

A Social Understanding of Dignity: A Promising Approach in the Organ Selling Debate

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Abstract

In contrast to either sceptical approaches arguing for the redundancy of dignity or more theoretical ones concerning only abstract notions, this paper presents a social understanding of dignity which attempts to give a satisfactory account of why some specific actions are considered to violate it. The practice of organ selling provides a context for exploring the possible meaning and function of dignity. The paper begins by explaining what a social understanding of dignity means, referring to Samuel J. Kerstein's approach. After raising three criticisms specific to his approach and showing that they are not generalizable to a broader approach, some general objections will be raised and possible responses given. It will be argued that a social understanding of dignity is a promising approach to take when evaluating the moral permissibility of organ selling.

Key Words: Organ Selling, Samuel J. Kerstein, Social Understanding of Dignity, Autonomy, Dignity as Constraint

Introduction

The concept of human dignity appears frequently, not only in the academic field, but also in popular culture. In our daily life, for example in the newspapers, we come across this notion all the time. Although it is not clear what we mean by dignity, it appears to be an un-touchable and inviolable value that is to be protected in order to guarantee proper respect for its bearer.

Offering organs for sale is among the acts believed to pose a threat to human dignity. This context provides a good starting point for investigating the role of dignity by revealing how it is violated. Although there are arguments in favour of organ selling that emphasize the respect for autonomy, there is a concern about what autonomous persons are morally allowed to do with their own bodies or parts of them. An important class of arguments aimed at restricting organ selling makes use of the concept of dignity as a constraint that puts limits on one's autonomous decisions. This restriction on one's autonomy is based upon a general opposition to humiliation and instrumentalization of human beings, which will be the focus of this paper. In this regard, the paper is concerned primarily with questions about the practice of organ selling in general, i.e. on the level of policy-making, rather than on the individual level. A promising way towards understanding what human dignity means and why it is violated with re-

gard to certain acts (e.g. organ selling) is to adopt a social understanding of dignity which considers as its key point how persons would like to be perceived and treated as members of human communities.

Samuel J. Kerstein's contribution to the debate on organ selling [1] represents such a social understanding of dignity. He asserts that a violation of dignity occurs when acts "*tend to encourage or promote this notion*", that is "the notion that he [a person selling a tooth or an intimate part of his body] himself – i.e., his humanity – or that of those like him was available for the right price for others to use as they will" ([1], p. 160). This paper's aim is to present and critically discuss dignity understood in a social way, using Kerstein's suggestion of the understanding of this notion as an example. I will first introduce the general idea of a social understanding of dignity, and then turn to Kerstein's approach, providing some criticism against it. Finally, I will conclude with a more general discussion of possible problems surrounding a social understanding of dignity. In the end, I claim that a social understanding of dignity indeed can play a constructive role in the debate on organ selling.

A Social Understanding of Dignity

In order to avoid possible misunderstandings, I would like to start by pointing out the distinction between social dignity and a *social understanding of dignity*. Social dignity can be lost or gained through one's actions. Besides the qualities an individual attaches to herself, this kind of dignity can be created through interactions with other persons. It can also be gained by admirable acts the person performs, and it can be decreased or increased. It does not have to be morally relevant. One can even describe a certain behaviour (such as slipping on a banana, walking naked or barefoot in the streets, etc.) as being, in a certain sense, undignified [2–6]. This paper will not refer to this model of dignity, but rather to the latter one, i.e. a social understanding of dignity, which I will explain now.

When we want to explain what dignity means and how we understand it, we look at occurrences of its violation generated by actions that are regarded as humiliating and degrading.¹ Actions can be considered as humiliating or degrading if the person is insulted or if the per-

1 This idea was introduced particularly by Avishai Margalit (1998) in his book *The Decent Society* [7].

son is made to feel less worthy than another. Although there can be such actions which pose a threat to human dignity, the affected person does not actually lose her dignity. In that sense, compared to social dignity, the type of dignity we are after cannot be lost or gained; however, it might be violated by the actions of others. Hence, it is stringent (or inherent). It is a fundamental value that shall not be weighed or traded against other values. This notion of dignity is considered to have a moral relevance.

