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Kantian Condemnation of Commerce in Organs

ABSTRACT. Opponents of commerce in organs sometimes appeal to Kant's Formula of Humanity to justify their position. Kant implies that anyone who sells an integral part of his body violates this principle and thereby acts wrongly. Although appeals to Kant's Formula are apt, they are less helpful than they might be because they invoke the necessity of respecting the dignity of ends in themselves without specifying in detail what dignity is or what it means to respect it, and they cite the wrongness of an agent's treating another merely as a means without clarifying conditions under which this occurs. This paper crystallizes two different approaches to the Formula of Humanity and probes when, according to them, the principle would imply that it is wrong to engage in "live donor" transactions, in which someone chooses to undergo a kidney extraction in exchange for money.

Developments on the ground and in theoretical debate underscore the importance of thinking more about the morality of buying and selling organs. "Transplant tourism" has become a popular means by which patients in need of organs procure them, and increasing numbers of bioethicists and philosophers are advocating regulated markets in organs.

In a typical case of transplant tourism, a patient from a developed nation such as the United States, Saudi Arabia, or Israel pays a fee to have a kidney transplant abroad. A "donor," procured for the patient by a broker, awaits him. The donor or, more accurately, seller is very poor, for example, someone living below the poverty line in the Philippines, and the broker has promised to pay him in cash for his kidney (Bramstedt and Xu 2007). The Philippines recently banned kidney transplantations for foreigners in an effort to curb the organ trade. Other popular destinations for transplant tourism, including China and Pakistan, have passed regulations forbidding the commercialization of organs, but so far enforcement has been lax. Figures are difficult to come by, but recent World Health Organiza-

tion research suggests that in 2005 at least 5 percent of organ transplants worldwide involved such tourism (Shimazono 2007, p. 959). In Pakistan, for example, up to two-thirds of the 2,000 kidney transplants done that year were performed on foreigners (Shimazono 2007, p. 957).

The United States Congress passed a law, the National Organ Transplant Act of 1984 (NOTA), making it illegal to buy an organ on American soil. Members of congress offered as justification the argument that such commerce is immoral. But if it is indeed wrong to buy an organ in the U.S., is it not also wrong for an American citizen to buy one in the Philippines, say from a laborer who earns \$1 per day? Laws forbidding conduct by U.S. citizens abroad are already on the books. The PROTECT Act of 2003 makes it illegal for Americans abroad to have commercial sex with anyone under age 18. If the commercialization of organs is morally wrong and partly for that reason legally prohibited in the U.S., perhaps it also should be illegal for Americans to purchase organs abroad.

What drives transplant tourists is clear. More than 79,000 people are now on the waiting list to receive a kidney in the United States (OPTN 2009a). But there is a shortage of organs. In 2008, only 16,517 kidney transplants were performed in this country (OPTN 2009b). Some of those currently on the waiting list will die as a result of no organ being available to them. Even those who are relatively fit have an understandable desire to hasten transplant; the quicker they receive a kidney, the less time (if any) they will spend on dialysis and the longer and healthier they are likely to live (Goyal et al. 2002, p. 1589).¹

Some philosophers and bioethicists have reacted to the organ shortage and/or transplant tourism by advocating the establishment of a regulated market in organs (see, e.g., Radcliffe-Richards et al. 1998; Hippen 2005; Wilkinson 2003; Taylor 2005). Proposals for regulated markets vary, but they typically involve provisions that try to ensure the safety of sellers and recipients, as well as transparency regarding risks, payment, and follow-up care (see, e.g., Matas 2006, p. 1129; Taylor 2005, pp. 110–12). Some proposals specify that it be the government, rather than, say, a private clinic that actually purchases the organs and that it provide organs and associated care to citizens in need, regardless of income. Of course, if buying and selling organs is morally wrong, then there is reason to reject such proposals.

Opponents of commerce in organs sometimes appeal for justification of their views to the work of Immanuel Kant, in particular a version of his categorical imperative, the Formula of Humanity: “So act that you

treat humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means” (Kant 1996 [1785], Ak 429, italics omitted).² Kant implies that anyone who sells an integral part of his body violates this principle and thereby acts wrongly (Kant 1996 [1797], Ak 423). Although these opponents’ appeals to the Formula of Humanity are apt, they are less helpful than they might be. They invoke the necessity of respecting the dignity of ends in themselves without specifying in detail what dignity is or what it means to respect it, and they cite the wrongness of an agent’s treating another merely as a means without clarifying conditions under which this occurs (see, e.g., Cohen 2002; Morelli 1999).

This paper crystallizes two different approaches to the Formula of Humanity, one that appeals to a notion of dignity and purports to elucidate the formula as a whole, the other that highlights a concept of treating another merely as a means and invokes only part of the formula.³ These approaches were available to Kant and square with some key claims he makes regarding the Formula of Humanity, but they should be taken here as ways of reconstructing his position rather than strict interpretations of his writings.⁴ The paper probes when, according to these approaches, the principle would imply that it is wrong to engage in “live donor” transactions, namely ones in which, in exchange for money, someone chooses to undergo a kidney extraction. The paper concludes that on these approaches, the Formula of Humanity does not always condemn the buying or selling of organs. However, it does condemn, as well as highlight reasons for condemning, the practice in many of the contexts in which it has been and is likely to be realized.

As I investigate the implications of the Formula of Humanity for the sale of organs, it will be helpful to have some cases in view.

