

BOOK REVIEW

Stephen Wilkinson, *Bodies for Sale: Ethics and Exploitation in the Human Body Trade*. London: Routledge, 2003. 248 pp. Indexed. ISBN: 0-415-26625-4, \$31.95 (Pb)

The title of this book is something of a misnomer, since the study focuses on only three areas of trade regarding human bodies. But the commercialization of the human body is of great significance. From the manufacture and sale of products and services aimed at beautifying the body to the widespread use of child and illegal immigrant labor, to the legal market in human body parts for medical research, the human body trade encompasses a bewildering array of legal and illicit activities. The practices Stephen Wilkinson assesses have engendered the recent and intense interest of politicians, public policy analysts, legal scholars, the medical establishment, and the general public because they are new ways of using the body commercially. This makes *Bodies for Sale* a timely investigation into the moral and public policy dimensions of commercializing human organ sales, the creation of human babies, and gene patenting.

The study proceeds in two stages. Wilkinson first analyses the notions of exploitation, objectification, harm, consent, and coercion, concepts central to the debate over commercializing organ sale, surrogacy arrangements, and human genes. The conclusions he derives are used, in the second part of *Bodies for Sale*, to ground objections to the main moral arguments that have been made against commercializing the aforementioned practices. This argumentative strategy is, as Wilkinson acknowledges, a negative one. Each chapter begins with an overview of the issues to be discussed and ends with a helpful summary of the major claims and conclusions.

Claiming that “exploitation is perhaps the *single* most important moral concept in the body commodification debate,” Wilkinson notes that, although it is common to invoke exploitation in debates over the morality of commercializing the human body, the notion of exploitation is not clearly understood (p. 25). Moreover, many arguments against commercialization are grounded in a concern that markets in bodies and body parts are or would be exploitative. Thus, Wilkinson’s aim in the chapter on exploitation is to clarify the concept as it is used in such common objections. According to Wilkinson, exploitation in the moral sense of the term allows for wrongful use and disparity of value types of exploitation. The types of exploitation differ in the

ways “they relate to consent and taking advantage of people’s vulnerabilities” (p. 26). Specifically, while both types of exploitation involve making use of persons or their attributes to achieve an exploiter’s ends, they differ insofar as wrongful use exploitation does not require taking advantage of another person’s weaknesses, whereas disparity of value exploitation does. We might, for example, wrongfully treat our lovers as sex objects, even if they are not vulnerable. A second way these types of exploitation differ is in their relation to consent. Disparity of value exploitation requires getting exploited persons “to agree to a bad deal,” which they are inclined to do because of their circumstances of vulnerability (p. 23). An example would be taking advantage of people’s poverty to employ them at barely sustainable wages.

In chapter 3, Wilkinson focuses on the objection that, because people are more than mere things, to treat them as if they were objects is to objectify or to commodify them. The objection has “a strongly Kantian flavor” in its emphasis on the idea that it is always wrong to treat people as mere means to an end (p. 54). But as Wilkinson rightly notes, the tenability of objections of this sort depends on whether using persons is compatible with respecting them as ends. This depends in turn “on the overall context of the relationship and on the quality of the used person’s consent” (p. 54). Here, again, consent arises as a pivotal issue in determining the propriety of treating people in particular ways. Wilkinson’s fuller treatment of valid consent in later chapters on consent and organ sale thus bears crucially on whether and in what sense objectifying or commodifying persons is a legitimate objection to commercializing the body. It should be noted that the notions of objectification and commodification also have roots in Marx’s view that treating people as labor power only is part of what it means to be alienated in capitalist economies. It is surprising that Wilkinson makes no attempt to mine the Marxian notion of alienation for insights into other, possibly stronger, objectification and commodification objections to commercializing the body.

In chapter 4, Wilkinson considers the argument that commercializing the body harms the people that this commercialization directly affects. The criticism is frequently linked to the exploitation objection, especially when the objection is couched in terms of the disparity of value sense of exploitation, such that to exploit someone *ipso facto* is to harm them. Wilkinson canvasses different meanings of the term “harm,” settling on a notion borrowed from Joel Feinberg in which “harm” means suffering setbacks to interests. Wilkinson modifies the analysis giving the notion of harm a normative gloss. “Put in its most stark form, the normative construal of harm says that *A harms B if and only if A causes B to be worse off than she ought to be*, with the normative baseline being *the level of welfare which B ought to have had*” (p. 63). Wilkinson then uses the conception to develop a notion of mutually advantageous exploitation, an instance of disparity of value exploitation that Wilkinson claims is morally better than exploitation that makes people worse

off because of the exchange. As Wilkinson puts it, “it is at least worth taking seriously the possibility that exploitation that is rationally consented to and desired by the exploitee is morally preferable to exploitation that is forced and unwanted. Thus, even though all exploitation is harmful, mutually advantageous exploitation will often be less morally objectionable than other forms” (p. 71).

