 178 participants agreed. This finding supports the argument that under the current system there is a shortage of kidneys. After all, only twenty-six people out of 178 would consider donating a kidney to a stranger, but if sales were legal forty-eight would likely agree. In this small sample that would be a net increase of twenty-two kidneys that now have the ability to save twenty-two more lives.

Harris & Erin (2002) bring up another argument against the free enterprise system: “Allowing payment to living persons for organs could lead society to view poor people as having capital and consequently being ineligible for welfare payments” (p. 115). Again, this problem could be solved by Dworkin’s (2014) view, “Just as we require insurance companies not to use genetic information to refuse patients coverage, we can require that welfare agencies or bankruptcy courts not to take possible organ sales into consideration” (p. 151). So with Dworkin’s views implemented, that would solve the problem that Harris and Erin present. The organs a person possesses could not be viewed as financial assets, and they only gain monetary value once sold. While inside a person, the organs could be treated as simply organs, not assets being able to limit or stop welfare payments or affect a bankruptcy court’s ruling.²¹

One might make the argument that under *laissez faire* capitalism, the number of kidneys available might decrease but this is not true. While yes, the altruistic citizens before the switch to a free market now have the new option to sell their kidneys, and even if some did decide to sell their kidneys rather than donate, they are still adding to the number of kidneys available for transplant, donated or purchased, still leading to an increase in the number of lives saved.

Razmotrimo još jedan argument protiv deregulacije ovog sektora gospodarstva: piratstvo! Može se utvrditi da se u režimu ekonomske slobode bubrezi mogu prodati za 5000 dolara.²² Logika iza ove tvrdnje kaže da što je viša cijena, to će lopovima biti primamljivije prestati nevine ljude, iščupati im bubrege iz tijela te ih prodati. Ovo je potpuno točno. Sve krivulje ponude, bez iznimke, uključujući i krivulju ponude bubrega, imaju tendenciju rasta. Trenutno, dok je na snazi zabrana, cijena je otprilike nula.

Za usporedbu, gledano iz perspektive kradljivca automobila, bolje je ukrasti Maserati nego Ford Focus. Pogreška je u tome što je cijena na crnom tržištu, trenutno, daleko viša nego što bi bila uravnotežena cijena bubrega u slučaju legalizirane trgovine.

To je prikazano jednostavnom analizom ponude i potražnje. Ako bi se bubrezi iz slobodnog poduzetništva prodao za, recimo, 25 000 dolara, to bi bilo daleko primamljivije (vidi Sliku 1). Kako smo došli do te brojke? To je cijena po kojoj sadašnja zalihama zadovoljava krivulju potražnje.

Trenutačno bi bilo dostupno mnogo manje tih dijelova tijela nego kad bi trgovina bila legalizirana. Potražnja usmjerava krivulju u drugom, silaznom smjeru. Stoga će cijena na crnom tržištu (u uvjetima zabrane) biti viša od cijene na slobodnom tržištu (u uvjetima legalizacije). Dakle, u slučaju nasilja koje bi proizlazilo iz ovog izvora, ono će biti smanjeno, a ne pojačano, ako se trgovina organima legalizira.

ZAKLJUČAK

Svi argumenti idu u korist legalizacije. Bogataši ne mogu iskoristiti siromašne; ako ništa drugo, bogatašima bi se omogućilo da slobodno kupuju organe umjesto da čekaju besplatne organe na popisu, ostavili bi više doniranih organa onima kojima je to potrebno i koji si ih ne mogu priuštiti. Gospodarska sloboda u ovoj industriji također bi ljudima omogućila izbor. U trenutnom sustavu postoje samo dva izbora (doniraj ili ne doniraj).