Entrepreneur

A 30-year-old man who is in good health sells one of his kidneys for \$50,000 in order to finance a new business. He has a secure job, but not enough savings to get his venture off the ground. The buyer is a 45-year-old woman in end-stage kidney failure whose health is deteriorating to the point that her doctors soon will deem her too sick to remain on the national waitlist for an organ. Both buyer and seller have a thorough understanding of the health risks each will incur. The buyer pays for the organ with her own funds, without giving up her financial well-being or that of her family. She has excellent insurance, which covers all the rest of

her medical expenses. She pays the medical expenses that the seller incurs, and guarantees him health insurance for the rest of his life. Both are cared for by first-rate physicians in a state-of-the-art facility.

Transplant Tourism

A 25-year-old, married man in a developing country has struggled as a laborer to make ends meet. Expenses for food, housing, and, especially, medical care for his wife have landed him in debt. His creditors are harassing him to pay what he owes. He agrees to sell one of his kidneys to a broker for \$2,500. As the seller is aware, the broker is an agent of a nearby clinic, one that provides services to transplant tourists from wealthy countries. The broker tells the seller that it is easy to explain the risks he will face: the surgery necessary to harvest the kidney poses little threat to his well-being; in all likelihood, he will be fine in a few weeks. In addition to giving the laborer the cash, the broker pays for the surgery, as well as for the medical expenses incurred during the seller's recovery. The surgeon is experienced and competent, and the facilities for surgery and recovery are adequate.

Regulated Market

As in the previous case, a 25-year-old, married man in a developing country has struggled as a laborer to make ends meet. Expenses for food, housing, and, especially, medical care for his wife have landed him in debt. His creditors are harassing him to pay what he owes. But in his country, the government has established a regulated market in organs. A government employee gives the man a thorough and comprehensible description of the short- and long-term health risks posed by kidney extraction as well as of the benefits he will receive if he sells an organ, including \$2,500 and health insurance for life. The man goes ahead with the procedure and indeed receives the cash and insurance coverage.

The Formula of Humanity clearly contains the command that an agent never treat another merely as a means. But it is far from obvious what this command specifically entails. In the first section of the paper, I set out an interpretation of the command, and in the second section, I try to discern if and when the buyers and sellers described in the previous cases violate it. Some philosophers believe that the best way to approach the Formula of Humanity is to focus not on what it means to treat persons merely as means, but on what it means to treat persons as ends in themselves. They

observe that for Kant a necessary as well as a sufficient condition for someone treating a person rightly is that he treat him as an end in himself. The third section of the paper summarizes an account of what treating persons as ends in themselves entails. On this account, the Formula of Humanity is in essence an imperative to respect the special value inherent in persons, that is, their dignity. The fourth and fifth sections apply this account to cases of buying and selling organs.

TREATING OTHERS MERELY AS MEANS

A sufficient condition for an agent's violating the Formula of Humanity is that he contravene (what I call) the Mere Means Principle: never treat another merely as a means. If either the organ buyer or seller treats the other merely as a means, then he acts wrongly. But under what conditions does an agent treat another merely as a means?⁵

Much discussion of this question stems from a single passage in the *Groundwork of the Metaphysics of Morals*. Kant (1996 [1785], Ak 429–30) is attempting to demonstrate that the Formula of Humanity generates a duty not to make false promises:

He who has it in mind to make a false promise to others sees at once that he wants to make use of another human being *merely as a means*, without the other at the same time containing in himself the end. For, he whom I want to use for my purposes by such a promise cannot possibly agree to my way of behaving toward him, and so himself contain the end of this action.

In the second sentence, Kant seems to invoke the idea that since a person who makes a false promise to another denies the other the possibility of consenting to his action, he treats the other merely as a means.

According to the Possible Consent account of the Mere Means Principle: An agent treats another merely as a means if his treatment of the other prevents him from having the opportunity to consent to this treatment.⁶

Several aspects of the account, which sets out a sufficient condition for an agent's treating another merely as a means, require clarification. First, it is helpful to consider the notion of an agent's treating or using another in some way. It is not sufficient for using another or treating him in some way that one benefit from what the other has done. If, on her usual route through the park, a jogger gets pleasure from a passing stranger's singing, she does not appear to be using the stranger (Nozick 1974, pp. 31–32). Moreover, I have been employing (and will continue to employ) the terms "treating another in some way" and "using another"

interchangeably. However, in ordinary English the notion of treating another in some way seems to have a wider extension. If someone smiles at you, for example, he treats you in some way, but he might not be using you at all. He might simply be expressing affection. Here I stipulate that in the Possible Consent account the notion of treating another in some way *does not* have this wider extension. All cases of using another, or, equivalently, treating another in some way, are ones in which an agent intentionally does something to someone in order to secure, or as a part of securing, one of his ends. For example, I use a taxi driver if I hail his cab in order to get to the cinema.

The Possible Consent account incorporates a particular reading of possible consent, according to which an agent can consent to a course of action only if it is possible for him to dissent from it. It is possible in the relevant sense for someone to dissent from a course of action only if he can avert or modify it “by withholding consent and collaboration” (O’Neill 1989, p. 110). If an agent deceives or coerces another, then the other’s dissent is “in principle ruled out,” and thus so is his consent (O’Neill 1989, p. 111). Suppose, for example, that in order to make money an auto mechanic tricks a customer into authorizing an unnecessary repair. The mechanic’s trickery prevents the customer from having the opportunity to dissent from his use of him. For it hides the character of this use, namely that it involves a false assessment of what is wrong with his car. Or suppose that a mugger approaches you on a dark street, points a gun at your torso, and tells you with chilling candor that unless you give him your wallet, he will kill you—and, presumably, take your wallet. He gives you no opportunity to avert or modify his use of you to obtain money: you must, as it were, either give it to him dead or alive. So you cannot consent to his action.