The social understanding of dignity's social element appears when dignity is identified with an idea about how we want to be treated and, especially, how we want to be *perceived* by others. It is about the social relations we have: it is a social version of explaining what dignity should be. What dignity *symbolizes* is the way we perceive others and ourselves. Hence, it is not about the intrinsic features of the person, as argued by authors like Nussbaum and Kant, but rather about how they are viewed. Dignity is, in this sense, expressive.

Some actions, such as tossing dwarfs for fun or offering a kidney for sale, are sometimes perceived – regardless of whether the parties choose freely to participate – as degrading or humiliating [8], and thus as threats to dignity. Therefore, they are discouraged in societies and accepted as morally impermissible. This means that dignity is understood as a constraint which can limit persons' autonomous choices.

Human dignity as a constraint brings about the claims of social values and is merely concerned with duties, i.e. "duties to others, duties to oneself, and duties to the community" ([8], p. 37) as to respect one's own dignity, others' dignity and their vision of human dignity, which would also generate limits on free choice. In this sense of human dignity, respect for human dignity is understood as one of the constitutive values of society. Beyleveld and Brownsword present a specific view (even though they do not themselves hold that view) that if biomedical practice is to be driven by a *shared vision of human dignity*, then it should not be driven by individual choices or preferences. If something reaches beyond the individual choices, preferences and desires representing an objective value, then it is a constraint on certain acts. This is closely related to what Immanuel Kant stated: a person's autonomy is limited by the dignity of the person, which is not relative to human inclinations and needs ([9], G 4: 428, G 4: 434–4: 435).

However, the prohibition of such practices is not purely dependent on Kant's second formulation of the categorical imperative, as widely discussed in the literature, but is rather founded on a general public opposition, to which Kant's arguments have contributed [10]. Thinking of dignity as a constitutive social value and its function as restricting autonomous free choices raises social concerns.

Dignity as a social constraint apparently restricts some types of acts, which are considered unfavourable, such

as selling an organ for an amount of money. Violations of dignity in the organ selling debate symbolizes a tendency to see "each other as repositories of organs and other bodily bits and pieces" ([11], p. 294), to perceive people as if they had a price [1], and to see others used at will. These symbolizations indicate not seeing each other as being of equal worth, which would threaten human dignity.

The problem occurs when people start to change their way of looking at others; such as seeing others of our kind as members of inferior species, which will establish a threshold to determine the actions which are legitimate in our interactions with them or not. Thus, a social understanding of dignity takes into account the relationships of individuals have towards each other, how they see each other and how they are regarded.

This kind of perspective has also been adopted by some international policy. For instance, the WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation declare that all commercial removal of transplantable parts should be forbidden [12]. Besides the risk of taking unfair advantage of economically vulnerable groups, the concern is that "[s]uch payment conveys the idea that some persons lack dignity, that they are mere objects to be used by others" (Commentary on Guiding Principle 5). This statement is supported by empirical data. Studies show that desperately poor people take part in such transactions; their poverty leads them to sell their kidneys as a last resort [13–17]. Of course, it does not follow that poor and vulnerable people lack dignity, but the qualitative studies indicate that they are seen as worthless and seemingly inferior to others. "People see me as a cripple, and treat me as if I have leprosy. In a clash with my neighbo[u]r she shouted 'If you touch me, I do what I can to you!'" [14]. Kidney sellers experience social damage, such as isolation and alienation from society, in addition to serious physical disabilities and continued poverty [17–18]. The vendors are stigmatized by their families: "My brothers bitterly protested that your kidney vending [has] degraded and broken us forever", by society: "If people know my secret of vending my children I will be subjected to irony and stigmatized as being grown by kidney's money" and are labeled as weak and useless: "[A]fter vending, during a fight, our neighbo[u]r cried 'You kidney seller! If you were good people you would not sell your own body (the kidney)'" [14].