Let us consider one more argument against deregulating this sector of the economy: piracy! It might be contended that in a regime of economic freedom, kidneys might sell for \$5,000.²² The logic behind this is that the higher the price, the more tempting it will be for thieves to waylay innocent people, rip their kidneys right out of their bodies, and sell them. As far that goes, this is entirely correct. Supply curves, all of them, without exception, up to and including that for kidneys, tend to slope in an upward direction. Right now, under prohibition, the price is roughly zero.

Other things equal, it is better from the robbers' point of view to car-jack a Maserati than a Ford Focus. The error here is that the black-market price, right now, is far higher than would be the equilibrium price of a kidney under legalization.

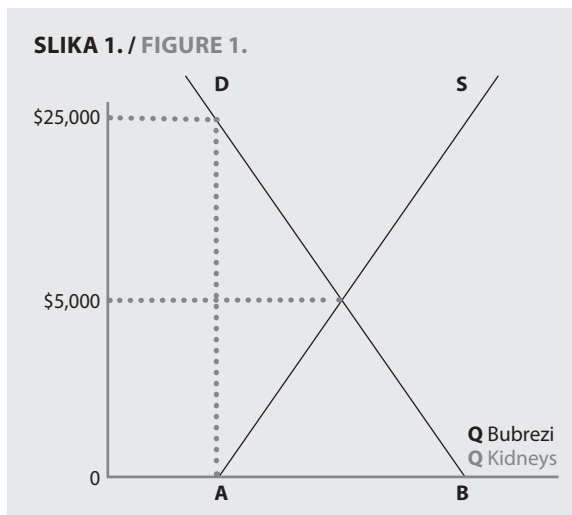
This is shown by a simple supply and demand analysis. If a free enterprise kidney sold for, say, \$25,000, this would be far more tempting (see Figure 1). How did we arrive at that figure? That is the price at which the present stock meets the demand curve.

There would be far fewer of these body parts available at present, than under legalization. Demand curves slope in a downward direction. Therefore, the black-market price under prohibition will be higher than the free market price under legalization. So, if there is any assault and battery going on from this source, it will be lessened, not strengthened, under legalization.

CONCLUSION

Legalization overcomes all substantive arguments against it. The rich could not take advantage of the poor; if anything, the wealthy being allowed to purchase organs freely rather than wait for a free organ on the list would leave more donated organs for those who are in need and cannot afford one. Economic freedom in this industry would also allow people to make more choices. In the current

SLIKA 1. / FIGURE 1.



Dodana bi bila mogućnost kupnje i/ili prodaje organa za transplantaciju.

Općenito, predloženi sustav *laissez-faire* povećava ukupan broj spašenih života, dopuštajući da se isti broj bubrega donira svake godine, a također na tržište kroz privatnu prodaju uvodi više bubrega koji spašavaju živote.²³ Vladini dužnosnici i političari, zabranjujući prodaju organa, zapravo stoje na samom korijenu problema; oni su, u biti, ubojice. Što je nemoralno u prodaji organa? Ne razlikuje se od šišanja i prodaje kose vlasuljaru. Ne koristite oba bubrega i ne trebate oba da biste živjeli, kao što ne trebate ni kosu da biste živjeli. Ipak, dozvoljena je prodaja kose, koja ne spašava živote, ali je slobodno tržište trgovine organa nepravedno zabranjeno. Naravno, ne može se poreći da postoji golema razlika u važnosti između kose i dijelova tijela kao što su bubreg ili krv. Obično ih smatramo vrlo različitim. Doista, mnogim će ljudima biti odbojno čak ih spominjati u istom kontekstu, a kamoli rečenici. Ipak, postoje i sličnosti: ljudi ili posjeduju te tjelesne aspekte ili ne. Ako ih posjeduju, imaju pravo postupati s njima kako god žele. Ako su u tome spriječeni, u toj mjeri su umanjena njihova vlasnička prava nad njima.

system, there are only two choices (donate or do not donate). Added would be the ability to buy and/or sell an organ for transplant.