According to the Possible Consent account as I develop it, for an agent to treat another merely as a means, it does not suffice that the other simply *be* unable to consent to the way he is being treated. If it did suffice, then a passerby giving cardiopulmonary resuscitation (CPR) to a collapsed jogger would treat her merely as a means and thus act wrongly. For since she is unconscious, the jogger could not avert or modify the passerby’s action. The Possible Consent account does not count an agent as treating another merely as a means unless something the agent does or has done precludes the other from having the opportunity to avert or modify the agent’s action.

Finally, on the Possible Consent account as I construe it, an agent robs another of the opportunity to avert or modify his use of her if the following is the case: In a way foreseeable to the agent, he has done something to the other (or her property) without her consent that has brought it about that the other's welfare will be significantly lower if the agent does not use her than it will be if he does. Suppose that, as a computer technician knows, a customer must email today a vital document, the only copy of which is on the customer's hard-drive. Her computer is frozen and he is the only one in position to fix it. The technician uses her to make a profit by getting her to authorize him to do the repair. But the computer is malfunctioning partly as a result of the technician's behavior on a previous service call, when he knowingly left her machine vulnerable to malware. Her welfare will be significantly lower if he does not make use of her (through doing the repair for profit) than if he does. In this case, according to the Possible Consent account, even though the technician does not lie to the customer when he says that her computer needs service, his actions have robbed her of the opportunity to avert or modify his use of her. In getting her to authorize the repair, he treats her merely as a means.

ORGAN TRANSACTIONS AND TREATING OTHERS MERELY AS MEANS

The Possible Consent account specifies a sufficient condition for an agent's violating the Mere Means Principle. Returning to the case of organ sales, does anyone described in the examples given treat another merely as a means?

No one in the entrepreneur case does so. The two parties use one another. The entrepreneur treats the patient as a means for obtaining money; the patient treats the entrepreneur as a means for getting a kidney. But neither person's actions prevent the other from having the opportunity to avert being used by him/her.

In the transplant tourism case, the laborer does not use the broker merely as a means. Nothing the laborer does prevents the broker from refraining from agreeing to buy his organ. However, in a real-world manifestation of such a case, the broker probably would be treating the seller merely as a means.

Poor kidney sellers are very often harmed by the transaction. According to a study (Goyal et al. 2002) conducted in Chennai, India, for example, sellers were very poor, with more than half living below the poverty line before selling a kidney. Their principal motive was to rid themselves of debts, primarily ones incurred by paying for food, housing, dowries, and

medical care. More than 85 percent of the sellers reported that organ removal was followed by a decline in health. One half reported persistent discomfort at the incision site and one third back pain—likely more than mere inconveniences given that the majority of sellers work as laborers and street vendors. But the procedure did not deliver them from debt. Significantly more individuals lived below the poverty line after the sale than before it. Almost 80 percent of those in the study would not recommend that others in similar circumstances sell a kidney. A more recent survey of 239 kidney vendors in Pakistan showed that 88 percent made no economic improvement, and 98 percent reported deterioration in general health (Naqvi et al 2007). Vendors in Pakistan also have been found to be at high risk of developing renal disease in the long term (Naqvi et al 2008). Finally, kidney sellers, like prostitutes, suffer from a stigma that can extend to their families, several researchers have found. For example, a boy in India complained that others taunted him by repeating, “Your mother is a kidney seller” (Cohen 1999).

In many contexts in which transplant tourism occurs, indeed in all of which I am aware, it would be remarkable ignorance indeed if a broker were not cognizant of possible harms such as these. If, as in the example given, he claims to disclose the risks of the transaction to the seller but omits to mention such information, then he deceives him about the risks. The broker prevents the seller from having the opportunity to dissent from the particular use he makes of him. The broker obscures the character of this use, which involves hiding the risks to the buyer posed by kidney extraction. Thus the broker treats the seller merely as a means.

Finally, in the regulated market case, the laborer who sells his kidney to pay his debts does not treat the government (or its agent) merely as a means. His agreeing to sell his kidney obviously does not preclude the government from having the option to forgo buying one from him. But does the government treat the laborer merely as a means? It is certainly using him. That fact, coupled with the fact that his circumstances preclude good alternatives to selling his kidney, might seem to entail that the government is using the laborer merely as a means.

But *these particular* facts do not entail this. One agent can use another, yet not treat him merely as a means even when, as they both know, the other’s welfare will diminish unless the other allows the agent to use him. Suppose, for example, that someone’s car has broken down in a desert. She might not have any good alternative but to pay a local mechanic to repair it. That the mechanic charges her in order to make money does

not, according to the Possible Consent account, entail that he treats her merely as a means. Nothing he has done to her or her property precludes her from having the opportunity to turn down his offer of doing a repair for a fee. Her circumstances are responsible for her not having a choice but to pay him, or, more precisely, for her not having an alternative to paying him that would preserve her welfare.