Samuel J. Kerstein [1] focuses on the assertion that people do not lose their dignity whenever they partake in an unfavourable action (e.g. organ selling), but that they can easily be deprived of such worth in the eyes of others. So, for him, the problem is a social one; about being *labeled as such* by society.

In the following, I will first briefly present Kerstein's approach. I will then raise some points of criticism that are specific to *his* approach, and in the next step consider whether the same problems might be raised

for a broader perspective of a social understanding of dignity, which will also test the strength of this broader perspective.

Kerstein on Organ Selling

Samuel J. Kerstein [1] reconstructs Immanuel Kant's formula of humanity,² that is the second formulation of the categorical imperative: "*Act in such a way that you treat humanity, whether in your own person or in any other person, always at the same time as an end, never merely as a means*" ([9], G 4: 429, original emphasis). Kerstein suggests two accounts for a comprehensive understanding of this formula: (a) the "Mere Means Principle" and (b) the "Value-Based Account". He presents the first in order to determine when and under what conditions one person treats the other merely as a means. The "Value-Based Account", on the other hand, is presented to explain what it means to treat persons as ends in themselves and whether a social practice fails to express respect for the worth of humanity. The "Mere Means Principle" is not important here, since according to Kerstein it is not directly relevant to dignity. Hence, in the context of this paper, I will focus on the latter.

Kerstein probes what it means to treat someone as an end in herself. On the "Value-Based Account", "the Formula of Humanity is in essence *an imperative to respect* the special value inherent in persons, that is, their *dignity*" ([1], p. 151, my emphasis). He then applies this account to organ transactions in order to question whether buying and selling organs fails to express respect for the worth of humanity.

For Kerstein, a violation of dignity (a violation of the "Value-Based Account") occurs when an act *encourages the notion* in society that someone lacks the value that transcends price. Hence, he states that there must be a cultural and social *context* in which some (more affluent) people are more inclined to think that there are other people whose humanity can be used in order to increase their own comfort. If a violation of dignity occurs by a practice that supports this idea of instrumentalizing other people, then it is morally impermissible. It depends, then, in a specific way upon the social *context* whether or not a violation of dignity occurs by a specific act.

Kerstein considers three examples in which he asks whether organ transactions fail to express respect for the worth of humanity: In the entrepreneur example, the seller is a healthy and wealthy 30-year-old businessman who offers his kidney to be sold for \$50,000 in order to finance a new business, and the buyer is a wealthy old woman with end-stage kidney failure. In

the transplant tourism example, we see a 25-year-old labourer; a married man in a developing country offers his kidney on the black market for \$2,500 in order to pay his debts. The buyer is a broker. In the regulated market example, we have the seller in a similar condition to the transplant tourism case. The only difference between the cases is that the government establishes a regulated organ market in this case, and so the buyer is the government.

Kerstein states that in all the three examples, the "Value-Based Account" of the formula *might* be violated ([1], pp. 164–165); however *how much of a tendency occurs to see people themselves as having a price, and not only their body parts*, would be dependent upon the context ([1], p. 162). In each example he asks whether the actions of the buyers and sellers tend to encourage the notion that persons have a price. He asserts that the buyers' actions in the regulated market and the transplant tourism examples may well promote the idea that the poor people themselves are purchasable, and not only their body parts. However, how strongly such a tendency would manifest itself in society is an empirical question, and therefore context-dependent. For the buyer in the entrepreneur example, it is less clear. Kerstein argues that "buying an organ from a (materially) well-off person in order to save one's life" ([1], p. 163) is *less likely* to promote the notion that persons themselves are purchasable for the right price. Hence, he alleges that whereas the buyers' actions are wrong in the transplant tourism and regulated market examples, the buyer's action in the entrepreneur example is *morally permissible*.

It is quite similar for the sellers' actions. While selling a kidney might fail to express respect for the dignity of the labourers in the transplant tourism and regulated market examples, the similar action, when performed by the materially well-off person (i.e. the entrepreneur), would not promote the notion that some people are treated as if they had a price. Due to the variety of other possible alternatives open to him, others would be less likely to see him, so to speak, as a 'tool' to be used at will for the right price.