Overall, the proposed *laissez-faire* system increases the total number of lives saved by allowing the same amount of kidneys to be donated each year while also introducing more life-saving kidneys to the market through private sales.²³ The government officials and politicians, by forbidding the sales of organs, are, in fact, at the root of the problem; they are in effect, murderers. What is immoral about selling one's organ? It is no different than cutting and selling your hair to a wig maker. You do not use both kidneys and do not need both to live, just as you do not need your hair to live. Yet, the selling of hair is allowed, which does not save lives, but a life-saving free market for organ sales is banned by unjust law. Of course, it cannot be denied that there is a gigantic difference in importance between hair and body parts such as a kidney or blood. We commonly regard them as very different. Indeed, many people will find it off-putting to even mention them in the same context, let alone sentence. Yet, there are similarities too: either people own these aspects of their bodies or they do not. If they do, they have a right to deal with them in any voluntary manner they wish. If they are prevented from so doing, then, to that extent, their ownership rights over them are attenuated.

BILJEŠKE

- ¹ Vrlo smo zahvalni pronicljivom sucu koji nas je izazvao da budemo logično dosljedniji u našim stavovima o potpunom ekonomskoj slobodi. Za sve preostale greške i nedostatke, naravno, sami smo odgovorni.
- ² Iznimke su Nobelova nagrada, Oscar ili druga dobra koja se dodjeljuju prema zaslugama. A tu je i činjenica da nitko ne može kupiti pravo prijateljstvo ili pravu ljubav.
- ³ Ovo je trenutna naknada za jetru pronađenu na ilegalnom tržištu donora. Cijena je viša nego što si prosječan kandidat za transplantaciju može priuštiti. Mogućnost kupnje ovog bubrega ipak je važna jer bi mnogi bili spremni platiti ovu cijenu u situaciji u kojoj im je život u pitanju. Izvori: <https://www.dailymail.co.uk/news/article-3031784/Inside-illegal-hospitals-performing-thousands-black-market-organ-transplants-year-200-000-time.html>; <https://futurism.com/neoscope/sale-human-organ>
- ⁴ Smrti svih osoba koje svake godine umru čekajući transplantaciju organa nisu slučajne. Bolje rečeno, oni koji umru dok su na listi čekanja stvorenoj zabranom trgovine organima žrtve su zakona koje je proglasio Kongres. "Ovi izgubljeni životi nisu toliko Božji čin koliko su čin Kongresa zbog njegovog nacionalnog zakona o transplantaciji organa iz 1984., s izmjenama i dopunama, koji zabranjuje isplatu darivateljima organa." (Williams, 2013, para. 1).
- ⁵ Sadašnji sustav je problematičan, jer ne osigurava pravednu naknadu za darivatelje bubrega i ne daje mogućnost izbora onima koji bi imali financijsku korist od prodaje bubrega.
- ⁶ Za slučajeve koji se zalažu za legalizaciju, vidi: Anderson, 2003; Anderson & Barnett, 1999; Barnett, 1988; Barnett, Saliba & Walker, 2001; Barnett & Saliba, 2004; Beard, Jackson & Kaserman, 2007-2008; Block, Whitehead, Johnson, Davidson, White & Chandler, 1999-2000; Block, 1987, 1988A, 1988B; Carey, 2002; Cherry, 1999; Clay & Block, 2002; Farber, 2015A, 2015B; Garner & Block, 2008; Hall, 2015; Healy, 2006; Hippen, 2008; Kaserman, 2002; Kaserman & Barnett, 2002; Malek, 2001; Richards, 2001; Taylor, 2005, 2006, 2007; Wilkinson, 2003; Young, 2004.
- ⁷ U tu svrhu bi molili, posuđivali, možda čak i krali. Čak bi se prodali u ropstvo kako bi spasili svoje potomstvo.
- ⁸ Ovi su statistički podaci izračunati temeljem informacija koje je naveo Taylor (2020, stavak 5). U 2013. godini obavljeno je 16 896 transplantacija bubrega, a na listi za transplantaciju bilo je više od 100 000 osoba. To znači da je bubreg dobilo manje od 17 posto onih kojima je bio potreban. Vidi i ove materijale, koje objavljuje Nacionalni centar za presađivanje bubrega: <https://www.kidney.org/news/newsroom/factsheets/Organ-Donation-and-Transplantation-Stats>