But now suppose that he is partly responsible for her engine's overheating. At his service station 40 miles back, he agreed to check her radiator fluid, but chose not to because he was in a hurry. In that case, in proposing a repair for a fee, he is treating her merely as a means. She has no welfare-preserving option to decline his proposed use of her, and, as he could have foreseen, something he has done to her and to which she has not consented precludes her from having such an option.

In the regulated market example, although the government's using the laborer as an organ source does not entail that it uses him merely as a means, the government might nevertheless be doing so. Along the lines of the examples of the mechanic and the computer technician, it is doing so if the following conditions are fulfilled. The laborer has no welfare-preserving alternative but to sell his kidney and, without the laborer's consent, the government, through its policies, has foreseeably put the laborer in his current situation.⁷ Of course, in many circumstances, it would not be easy to judge whether this second condition was fulfilled. Was it government policy or the agent's own poor but avoidable choices that left him with no welfare-preserving alternative but to sell his organ? Suppose it was the government's policy that put the laborer in this condition. Was this result foreseeable or produced by an exceptional concomitance of events? In any case, in highly stratified societies with corrupt governments, it is likely that the conditions would be fulfilled.

EXPRESSING RESPECT FOR THE WORTH OF HUMANITY

The Possible Consent account specifies a sufficient condition for an agent's violating the Mere Means Principle, but captures only a part of the Formula of Humanity. The Value-Based account focuses on the notion of treating a person as an end in himself and purports to give a comprehensive reading of the Formula. (The two accounts are not necessarily in tension with one another. I specify a way in which they might be combined later in the paper.)

In order to understand the Value-Based account, one must explore the meaning Kant assigns to the notion that humanity is an end in itself. First,

Kant (1996 [1785], Ak 437; see also 1996 [1797], Ak 442) suggests that humanity is not an “end to be effected,” but rather an “independently existing end.” An end, he implies, is an object for the sake of which an agent either acts or ought to act. Winning a tennis tournament might count as such an object, but so might an existing object such as a flag or a person.

When Kant calls humanity an end in itself, he is suggesting not only that it is something for the sake of which one acts or ought to act, but also that it has a particular value.⁸ To say that something is an end in itself is to say that it has value with three main features. First, an end in itself is an objective end, as opposed to a subjective or “relative” end. Objective ends, if there are any, hold for all rational agents. In other words, the idea of securing them makes available to all such agents a ground, that is, a justifying and motivating reason, for acting. But subjective ends do not give all rational beings grounds for securing them (Kant 1996 [1785] Ak 428, 431). Second, an end in itself has absolute or unconditional worth (Kant 1996 [1785], Ak 428). If something has such worth, then it is good under every possible condition, that is, in every possible context, in which it exists. For example, if beauty is unconditionally valuable, then it is good no matter how it emerged or what its effects may be. Moreover, according to the Kantian notion, if something is unconditionally good, then the effects of its existence have no bearing on the degree of its goodness.⁹ The value of an end in itself remains constant no matter what it produces.

Third, an end in itself has dignity, that is, “unconditional and incomparable worth” (Kant 1996 [1785], Ak 435–36; see also 1996 [1797], Ak 434–35, 462). I have just noted what it means to have unconditional worth. Kant (1996 [1785], Ak 434) explains incomparable worth by contrasting it with price: “What has a price can be replaced by something else as its equivalent; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity.” The value of something with dignity, then, is incomparable in the sense that it has no equivalent for which it can be exchanged. As Thomas Hill, Jr., has argued, according to Kant something with dignity can never be legitimately sacrificed for or replaced by something with price. Not even all the gold in Fort Knox would truly compensate for the killing of one rational agent. Moreover, something with dignity cannot be legitimately sacrificed for or replaced by something else with dignity. If it is ever legitimate to kill one person and thereby save two, it is not because the value of the two outweighs that of the one (Hill 1992).

In the *Groundwork*, Kant (1996 [1785], Ak 425) calls rational nature—i.e., humanity—an “object of respect.” In the *Metaphysics of Morals*, he suggests that any being with humanity must not only respect himself, but “exacts respect for himself from all other rational beings in the world” (Kant 1996 [1797], Ak 435, see also Ak 462). Kant sees the Formula of Humanity as a moral standard for human actions, that is, for what we intentionally do. According to Allen Wood’s (1999, p. 147) interpretation, on which I rely in the rest of this section, an action is morally permissible—in accordance with duty—if and only if it expresses respect for the worth of humanity.¹⁰ As an action-guiding principle, the Formula of Humanity amounts to the following command:

Act always in a way that expresses respect for the worth of humanity, in one’s own person as well as that of another. (Wood 1999, p. 150)¹¹

This Value-Based Formula is to be understood as a categorical imperative: a principle to which all of us (human agents) have an overriding obligation to conform, regardless of what we might be inclined to do. One needs to keep in mind here that a type of action might express respect for the worth of humanity simply by virtue of expressing no disrespect for it. The Value-Based account does not embrace the idea that every morally permissible type of action involves some positive affirmation of the value of humanity.

In order to derive duties from the Value-Based Formula to act—or refrain from acting—in certain ways, one must rely on intermediate premises: ones that specify whether some sort of conduct expresses respect for the worth of humanity. For example, the following is the sort of intermediate premise requisite to derive a duty not to make false promises: “A false promise, because its end cannot be shared by the person to whom the promise is made, frustrates or circumvents that person’s rational agency, and thereby shows disrespect for it” (Wood 1999, p. 153). Assuming the Value-Based Formula and this intermediate premise are true, it follows that one has a duty not to make false promises. (If intermediate premises are necessary to derive conclusions regarding the moral permissibility of types of actions from the Value-Based Formula, then obviously they also are necessary to derive conclusions regarding particular actions from this formula.)