As we have seen, Kerstein adopts dignity as developed by Immanuel Kant under the header *Menschenwürde* – as a universal, inherent and inalienable value that humans have simply by virtue of being human ([9], G 4: 434–4: 435). Dignity, in this sense, carries an obligation with it that all people should be treated with respect, as reflected in the formula of humanity ([9,19], G 4: 429; MM 6: 434–6: 435). The social dimension shows up when dignity constitutes an idea about how individuals are perceived by others. Kerstein's main concern is about symbolization: whether any unfavourable act would induce a notion that there are people whose value can be compared to a certain amount of money. Therefore, such an understanding would label people as if they had no incomparable and unconditional worth, which is dignity.

² In order not to distract from the focus of this paper, I will not discuss in detail whether Kerstein's reconstruction of Kant's formula of humanity is the best way to develop a Kant-inspired ethical approach to organ selling or not.

In the following section, I will criticize Kerstein's way of including a social dimension, and I will discuss whether the same criticisms can be raised as a general concern about a social understanding of dignity.

Criticism

The Moral Permissibility of an Action Determined by Socio-Economic Condition

If the moral permissibility of an action is determined by the economic condition of the persons involved and if some types of actions are to be prohibited for those who are poor, then this seems to be unfair to those who are economically disadvantaged. Such an attitude may result in discrimination against the poor. However, this criticism should not be taken as reinforcing the idea that those who are desperately poor should offer their organs (e.g. their kidneys) for sale in order to end their poverty. Neither should it be understood as an opportunity for a person to broaden her options which are already limited [20], nor as a way to refrain from violations of her dignity [21]. Besides the unfairness and discrimination that might occur, such actions would threaten dignity understood as a social value regardless of how materially well off the people are.

Hence, the moral permissibility of the action should not be determined by the socio-economic conditions of the person, which are contingent. It should rather be founded on a more general conviction of human dignity as a social value to be protected, which is stringent and consistent. Although Kerstein wants to adopt a stringent idea of dignity, he cannot avoid including such contingency in his approach when he lays emphasis on *how likely it is to perceive certain classes of people as lacking value*. If organ selling is prohibited for those who might be regarded as inferior after performing the act, and if any individual regardless of their socio-economic conditions would be regarded as such, the prohibition is justified for everyone.

It seems that Kerstein embraces dignity as a social constraint. However, by including contingency, his position encompasses only a certain part of society, *viz.* the poor, and not all individuals within it.

Many Acts Can be Counted as a Violation of Dignity

Kerstein's position makes probable the claim that those who are economically disadvantaged or poor would be more likely to be seen as if they were ready to be used by others for the right price and thus as lacking dignity whenever they perform an unfavourable action. Dependent upon the result of an action (i.e. the impression it makes upon people), no matter what the action itself is, the action can be morally condemned. In this view, too many things might be counted as violations of dignity. For instance, we can think of the moral permissibility of getting paid for jobs that no one wholeheartedly or willingly chooses to perform, such as cleaning

toilets, or even some dangerous jobs, such as firefighting or mining (by excluding those who are willing to work in such jobs). Considering that people who are economically well off would not choose to perform such jobs (due to the variety of other possible alternatives open to them), some people do this because they need a job to make a living. It might be claimed that getting paid for an unfavourable job promotes the idea that some people are ready for others to be used at will. Hence this situation – on Kerstein's account – would fail to express respect for the dignity of persons, and therefore should be accepted as morally impermissible. However, 'working at a job to make a living' is not a humiliating or degrading act, and therefore no violations of dignity occurs by performing such jobs. (It is rather *the conditions of the job* that might be considered as leading to violations of dignity, *not performing the job* itself).