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- ¹ We are very grateful to a very perspicacious referee who has challenged us to be more logically consistent with our position of full economic freedom. All remaining errors and infelicities are our own responsibility, of course.
- ² Exceptions include the Nobel Prize, or an Oscar, or other goods distributed by merit. Then, there is the fact that no one can purchase true friendship, or true love.
- ³ This is the current compensation for a liver found on an illegal donor market. The price is more than the average candidate for transplant can afford. The option to buy this kidney though is important because many would be willing to pay this price in a life-or-death situation. Sources: <https://www.dailymail.co.uk/news/article-3031784/Inside-illegal-hospitals-performing-thousands-black-market-organ-transplants-year-200-000-time.html>; <https://futurism.com/neoscope/sale-human-organ>
- ⁴ The deaths of all persons who die each year awaiting an organ transfer are not accidental. Rather, those who die while on a waiting list created by the prohibitions on the trade of organs are victims of laws promulgated by Congress. "These lost lives are not so much an act of God as they are an act of Congress because of its 1984 National Organ Transplant Act, as amended, which prohibits payment to organ donors" (Williams, 2013, para. 1).
- ⁵ The current system is problematic by not providing fair compensation for kidney donors and not providing a choice to those who would benefit financially from selling a kidney.
- ⁶ For the case in favor of legalization, see Anderson, 2003; Anderson & Barnett, 1999; Barnett, 1988; Barnett, Saliba & Walker, 2001; Barnett & Saliba, 2004; Beard, Jackson & Kaserman, 2007-2008; Block, Whitehead, Johnson, Davidson, White & Chandler, 1999-2000; Block, 1987, 1988A, 1988B; Carey, 2002; Cherry, 1999; Clay & Block, 2002; Farber, 2015A, 2015B; Garner & Block, 2008; Hall, 2015; Healy, 2006; Hippen, 2008; Kaserman, 2002; Kaserman & Barnett, 2002; Malek, 2001; Richards, 2001; Taylor, 2005, 2006, 2007; Wilkinson, 2003; Young, 2004.
- ⁷ They would beg, borrow, maybe even steal to this end. Even sell themselves into slavery to save their progeny.
- ⁸ This statistic was calculated using the information provided by Taylor (2020, para. 5). There were 16,896 kidney transplants performed in 2013, while over 100,000 people were on the transplant list. This means that less than 17 percent of those who needed kidneys received one. See also this material provided by the National Kidney Foundation: <https://www.kidney.org/news/newsroom/factsheets/Organ-Donation-and-Transplantation-Stats>

⁹ Naravno, nikome se ne bi smjelo dopustiti da maše (vlastitim) rukama u gužvi jer bi to predstavljalo prijetnju drugima. Ali ovo je sasvim drugo pitanje. Evo mogućeg prigovora na gore navedeno: Zašto bismo trebali vjerovati da bi se ljudima trebalo dopustiti da sa svojim tijelom rade što žele? Ovo je vrlo osporavana tvrdnja koju treba potkrijepiti. Ako je to općeprihvaćeno, čemu se onda truditi i pisati ovaj članak? Naš odgovor je da zlo ropstva uopće nije “vrlo osporavana tvrdnja”. Vjerojatno rijetki u današnje vrijeme brane ovu “zanimljivu instituciju”. Pa ipak, ovo predstavlja apsolutno ocrnjivanje ljudi koji “posjeduju svoja tijela”. Dakle, oni koji se protive ropstvu, a također dovode u pitanje pravo ljudi na posjedovanje vlastitog tijela, čine logičnu kontradikciju.