Several points regarding intermediate premises warrant attention. First, they are “logically independent” of the Value-Based Formula in the sense that the truth of this principle does not itself guarantee the truth of any such premise. That one ought to act always in a way that expresses respect

for the worth of humanity does not itself entail that any particular sort of conduct in fact expresses or fails to express such respect. Second, the intermediate premises are “hermeneutical”—i.e., “they involve interpreting the meaning of actions regarding their respect or disrespect of the dignity of rational nature” (Wood 1999, p. 154). For example, the foregoing intermediate premise incorporates an interpretation of the action of making a false promise to someone, namely that it expresses disrespect for the worth of this person’s humanity.

That these intermediate premises are hermeneutical does not entail that there are no standards that a legitimate one must meet. One’s interpretations of what actions express regarding the worth of humanity are subject to rational argument (Wood 1999, pp. 154–155). So presumably some such interpretations are to be rejected. Some mischaracterize what an action expresses. For example, an injured patient in an emergency room asks a doctor to stop her bleeding, and the doctor does so in a minimally painful and invasive way, solely in order to restore her health. It is plainly incorrect to say that since the doctor’s action sends the message that the patient’s humanity is not worth preserving, it expresses disrespect for the value of the patient’s humanity. For his action simply does not send this message.

One might think that an agent’s treatment of another expresses respect for his humanity if and only if the treatment is accompanied by a respectful state of mind. In other words, what the agent does conforms to duty if and only if the agent has the thoughts or feelings it is appropriate to have when treating an end in itself in some way. But some actions, such as making a false promise, disrespect the value of humanity no matter what the mindset of the agent who performs them (Wood 1999, p. 117). Moreover, some actions respect its value even when the agent is devoid of a respectful state of mind. When one buys a cup of coffee from someone, one might have no respectful thoughts or feelings toward that person—one’s mind might be (almost) entirely elsewhere—but that does not entail that one has failed to treat the person as an end in herself.

RESPECT FOR HUMANITY AND LIVE TOOTH TRANSPLANTATION

According to Kant, it is a duty to oneself not to sell one’s integral parts. Does the Value-Based Formula support this conclusion? Kant (1996 [1797], Ak 423) writes:

To deprive oneself of an integral part or organ (to maim oneself)—for example, to give away or sell a tooth to be transplanted into another’s mouth, or to have oneself castrated in order to get an easier livelihood as a singer,

and so forth—are ways of partially murdering oneself. But to have a dead or diseased organ amputated when it endangers one's life, or to have something cut off that is a part but not an organ of the body, for example, one's hair, cannot be counted as a crime against one's own person—although cutting one's hair in order to sell it is not altogether free from blame.

Here I shall focus on Kant's rather odd-sounding claim that it would violate a duty to oneself to sell a tooth to be transplanted into another's mouth.¹²

In late eighteenth-century Europe, rich people sometimes would purchase live teeth from the poor. For very high fees, surgeons would extract the teeth and implant them into their customers' mouths, trying, apparently with some success, to get them to take root in their new environment. The customers purchased the teeth largely for aesthetic reasons; white, healthy teeth were in fashion (Blackwell 2004).

Suppose Kant had this practice in view and believed, furthermore, that the poor sold their teeth voluntarily—i.e., not under any threat of sanction if they refused—in order to increase their comfort. Possible arguments, which appeal to the Value-Based Formula, for his condemnation of selling a tooth then appear.

According to one, selling a tooth and thus voluntarily undergoing an extraction poses a significant risk to the seller's health. Subjecting oneself to this procedure suggests that it is worth putting one's life and thus the existence of one's humanity in danger for the sake of increasing one's comfort. But this suggestion clashes with the notion that humanity has incomparable value, value that can never be legitimately exchanged for something such as comfort. (Here is an intermediate premise in Wood's sense.) In short, the action expresses disrespect for the value of humanity. This argument might harmonize with the notion that to sell a tooth is partially to murder oneself. In selling it, one does not kill oneself, but one (supposedly) puts one's life at serious risk for a purpose that does not warrant it.

An obvious retort is that even if the extraction of a healthy tooth posed a significant health risk in Kant's time, it no longer would pose such a risk to most of us. So if the argument captures Kant's rationale for the conclusion that everyone has a duty not to sell his or her tooth, then this rationale is inadequate; for it would not support the conclusion that readers of this paper have such a duty.

A second argument Kant might offer to show that selling one's tooth violates a duty to oneself is the following. Granted, selling a tooth does

not necessarily pose a significant risk to the health of the seller. But a tooth plays a role in the functioning of a person's body, and its location within the mouth renders it an intimate part of him. Now suppose that in order to increase his comfort a person sells a tooth. This action would demonstrate his willingness to make even intimate parts of his body available, for the right price, for others to use as they will. It would express the notion that he himself—i.e., his humanity—is available for the right price for others to employ in pursuit of their goals. This notion would constitute part of the “meaning” of his action. But the notion clashes with the idea that his humanity has dignity; for part of what it means to have dignity is to have value that is not legitimately exchangeable for anything with mere price. Selling one's tooth fails to express respect for the dignity of one's humanity. (The last several claims together constitute an intermediate premise.) Therefore, doing so violates the Value-Based Formula.