No Threshold for 'How Much'

Violation of dignity is about a *tendency* to perceive certain classes of people as purchasable when they offer their organs for sale. Dependent on *how strong* the tendency is, Kerstein states, we can see *how much* violation of dignity will occur by such an act³. However, it is quite ambiguous and tricky to think of dignity as being violated in degrees in this sense. Although Kerstein states that the *tendency* to see these people as purchasable is an empirical question, we cannot determine *how much* of their dignity is violated or harmed or threatened by organ selling on the basis of the empirical data. In order to determine how much violation would occur, Kerstein should have suggested a threshold, which would specify criteria for his usage of "how much". He does not specify how strong the tendency should be to justify prohibitions of certain acts.

As we have seen, although Kerstein's approach is representative of a social understanding of dignity, he takes dignity to be context-dependent (influenced by the socio-economic conditions of persons), which constitutes the problematic part in his approach as I have endeavoured to explain above. A social understanding of dignity should encompass every individual, regardless of any contingent circumstances that the person is

3 At the end of his paper, Kerstein summarizes his application of the Formula of Humanity to the three cases of organ sales. He states that a "possible violation" occurs both for the buyer and the seller in the entrepreneur case, whereas a "probable violation" occurs both for the buyer and seller in the regulated market case. In transplant tourism case, for the buyer violation occurs, while for the seller a "probable violation" occurs ([1], p. 164). This is so, since "the application of the Formula to them requires intermediate premises with context-dependent features" (ibid.). Although not directly said by Kerstein "how much", it seems to be quite obvious when he says, "[t]he labourer already is unlikely to be seen, ... , as equal in worth to more prosperous individuals ... 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 context-dependent, empirical question" ([1], p. 162).

in, to show why we consider some acts to pose a threat to one's dignity.

Discussion

Limits on Autonomy

One can ask whether a social understanding of dignity can have priority over personal freedom and autonomy. That means whether the autonomous choices of individuals can be constrained by dignity, which is nourished by shared social values and demands, or not. Should we encourage autonomous choices and opportunity even though they might end up in violations and insults against one's dignity or human dignity? It might be argued that since dignity is about some requirements and values that each individual is considered to share, it is purely intuitive, and so there cannot be any justification for such encouragement.

There may, however, be justified public limits, even in a liberal democratic society, which are founded on publicly accepted fundamental values. Individual liberty is then restricted [10]. Restricting autonomous choices does not create a paternalistic state. In our democratic societies, we have such restrictions. Dignity understood in a social way allows us to see what it would mean if the state allowed its citizens to offer their organs for sale. It would generate the notion that people have a price. Hence, it is not about the individual choices or acts anymore, but rather about people's changing attitudes towards those who offer their organs for sale, and thus it is social. It is about how we want to live together. Would it not lead to seeing some as tools for the satisfaction of others' desires if the state were to establish the conditions for its citizens enabling them to participate in these transactions?

Relativity

Another possible argument that can be raised against a social understanding of dignity is whether these shared values are the same for each society. What if a society exists in which dignity is not a shared value? If so, since no insult occurs to one's dignity by the act, it is permissible. This objection might point to a limitation and weakness of this approach.

We experience differences between societies and even within the same society. An act can be considered as degrading for a certain part of a society (e.g. for members of a tribe), whereas the same act is not regarded as such in society in general. Although that is a fact, such particular cultural attitudes or traditions should not influence persons' perceptions of and attitudes towards each other as persons in general (i.e. as not being equal in worth). It is widely accepted that there are some values that are universal and unchangeable [22, 23]. Whereas some values might change from one society to another, other values, especially the values that construct the basis of any society, such as mutual re-

spect, do not change from society to society. Dignity understood in a social way is among those values which establish the grounds for respect and for being a community. It is not dependent on contingent factors, but gives a more general approach that shall recognize violations of dignity in (*almost*) every society. That is the reason why, at the very beginning of this paper, a distinction was made between social dignity and a social understanding of dignity. While the former depends on the cultural perspective of a particular society, the latter is not dependent on such parametric factors.