¹⁰ Što bi bio valjani argument u korist ove tvrdnje? Ona proizlazi iz onoga što čini civilizirani poredak: ljudi bi trebali biti slobodni činiti što god žele sa svojom imovinom, uključujući dijelove tijela, samo pod uvjetom da takva radnja ne predstavlja ni kršenje prava *per se*, ni prijetnju njime. Poricanje ove tvrdnje smatrajte dokazom njezine istinitosti: ljudi ne bi trebali biti slobodni činiti što god žele sa svojom imovinom, uključujući dijelove tijela, pod uvjetom, čak i ako takva radnja ne predstavlja ni kršenje prava *per se*.

¹¹ U prilog ovom stajalištu, vidi Adair & Wigmore, 2011; Dumke, 2004; Etzoini, Undated; Resnick, 2012; Scheper-Hughes, 2002, 2005; i Sullivan, 1983.

¹² Vlasnička prava dolaze u paketu. Otudivost je, dakle, bitan i nužan dio vlasništva, zajedno sa svim ostalim vlasničkim pravima, kao što je mogućnost korištenja stvari i sprječavanja drugih u tome. Ako se otudivost ukine u određenoj mjeri, puno vlasništvo nestaje.

¹³ Postoji li u potpuno slobodnom poduzetništvu ikakvo ograničenje onoga što osoba može prodati? Je li granica zaustaviti se na organima bez kojih mogu preživjeti? Imaju li pravo sami sebe ubiti i prodati sve svoje organe kako bi njihove obitelji dobile novčanu odštetu? Iznos dobiti bio bi puno veći za cijelo tijelo nego za samo jedan organ, a može se pretpostaviti da bi bilo voljnih koji bi ušli u takvu transakciju – stari Rimljani bi počinili samoubojstvo da bi spasili obiteljsku čast, pa zašto ne spasiti obiteljske financije. Mi tvrdimo da je i ovo održiva opcija. Sloboda je sloboda i nema takvih granica.

¹⁴ Trenutni sustav darivanja organa ne traži od ljudi da doniraju svoje organe. Od darivatelja se traži da potpiše donorsku karticu, a nakon smrti darivatelja uzimaju se njegovi organi za transplantaciju. Nikada im se, dok su živi, nitko ne obraća i traži da daruju organ, a kamoli da ga prodaju.

¹⁵ To nije svugdje tako. Primjerice, prema hrvatskom zakonu (a i u nekim drugim zemljama) svatko se smatra obdukcijom darivateljem, osim ako izričito ne naredi drugačije.

⁹ Of course, no one should be allowed to swing (his own) arms around in crowded circumstances since that would constitute a threat to others. But this is a very different issue. Here is a possible objection to the foregoing: Why should we believe that persons should be allowed to do what they wish with their own bodies? This is a highly contested claim which needs significant support. If it were generally accepted why bother writing this paper? Our response is that the evils of slavery is not at all “a highly contested claim.” It must be the rare person, nowadays, who actually defends this “curious institution.” And, yet, this constitutes the absolute denigration of people “owning their own bodies.” Thus, those who oppose slavery, and, also, call into question the right of people to own their own bodies, are committing a logical contradiction.

¹⁰ What argument could be made in behalf of this claim? It stems from what constitutes a civilized order: people should be free to do whatever they want with their own property, including their body parts, provided, only, that such an action constitutes neither a *per se* rights violation, nor a threat thereof. Consider the denial of this claim as a proof of its truth: people should not be free to do whatever they want with their own property, including their body parts, provided, even if such an action constitutes neither a *per se* rights violation.

¹¹ For support of this position, see Adair & Wigmore, 2011; Dumke, 2004; Etzoini, Undated; Resnick, 2012; Scheper-Hughes, 2002, 2005; and Sullivan, 1983.