In response to this argument, it is natural to question the claim that a person's selling a tooth for his own comfort would express the notion that he himself—i.e., his humanity—is available for the right price for others to use as they will. Selling a tooth is obviously not the same thing as, say, selling oneself into slavery. Someone's doing the latter in order to make a relative more comfortable would express the notion in question. Part of the “meaning” of his action would be that he is available for the right price for others to use as they will. But it would be an exaggeration to hold that part of the meaning of someone's selling his tooth for comfort is that he, that is, his person, is thus available. A tooth is not a person (Gill and Sade 2002, p. 26).¹³

As does this second argument, a third relies on the observation that a person's selling a tooth to increase his comfort would illustrate a willingness to make even intimate parts of his body available, for the right price, for others to use as they will. Whereas the second argument maintained that a person's selling a tooth actually conveyed or expressed the notion that he himself—i.e., his humanity—or that of those like him was available for the right price for others to use as they will, the third argument maintains that, at least in Kant's cultural context, actions of this type *tend to encourage or promote this notion*. Again, this notion clashes with the idea that humanity has dignity; for part of what it means to have dignity is to have value that is not legitimately exchangeable for anything. But if an action is of a type that tends to promote a notion that clashes with the idea that humanity has dignity, then the action fails to express respect for human dignity. A person's selling a tooth thus fails to express

respect for human dignity. (The last several claims together constitute an intermediate premise.) Therefore, the person's selling his tooth violates the Value-Based Formula.

A key claim in this argument is that in Kant's cultural context selling a tooth to increase one's comfort is a type of action that would tend to promote or encourage the idea that a person lacks value that transcends price. This claim might, of course, be true even if a particular action of selling a tooth for comfort does not result in anyone's embracing, or moving closer to embracing, the idea that the seller lacks such value. But in order for the claim to be true, it must be the case that actions of the type "a poor, lower-class, eighteenth-century European selling his tooth to augment his comfort" frequently would make someone more inclined than he otherwise would be to accept the notion that someone's humanity is available for others to use as they will. Whether the claim is true is an empirical question. But in Kant's context it is plausible. Those who sold their teeth were poor. More affluent people presumably already tended to see the poor as tools for the satisfaction of their desires (Blackwell 2004). It seems reasonable that the poor offering their intimate body parts for sale promoted the idea that they themselves—i.e., their humanity—constituted such tools.

In a context in which almost everyone has and behaves in accordance with an unshakable conviction that all persons have Kantian dignity—i.e., in a virtual kingdom of ends—it seems implausible to claim that someone's selling a tooth to secure greater comfort would be a type of action that tended to promote the idea that he lacks a value that transcends price. However, in Kant's context and in ours this claim strikes me as plausible. But it is an empirical claim, the truth of which admittedly is hard to assess. The sort of intermediate premise Kant seems to rely on in deriving a duty not to sell "integral organs" may be true in some cultural and historical contexts, but false in others. In some contexts, therefore, persons might not have a duty to refrain from selling their organs.

Kant may well reject this suggestion. After all, he appears to set out an unconditional prohibition on a person's selling an integral part of his body. His rejection would have force if it turned out that embracing the suggestion would compel one to abandon the conviction that the Value-Based Formula is a categorical imperative, that is, an unconditionally binding practical principle. But I do not think embracing it would compel one to do this. It is consistent both to hold that the Value-Based Formula allows of no exceptions, that is, that one always must act in a way that expresses respect for the worth of humanity, and to hold that a particular type of

action might express respect for the worth of humanity in one cultural/historical context, but fail to do so in another.

DO ORGAN TRANSACTIONS EXPRESS RESPECT
FOR THE WORTH OF HUMANITY?

Now I shall explore how the third, most promising, Kantian argument against selling teeth might apply to the previous examples of organ transactions. A key premise in the argument is that, at least in a certain historical context, actions of the type “selling a tooth to increase comfort” tend to promote a notion that is inconsistent with the idea that humanity has dignity, namely the notion that a person is available for the right price for others to use as they will. The question is whether the types of actions performed by the buyers and sellers in the examples of organ sales would tend to promote this notion. If so, then they would fail to express respect for the dignity of humanity and thus would be morally impermissible.

First, consider the actions of the organ buyers. In order to make a profit, the broker in the transplant tourism case purchases an intimate, internal part of a person’s body. The person is, say, a very poor laborer in India. The laborer already is unlikely to be seen, at least by some, as equal in worth to more prosperous individuals. It does not seem a stretch to maintain that actions of this type tend to encourage the notion that such laborers themselves, and not merely parts of their body, can be had for price and so lack Kantian dignity. It is easy to envisage a slide from the thought that these poor persons’ intimate body parts are for sale to the idea that they themselves are fungible. Just how prevalent such a slide would be is a context-dependent, empirical question.

Depending on the context, the government agent in the regulated market example also might violate the Value-Based Formula. It makes sense to imagine that this is not an isolated instance and that he, as a rule, would be purchasing organs from some of the least well-off members of his society (Taylor 2005, p. 35). Those individuals who sell their kidneys in Iran, one of the few places where a regulated market exists, tend to be in poverty and debt (Zargooshi 2001). Unless the price of a kidney rose very high indeed, it seems unlikely that many privileged or even middle-class citizens of most nations would choose to undergo kidney extractions for money. So the type of action performed by the agent in the regulated market case could be described as “buying an organ from a poor and desperate person in order to save a life.” Actions of this type may well encourage the view that poor people themselves, and not merely parts of

their bodies, constitute a resource for his society to use at will. If this is true, then his action violates the Value-Based Formula.