Consent is the topic of chapter 5. For Wilkinson, the question of what conditions make consent defective is crucial, since it figures prominently in many moral objections to the commercial practices he considers. Specifically, the notion of invalid consent is what gives exploitation claims their initial plausibility. Conversely, valid consents “either justify (partly or wholly) the interventions of third parties, such as health care professionals, or they produce obligations for the consenter, if, for example, she agrees to enter into a contract” (p. 81). What makes consent valid is the presence of enough “information, competence, and voluntariness” (p. 81). Objections to body commodification are largely based on worries about the voluntariness of consent, and this in turn makes the issue of coercion especially important. The issue of coercion is the topic of chapter 6. Before summarizing the account, it should be said that Wilkinson’s view of consent would have benefited from considering recent philosophical and social scientific research into the notion of consent as it is used in the context of sexual relations, domestic violence, rape, and expanded conceptions of self-defense. Much recent work in the areas outlined above suggests that the experience of consent is essential to understanding whether and in what sense it is valid or free. The research further suggests that stipulating the conditions of valid consent independently of how real people in real circumstances view their options is not likely to be helpful in understanding how, for example, people view their options to sell organs or to lease their reproductive capacities.

Coercion, according to Wilkinson, is constituted by threats of harm to the people threatened in the event they fail to comply with the demands of the people making the threats. The harm at issue is that defined in chapter 4 as normatively laden. Thus, cases of coercion are “cases in which A proposes (threatens) to harm B if B doesn’t comply with A’s wishes, and the proposed harm to B is harm *relative to a relevant normative baseline*” (p. 97). This is the notion of harm that allows for mutually advantageous exploitation. The main conclusion of the analysis is that, because coercion typically compromises the voluntariness of choice and action, coerced consent is invalid.

As noted above, the notion of valid consent is central to Wilkinson’s support both of regulated organ sale and commercialized surrogacy. His argument for commercial surrogacy rests almost entirely on considerations regarding valid consent that he discusses in the chapter on organ sales. Wilkinson begins the chapter on organ sales by noting that there are various methods of obtaining

organs, including stealing them from living persons and re-selling them to others. In a horrific example he tells of the murder of thousands of Chinese convicts whose organs were harvested and sold to high-paying foreigners or used to extend the lives of high-ranking communist party members. Since these practices are obviously immoral, Wilkinson focuses on the morality of “voluntary paid donation,” which raises the issue of valid consent (p. 102). Noting that the buying and selling of human organs is a criminal offence in nearly all countries, Wilkinson cites the World Medical Association’s 2000 *Statement on Human Organ and Tissue Donation and Transplantation* for the underlying common reasons for this prohibition. The authors of this Statement assert that payment for organs “compromises the voluntariness of the choice and the altruistic basis for organ and tissue donation. Furthermore, access to needed medical treatment based on ability to pay is inconsistent with the principles of justice” (p. 105). From this, Wilkinson infers that the World Medical Association “takes the main moral objections [to organ sale] to be: that organ vendors’ donations aren’t truly voluntary, and that organ donation ought to be motivated only by altruism” (p. 105). The World Medical Association’s concern about injustice is not mentioned in this construal of its concerns, nor does it come up in Wilkinson’s ensuing discussion of the World Medical Association’s position.

Wilkinson next considers and rejects “the best – and most widely accepted – arguments against organ sale” (p. 103). They include arguments that such a market will harm organ vendors, that free donation promotes altruism and social solidarity while paid donations erode these values, that the consent of vendors would in many cases be invalid, that vendors would be coerced into selling their organs, and that vendors would be exploited. The final three of these are in fact a hodge-podge of concerns about exploitation, coercion, constraining options, and autonomy that are raised in various arguments that focus on the issue of invalid consent.

The argument from the potential harm that the sale of organs will inflict on vendors is the view that organ donors are harmed by the pain and health risks they face, and so organ sales are wrong. Such arguments can be easily met by noting that if protecting donors is the concern, then legalizing and regulating organ sales is the best way to do so. Wilkinson notes, moreover, that common forms of risky labor are often far more dangerous than the risks associated with organ donation and are not only not condemned as immoral, but are lauded as heroic. It is inconsistent to condemn organ sales on grounds of risk of harm to donors when such a practice is “similar in relevant respects to other widely accepted practices” such as voluntary unpaid donation and high-risk labor (p. 108). If we praise unpaid organ donation as morally exemplary but condemn paid donations as wrong, it cannot be the potential pain and suffering of the donor that makes selling the organ wrong. We probably praise unpaid donors in part because they assume financially

uncompensated risks. Live donors, paid or unpaid, are in many cases perfectly healthy, do not need surgery, and subject themselves to potential complications, injuries, and even death by donating organs. Risk to donors is a concern routinely minimized in discussions about organ sale. Recently, however, concern has been expressed over the fact that the health interests of donors have been made invisible by the medical interests involved in procuring organs for transplant, and this has generated a call for advocates to watch out for donor interests.