¹² Ownership rights are bundled. Alienability, then, is an essential and necessary part of ownership, along with all other ownership rights, such as the ability to use the item, and prevent others from so doing. To the extent that alienability is abrogated, full ownership disappears.

¹³ Is there any limit under full free enterprise to what persons may sell of themselves? Is the limit to stop at organs without which they could survive? Are they entitled to have themselves killed, and sell all of their organs in order to have their families financially compensated? The amount of profit would be much greater for an entire body than for just one organ, and one can assume that there would be those willing to enter such a transaction – the ancient Romans would commit suicide to save family honor, so why not to save the family's finances. We aver that this, too, is a viable option. Freedom is freedom and has no such limits.

¹⁴ The current system for organ donation does not ask people to donate their organs. A donor is asked to sign a donor card, and upon the death of the donor, their organs are harvested for transplant. They are never approached, while living, to ask to donate an organ, let alone sell one.

¹⁵ This is not the case everywhere. For instance, under Croatian law (and in some other countries as well), everyone is considered a post-mortem donor, unless they explicitly say otherwise.

¹⁶ Senator Bernie Sanders požalio se da u kapitalizmu postoji previše brendova žitarica, dezodoransa itd. <https://reason.com/2015/05/26/bernie-sanders-dont-need-23-choices-of-d/>. Nije li u pravu? Pretpostavimo da samoposluga nudi, doslovno, 100 000 brendova nekog artikla, ili, u krajnjem slučaju, beskonačan broj njih. Kako bi to moglo biti od koristi potrošaču? Ne bi li to bilo “previše dobrog”? Postoji razlog zašto ne vidimo ništa slično u stvarnoj ekonomiji: bilo bi neisplativo. S druge strane, Amazon nudi mnoštvo različitih proizvoda, i to prilično uspješno. Rječnici definiraju gotovo neograničeno velik broj riječi; enciklopedije ne zaostaju mnogo. Postoji čitav svijet razlika između ponude mnogih opcija kada je to praktično (Amazon, rječnici itd.) i kada to nije (trgovine). Sve je manje povrata, neki su brži, neki sporiji.

¹⁷ Postoji opsežna literatura o autonomiji i ograničavajućim opcijama koja se uglavnom protivi našoj tezi. Npr., vidi Erin & Harris, 2003; Hughes, 1998; McLeod & Sherwin, 2000; Rippon, 2014; Sas, 2020; Taylor, 2002.

¹⁸ Koristi se princip trijaže, a one koji su pretili ili puše gura se na kraj reda.

¹⁹ Nemogućnost bogatih da nadmaše siromašne nudeći više za neku robu ili uslugu ne znači da ih ne mogu nadmašiti ni u jednoj, ili čak i u većini.

²⁰ Jesmo li ovdje govorili prebrzo? Ne bi li prohibicionisti, regulatori, oni koji su plaćeni da drže liste čekanja za potrebite pacijente, itd., izgubili u režimu ekonomske slobode? Sa stajališta običnog jezičnog laika, to se ne može poreći. Ali to je zajedničko svim natjecanjima. Na primjer, mladić A i mladić B se žele oženiti djevojkom C. Ona će izabrati samo jednog od njih. Većina ljudi bi rekla da je onaj drugi izgubio. Međutim, s tehničko-ekonomskog stajališta, “gubitnici”, bilo u braku ili bilo kojem drugom natjecateljskom pothvatu, ne mogu to demonstrirati. Oni mogu kukati i žaliti se, ali to samo pokazuje da oni, po svojoj procjeni, imaju koristi od toga što rade više nego od bilo koje alternative koju su mogli poduzeti u tom trenutku. Za više o tome vidi Rothbard (1956).