But what about the woman in the entrepreneur example who buys an organ to save her life? Do actions of the type she performs tend to promote the notion that persons have a price? One might reasonably categorize her action as “buying an organ from a (materially) well-off person in order to save one’s life.” It is unclear whether this type of action would encourage the notion that people are available for others’ use for the right price. Others are perhaps less likely from the outset to view well-off people as mere tools for desire satisfaction than they are to view, say, poor laborers as such. So perhaps they also are less likely, when faced with someone purchasing an intimate body part from someone who is well-off, to get the idea that these persons themselves have a price. If this is correct, then the Value-Based Formula, along with the intermediate premises developed, would imply that although the organ brokers’ actions are wrong in the transplant tourism and regulated market cases, that of the wealthy woman in the entrepreneur case is morally permissible.

Now consider the actions of the organ sellers. If, according to the Kantian argument in view, it was wrong for a poor person to sell a tooth to increase his comfort, then it seems that it also may well be wrong for the laborers in the transplant tourism and regulated market examples to sell a kidney. For actions of both types would, depending on the context, tend to promote the view that some persons fall short of having unconditional and incomparable value and thus fail to express respect for the dignity of persons.

The case of the entrepreneur is less clear. He sells his kidney in order to found a profit-making business. Would an action of this type promote the idea that persons have a price? Since the entrepreneur is materially and socially privileged and has a wide variety of opportunities open to him relative to workers in developing countries, others would, I believe, not be predisposed to see him as a tool to be bought if the price is right. Actions of the sort he performs, a sort that involves the sale of an intimate body part, thus might not lead people to the idea that some person or persons lack dignity. On the other hand, some might focus on the materialism of the kind of project he pursues. The idea that he is willing to sell an intimate organ for profit might encourage some to think of his very humanity as something that is salable for profit.

It should be clear by now that whether the type of action performed by a buyer or seller of an organ would tend to promote a notion incom-

patible with the view that humanity has dignity is not a simple question. Constructing the sort of intermediate premise necessary to apply the Value-Based Formula can involve a challenging exercise of empirical judgment. Of course, it also involves appeal to the idea that an action's tending to promote such a notion would amount to the action's expressing disrespect for the value of humanity.

Some might object that the judgments yielded with the help of the intermediate premises constructed here are unfair to the agents in the cases. It might turn out that the entrepreneur's action of selling a kidney is morally permissible, whereas the laborer's in the regulated market case is not. If the moral permissibility of their actions differs, its doing so will be a function of how they are perceived in light of their social circumstances. But, it seems unfair to judge the laborer's action as wrong but the entrepreneur's similar action as right, since the one is no more responsible for his social class or the way others perceive this class than the other. In response, it is important to distinguish between judging an action to be wrong and blaming an agent for doing it. That the laborer's action is wrong does not in my view entail that he is morally culpable for it. In particular, if it is not possible for him to know the action is wrong, then it is, according to Kant, illegitimate to blame him for it.¹⁴

CONCLUSION

The following table summarizes my application of the Possible Consent account of the Mere Means Principle (MMP) and the Value-Based account of the Formula of Humanity (FH) to the three cases of organ sales:

	Entrepreneur		Transplant Tourism		Regulated Market	
	Buyer	Seller	Buyer	Seller	Buyer	Seller
MMP	No violation	No violation	Violation	No violation	Possible violation	No violation
FH	Possible violation	Possible violation	Violation	Probable violation	Probable violation	Probable violation

All but one of the judgments generated using the Value-Based Formula are indefinite. This result should come as no surprise. For the cases as described are schematic, and application of the Formula to them requires intermediate premises with context-dependent features. Context also

matters in the application of the Mere Means Principle. For example, depending on whether the government that buys the kidney from the laborer is responsible for his dire poverty, it might, through its agent, treat the laborer merely as a means.

The entrepreneur example describes the sort of organ transaction one might expect to encounter among relatively wealthy and educated individuals. Neither the buyer nor the seller violates the Mere Means Principle, but, depending on the context, both might violate the Valued-Based account of the Formula. Their actions might be of a type that promotes the idea the persons fail to have the value of ends in themselves.

The transplant tourism example describes actions typical of organ brokers and the poor from whom they make their purchases. Both the Mere Means Principle and the Valued-Based Formula condemn the actions of the organ buyer. However, although the Value-Based Formula likely condemns the action of the seller, the Mere Means Principle clearly does not.

Depending on the background conditions of the transaction in the regulated market example, both the Mere Means Principle and the Value-Based Formula might condemn the behavior of the organ buyer, that is, the government agent. The former condemns it if the government is responsible for the laborer's plight, while the latter does if the government agent's action tends to encourage the idea that poor persons are resources to be used by others at will. The laborer's action of selling the organ also might be wrong, according to the Value-Based Formula, but the Mere Means Principle casts no negative light on it.