Another common but unsatisfactory way to object to organ sales is to argue that a market in organs will lead to a reduction in the altruistic giving of such organs. Two considerations here are decisive and obvious. First, the fact that people sell organs entails nothing about their motives for doing so. Second, even if the commercialization of organs caused a reduction in altruistic donations, such donations have proven to be woefully inadequate in generating the supply necessary to meet the demand for potentially life-saving organs.

The third argument that is often used against organ sales is based on the notion of invalid consent. The argument turns crucially on the question whether a donor's choice to sell an organ is voluntary. The root idea is that in the absence of voluntary consent, there is good reason to think the choice to donate is not a valid one. Wilkinson uses as an example the World Medical Association's assertion that financial incentives compromise the voluntariness of the choice to sell an organ because such incentives sometimes make people do things they would not otherwise do, or they are coercive, or they make people's actions and decisions less free or less autonomous. By way of clarification, Wilkinson notes that the core idea in the argument is that financial incentives sometimes constitute undue influence. "The central ideas here are autonomy and freedom. An influence is 'undue' insofar as it erodes or fails to respect the consenter's autonomy and/or freedom" (p. 118). That financial considerations may have such an influence occurs in two main ways, in contexts of dire economic need and in cases in which exorbitant offers are made. The cases have in common the fact that "it's tremendously hard for offerees to decline. Whether it's strictly *impossible* for them to do so raises difficult questions about free will and the nature of temptation" (p. 119). Wilkinson sets aside these difficult questions about free will and temptation as unnecessary to his purpose and, following Gerald Dworkin, argues that what is essential to valid consent is autonomy, not freedom. "One important implication of this is that while desperate offeree cases are almost by definition not free to decline an offer (by which I mean they have no practical alternative), they may still be capable of making a fully autonomous choice, provided that they meet (certain) conditions" (p. 120). The conditions are that the agent be able to endorse reflectively or "identify with" the reasons for which she acts while "free from distorting or controlling influences" (p. 120).

In avoiding questions about irresistible desires and the nature of temptation, Wilkinson begs the question in favor of his view that typical objections to organ sale based on invalid consent are unconvincing. Irresistible desires and strong temptations may generate what hierarchical motivation theorists like Harry Frankfurt and Michael Slote have called volitional ambivalence. As the term suggests, volitional ambivalence is a state in which the will is divided against itself, being pulled simultaneously in incompatible directions, each of which is reflectively endorsed by the agent. Far from being an instance of Wilkinson's autonomous though unfree agent, such persons are psychically divided and, thus, not autonomous. Some arguments based on invalid consent make equivalent claims in arguing that economic injustice constrains people most likely to sell organs in such a way as to make their choice to sell invalid.

In quoting the World Medical Association's statement opposing organ sales, Wilkinson ignored the concern over unequal access to medical care that this organization articulated in the passage that Wilkinson quoted. Instead, Wilkinson construed the World Medical Association's objections to organ sale as being about altruism and invalid consent. But the World Medical Association's concern about unequal access to health care is presumably part of a broader concern about the impact of economic injustice on people's choices. That legal organ sales will often occur in contexts of injustice is part of what is morally questionable about such practices. Claiming as Wilkinson does that options to sell organs under unjust conditions of dire poverty may nevertheless be in some sense autonomously chosen may not meet the objections from invalid consent.

Finally, and related to this last point, although Wilkinson allows that much hinges on the empirical evidence about the impact of organ sales on people's lives, he fails to consider the recent evidence from illegal kidney sale in India. A series of articles in the 2 October 2002, *Journal of the American Medical Association* make clear that the vast majority of people who sold a kidney were poor. The people who sold a kidney did so primarily to pay off debts and improve their economic status, and yet ended up worse off both economically and with regard to their health, 1 year or more after selling their kidney. It is plausible to conclude from such evidence that the illegal trade in kidneys provided an additional option to the choices previously open to the desperate poor, but one that, if exercised, reduced their overall autonomy.

Wilkinson concedes that many of the concerns articulated in arguments against organ sale are more or less convincing in the absence of appropriate regulation. None, however, prove that organ sale is in principle morally objectionable, and thus none establish compelling moral reasons for keeping the practice illegal.

Wilkinson's final chapter on patenting life may be the most interesting in *Bodies for Sale*, given that the empirical, legal, and moral dimensions of genetic research and the patenting of living organisms are new and changing

rapidly. Wilkinson gives a helpful account of the nature of patenting, its relation to intellectual property and ownership, and current public policy in the United States and Europe. His overview of biopiracy, which is the commercial exploitation of genetic diversity, mainly in developing countries, and his observation that patents often function to prevent research and development rather than foster it, are among the many worthwhile observations of this chapter.

In sum, *Bodies for Sale* is a lucid and timely investigation into the moral and public policy dimensions of commercializing human organ sales and surrogacy arrangements, and the patenting of human and other life forms. People interested in understanding the state of current public policy on these practices and arguments for and against commercializing them would do well to study *Bodies for Sale*.

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