²¹ To bi, naravno, bila čista i očigledna laž, budući da organi u tijelu čovjeka i dalje imaju vrijednost, bez obzira na odluku vlasti. Ali, strogo govoreći, Dworkinov prijedlog doista pobija prigovor Harris i Erin. Možemo sugerirati da centar za socijalnu skrb ne uzme u obzir ostalu imovinu siromašnih, poput automobila, televizora, itd.; što teško da bi ovim predmetima oduzelo njihovu vrijednost. Za slučaj protiv socijalne skrbi vidi Murray (1984)

²² Procjena je mnogo. Promchertchoo (2019) procjenjuje da je to između 3 900 i 9 700 dolara na Filipinima. Dominguez Long & Green (2014) procjenjuju ga na 26 200 dolara. Iranska fiksna cijena je 4 600 dolara; to je jedina zemlja u kojoj je takva prodaja legalna (Bengali & Mostaghim, 2017).

¹⁶ Senator Bernie Sanders has complained that under capitalism there are too many brands of dry cereals, underarm deodorants, etc. <https://reason.com/2015/05/26/bernie-sanders-dont-need-23-choices-of-d/>. Does he not have a point? Suppose a supermarket offered, literally, 100,000 brands of some item, or, in the extreme, an infinite number of them. How could this be of help to the consumer? Would this not be “too much of a good thing?” There is a reason we do not see anything of the sort in the real-world economy: it would be unprofitable. On the other hand, Amazon offers a plethora of different products, and does so pretty successfully. Dictionaries define almost indefinitely large numbers of words; encyclopedias are not far behind. There is all the world of difference between offering many options when convenient (Amazon, dictionaries, etc.), and when they would not be inconvenient (grocery stores). There are diminishing returns to all things, some faster than others.

¹⁷ There is an extensive literature on autonomy and constraining options which in the main vitiate against our thesis. For example, see Erin & Harris, 2003; Hughes, 1998; McLeod & Sherwin, 2000; Rippon, 2014; Sas, 2020; Taylor, 2002.

¹⁸ Triage is employed, and those who are obese, or smoke, are relegated to the end of the queue.

¹⁹ The inability of the rich to outbid the poor for some goods or services does not entail that they cannot outbid them for all, or even most, goods or services.

²⁰ Did we speak too fast here? Would not the prohibitionists, the regulators, those paid to keep waiting lists for needy patients, etc., lose out from a regime of economic freedom? From an ordinary language layman’s point of view, this cannot be denied. But this is the same in all competitions. For example, boy A and boy B both seek the hand in marriage of girl C. She chooses only one of them. Most people would say that the other one lost out. However, from a technical economic point of view, the “losers,” whether in the marriage or any other competitive undertaking, have no way of demonstrating any such thing. They can whine and complain, but that can only demonstrate that in their estimation they benefit from so doing, more than from any alternative they might have undertaken at that point in time. For more on this see Rothbard (1956).

²¹ This of course would be an outright and blatant lie, since the organs inside of a person would still have value no matter what decision is made by the authorities. But, strictly speaking, Dworkin’s suggestion does indeed refute the objection of Harris and Erin. We could go Dworkin one better by proposing that the welfare department not take into account still other possessions of the poor, such as cars, televisions sets, etc.; that would hardly rob these items of their value. For the case against welfare see Murray (1984).

²³ Ovo se temelji na istraživanju Elías, Lacetera i Macisa (2019), koje pokazuje da se potpora Amerikanaca prodaji organa povećala za 18 posto s obzirom na to da se više života spašava. To je ono što bi slobodno tržište u konačnici donijelo, povećanje ukupnog broja spašenih života.

²² Estimates are all over the lot. Promchertchoo (2019) estimates this as between \$3,900 and \$9,700 in the Philippines. Dominguez Long & Green (2014) estimate it at \$26,200. The Iranian fixed price is \$4,600; that is the only country in which such sales are legal (Bengali & Mostaghim, 2017).

²³ This is based on the research done by Elías, Lacetera & Macis (2019), which shows that Americans support of organ sales increases by 18 percent given that more lives are being saved. This is what the free market would do, increase the total number of lives saved.

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