It is worth noticing that the two Kantian principles might be combined. In particular, the Mere Means Principle might be folded into the Value-Based Formula. One might hold, for example, that if an agent treats another as a mere means, then the agent's action expresses disrespect for the other's humanity and thereby violates the Value-Based Formula as well. So, for example, if in the regulated market example, the government treats the laborer merely as a means, then its action expresses disrespect for the laborer's humanity and thus runs afoul of the Value-Based Formula. If the two principles are combined in this way, then all violations of Mere Means Principle generate intermediate premises for the application of the Value-Based Formula such that the latter is violated.

In general, the Value-Based Formula leans toward more negative verdicts regarding the cases than does the Mere Means Principle. However, not even the Value-Based Formula condemns organ sales in every possible context. It is, for example, easy to imagine a context where a well-off

person's selling his kidney in order to generate funds for a famine relief agency *would* express proper respect for human dignity. Neither the Value-Based Formula nor the Mere Means Principle suffices to sustain Kant's claim that a person's selling one of his "integral" organs is always wrong. Moreover, the fact that the principles do condemn some commerce in organs does not itself entail that this commerce is morally impermissible. For the principles themselves might be misguided.

Nevertheless, those of us who are attracted to one or both of the Kantian principles find ourselves with reason to question the rightness of buying and selling organs in many actual and likely contexts, including ones of government-regulated exchange.

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NOTES

1. Like other medical procedures, transplants also can cost far less abroad than in the U.S.
2. In the references to Kant, I cite the Preussische Akademie (vol. IV) pagination, which is included in the margins of Kant (1996 [1785]; 1996 [1797]). I have substituted the more familiar "So act that you treat humanity" for Gregor's "So act that you use humanity."
3. The paper assumes Kant's view, or at least what many commentators take to be his view, that a person is any being with humanity—a rational nature—that is, any being with the capacity to set and pursue ends as well as to act on self-given principles, including moral principles.
4. Based on a reading of Kant, Mark Cherry (2005, p. 135) contends that the sale of organs violates the categorical imperative only if at least one of the following three criteria are fulfilled: the sale puts life in danger, these organs "are equivalent to oneself as the subject of morality in one's own person," or the sale "is not associated with a discharge of a duty." Cherry then argues that none of these criteria need be fulfilled in a given sale of an organ. "In principle, Kant should not have an objection to selling organs when the risk to life is de minimis and when it is to discharge a duty, such as to care for one's family" (Cherry 2005, p. 136). According to the reconstruction of Kantian principles that I develop here, the sale of organs might violate the categorical imperative, in particular the Formula of Humanity, without fulfilling any of

the criteria Cherry mentions. Cherry and I appeal to different interpretations/reconstructions of the categorical imperative.

5. When Kant (1996 [1797], Ak 423) condemns depriving oneself of an integral part or organ, he suggests that in doing so one would be treating *oneself* merely as a means. But here I am offering a reconstruction of what treating *others* merely as means amounts to and asking whether any of the participants in the scenarios I sketch would be doing *that*. For an interpretation of what it does (or might) mean to treat oneself merely as a means, see Kerstein (2007). On another occasion, I hope to explore whether agents such as those in the examples treat themselves merely as means.
6. This account is a substantive reworking of one suggested by Onora O'Neill (1989). For more on the Possible Consent account and other accounts of the Mere Means Principle, see Kerstein (2009b), in which I defend a more nuanced sufficient condition for an agent's treating another merely as a means. The sufficient condition I present here is simplified. Many of us believe that *some* actions of deception, coercion, and self-defense are morally permissible. For example, it often is morally permissible for a police officer to use coercion in arresting a criminal. But as a result of being simplified, this account implies that such cases of coercion are wrong. Of course, the Possible Consent account does not, and does not purport to, capture all conditions under which someone might treat another merely as a means.
7. A government can, I believe, count as foreseeably putting a laborer in a situation in which he has no welfare-preserving alternative but to sell his kidney through omissions as well as through actions, for example, through refraining from establishing a social safety net.
8. That for Kant in the Formula of Humanity "end" is equivalent to "end in itself" is clearly implied in his *Groundwork* (1996 [1785], Ak 428).
9. Kant (1996 [1785], Ak 393) says that a good will is good without qualification, which I take to be equivalent to saying that it is unconditionally good. And it is clear that, according to Kant, in all possible circumstances in which it appears, a good will is not only good, but that its level of goodness does not vary according to its effects. Even if a good will "were completely powerless to carry out its aims; if with even its utmost effort it still accomplished nothing, so that only good will itself remained . . . even then it would still, like a jewel, glisten in its own right, as something that had its full worth in itself" (Ak 394).
10. I do not claim that Wood would endorse the use I make of his interpretation of the Formula of Humanity in the following sections.
11. In Kerstein (2009a), I criticize the Value-Based account of Kant's Formula of Humanity on the grounds that it has philosophically implausible implica-

- tions in some cases of killing in self-defense, physician-assisted dying, and heroic self-sacrifice. I am skeptical as to whether this account contains the most promising reconstruction of Kant's formula.
12. I do not address here Kant's suggestion that it is wrong to give away an integral organ. But neither the Mere Means Principle nor the Value-Based account of the Formula of Humanity would begin to license an unconditional condemnation of such an action.
 13. In making this point, one is, of course, not committing oneself to the view that a person is constituted by something other than his physical reality, for example, some kind of immaterial soul. There is no inconsistency in holding both that a tooth is not a person and that the capacities that constitute human persons ultimately have nothing but a material basis.
 14. I discuss the relationship in Kantian ethics between the rightness of a person's action and her being morally blamable for it in Kerstein (2002, pp. 162–65).

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