Redundancy

One could argue that referring to real life situations would provide enough evidence to justify a global consensus on the prohibition of organ selling. Considering it is not likely that a materially well off person will offer his kidney for sale [24], the poor will generally take part in such transactions. This will lead to exploitation of economically vulnerable people. Hence it can be forbidden without reference to dignity.

Although it can be argued that we do not need the concept of dignity in order to argue against organ selling, I think dignity has a specific significance in the debate. Firstly, it is independent of other arguments which favour prohibition. The "to see people as if they had a price" thesis is not comparable to the arguments concluded from exploitation, vulnerability or fairness. Its scope is broader. The same feelings and attitudes will probably arise even if an economically well-off person performs the act. Secondly, although we can arrive at the same policy about the prohibition of organ selling, it does not demonstrate that dignity is a useless concept. On the contrary, since it presents different, or possibly even better reasons to forbid it, it is not redundant. It will be an additional support for global prohibition of organ selling to demonstrate the function of dignity in the debate. Hence, this understanding shows (a) that dignity is not a value that can be replaced with the respect for autonomy principle; (b) that it functions as a constraint in the debate for each individual; (c) why an action is wrong and, accordingly, why it should be forbidden for everyone from a social perspective.

Conclusion

A social understanding of dignity is a promising approach towards evaluating the moral impermissibility of organ selling. This approach shows *why* violations of dignity occur with regard to some specific actions. Although critical points are raised that are specific to Kerstein's approach, it is shown that they are not generalizable to the broader perspective of a social understanding of dignity. The investigation of some general objections against the broader perspective has shown that these objections can be countered, confirming the

constructive role a social understanding of dignity can play in bioethical discourse.

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Zusammenfassung

Im Unterschied sowohl zu skeptischen Ansätzen, die zugunsten der Redundanz der Würde argumentieren, und auch zu theoretischen Ansätzen, die sich auf lediglich abstrakte Bemerkungen beschränken, wird im vorliegenden Beitrag der Zugang einer sozial verstandenen Würde vertreten, anhand dessen in befriedigender Weise aufgezeigt werden kann, warum spezifische Handlungen als Würdeverletzungen einzuschätzen sind. Die Praxis des Organhandels bietet ein solches Themenfeld, um mögliche Bedeutungen und Funktionen einer sozial verstandenen Würde auszuleuchten. Unter Bezugnahme auf den Ansatz von Samuel J. Kerstein wird im ersten Teil eine Erklärung eines sozialen Verständnisses von Würde gegeben. Nachdem anschliessend drei kritische Einwände gegen Kersteins Ansatz vorgestellt wurden und gezeigt wird, dass diese nicht generell gegen diesen Ansatz sprechen, werden einige weitere Einwände untersucht und beantwortet. Als Ergebnis kann festgestellt werden, dass ein soziales Verständnis von Würde im Kontext der Frage nach der Erlaubnis des Organhandels einen vielversprechenden Ansatz darstellt.

Résumé

Une compréhension sociale de la dignité – une approche prometteuse dans le débat sur la vente d’organes. Par contraste à la fois avec des approches sceptiques reposant sur le caractère superflu de la dignité et avec des approches plus théoriques se focalisant sur des notions abstraites de ce concept, cet article présente une compréhension sociale de la dignité et tente de fournir une explication satisfaisante sur pourquoi

on considère que certaines actions la violent. L'exemple de la vente d'organes fournit un contexte pour explorer la possible signification et la fonction de la dignité. Cet article commence par expliquer ce que signifie une compréhension sociale de la dignité, en se référant à l'approche de Samuel J. Kerstein. Après avoir soulevé trois critiques spécifiques à son approche et montré qu'elles ne s'appliquent pas à une approche plus large, nous considérerons quelques objections générales et des réponses possibles. Nous argumenterons qu'une compréhension sociale de la dignité est une approche prometteuse pour évaluer le caractère licite ou non sous l'angle moral de la vente d'organes.

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Abbreviations for Cited Works of Immanuel Kant

G Groundwork for The Metaphysics of Morals
MM The Metaphysics of Morals

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