

Beneath the organ trade: a critical analysis of the organ trafficking discourse

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Abstract This paper critically examines how the organ trade fits into the human trafficking discourse. The organ trade involves diverse actors and consists of various practices, i.e. organ trafficking, transplant tourism, organ sales and organ harvesting. Nevertheless the organ trade is predominantly defined in terms of organ trafficking. Although organ trafficking is a major concern it is not representative of the phenomenon as a whole. Evidence based research indicates that the organ trade is better characterised by organ sales and transplant tourism. This paper argues that co-opting the organ trade into the ‘meta- narrative’ of human trafficking resists a wider critique of the phenomenon linking the emergence of a global market in organs to broader socio-economic conditions. Further it is argued that the organ trade is not a direct consequence of the global shortage of organ supplies, but is rather linked to the transfer of transplant capabilities to the global South. The rhetorical positioning of the organ trade as an object of crime control diverts critical attention away from the transplant industry and frames the phenomenon within a narrow criminal paradigm. Formulaic criminal responses follow which overlook important intersections of agency, identity, culture and politics.

Introduction

In the past few decades organ trafficking has emerged from the easy horror of science-fiction to the unsettling reports of the international community ([35, 110]: para 138). Since the 1980s rumours began to surface about various cases of organ theft in the popular press. Numerous speculative accounts of treacherous prostitutes drugging unsuspecting clients, who later wake up in a bath tub only to discover they are missing a kidney, were circulated via the world’s media [49]. Accusations of child abductions by eye thieves followed, claiming that eyes had been forcibly removed from children for sale to private eye banks [16]. However, it was the ‘baby parts’ rumour that

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circulated widely in Latin America, that first prompted political attention at the international level.¹ In a report submitted to the United Nations Working Group on Slavery by the International Association of Democratic Lawyers it was alleged that children were being kidnapped from orphanages in Guatemala and trafficked to the United States, to serve as spare body parts for affluent recipients ([111]: 9).

The report was vigorously denied by the United States Information Agency which claimed that such rumours had no basis in reality [70]. Further investigation into these allegations could not find reliable information to substantiate the claims [98]. Social scientists, like Veronique Campion-Vincent and Alan Dundes corroborated this scepticism about the organ trade, arguing that the organ theft story is a contemporary reinvention of ancient body-stealing narratives, which include tales of liver eating Pishtaco monsters in the Andes, and accusations of Jews drinking blood from Christian babies [16, 43]. However, as recent cases in South Africa [108]² and Kosovo [78]³ have demonstrated, the organ stealing motif is much more than a gothic subtext to film and fiction; it is part of a complex and multifaceted phenomenon presenting a unique challenge to law, policy, ethics and medicine.

The organ trade involves diverse practices: organ trafficking (trafficking in persons for the removal of organs),⁴ organ sales (the commercial exchange of an organ(s)), organ harvesting (the forcible removal of an organ(s)), and transplant tourism (traveling across state borders to purchase an organ(s)).⁵ Nevertheless, the organ trade is predominantly defined in terms of organ "trafficking". Although there can be some overlap between the different aspects of organ trading (i.e. when travel for transplantation involves an organ harvested from a trafficked person) the emerging discourse on the organ trade applies the term organ trafficking interchangeably without distinction as to the variable aspects involved. Hence, the phenomenon as a whole is represented as an issue of organised crime and human trafficking ([95]). Legislative responses reflect this interpretative bias: (1) concentrating efforts on increasing the donor pool by "legitimate" means to offset the demand for illegally sourced organs and (2) applying formulaic criminal prohibitions against organ sales. Yet, this response only addresses part of a much broader issue grounded in economic inequity, manifest in the uneven development of 'transplant capabilities' in the global south.

Despite concerns over organ trafficking, the majority of writing on the organ trade is subsumed by a bio-ethical debate contesting the pros and cons of a regulated market

¹ This rumour has recently resurfaced. See ([21], August 6). *Guatemala Children Stolen for Illegal Adoption, Organ Trafficking*. Retrieved from Insight Crime, Organised Crime in the Americas: <http://www.insightcrime.org/news-briefs/guatemala-reports-22-cases-of-stolen-children-in-2013> Accessed 10 August 2013.

² In this case St Augustine's hospital in Durban, South Africa, was found guilty of 102 counts related to numerous offences, owing to the fact that it had allowed its 'employees and facilities to be used to conduct ... illegal kidney transplant operations'.

³ In the Medicus Clinic Case, five individuals were found guilty of organising and conducting illegal kidney transplants at the Medicus clinic in Pristina, Kosovo. See, Ruling Confirming the Indictment.

⁴ Trafficking in persons for the removal of organs is defined under Article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000).

⁵ According to the Declaration of Istanbul (2008: 1228) "travel for transplantation becomes transplant tourism if it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals, and transplant centers) devoted to providing transplants to patients from outside a country undermine the country's ability to provide transplant services for its own population."

in organs [18, 40, 51, 94].⁶ While the importance of the moral issues raised by organ sales should not be downplayed there is a need for a more nuanced account of the mechanisms of organ trading, linking the emergence of the organ trade to wider political, cultural and socio-economic factors. Accordingly, this paper advances a more substantive analysis of the various aspects of organ trading, examining the conceptual bias of the organ trafficking discourse and critically evaluating the underlying conditions beneath the organ trade. It investigates what assumptions are made in regards to this problem, by whom and for what purpose(s), through the following questions: How does the organ trade fit into the anti-trafficking framework? To what extent is the organ trade linked to the global shortage of organ supplies? What role has the transplant industry played in increasing the demand for illegally sourced organs?

The meta-narrative of human trafficking

The prevailing discourse or the meta-narrative of human trafficking is premised on a number of assumptions put forward by government authorities, human rights advocates, and NGOs. In general, human trafficking is constructed as a global crime and a grave violation of human rights that exists on an enormous scale [117]. It is purported that human trafficking is primarily a problem of crime control that persists due to weak regulations in 'other' States [116]. In response national anti-trafficking strategies should build expertise in law enforcement and strengthen legislation to protect victims [118].

Victims are generally portrayed as un-educated, poor and vulnerable. The following account taken from the US State Department Trafficking in Persons Report (US Department of State, 2012) is said to illustrate the 'myriad forms of exploitation that comprise trafficking and the variety of cultures in which trafficking victims are found' ([119]: 9).

Uta was 7 years old when she was sent from Romania to work as a domestic servant in the United Kingdom. Her family thought this was an opportunity to get Uta away from poverty, but the Romanian couple who recruited her physically and verbally abused her daily and forced her to sleep on the floor. The couple also enslaved and raped another victim, Razvan, a 53-year-old Romanian man. After being severely beaten and seeing the way the couple treated Uta, Razvan escaped and reported the offenses to the police. When the police rescued Uta she was dressed in filthy clothes, had scabs covering her head, and her teeth were so rotten they had to be removed. She had never been to school and could not even count to ten in her own language. The Romanian couple was found guilty of trafficking and was sentenced to a maximum of 14 years in prison [119].

Victim accounts, like the one above, are found in news media, captured in documentary films, feature on NGO websites and are published in international government reports. The grim image of a beaten, raped and/or enslaved individual is typically

⁶ Although this paper is critical of enforcement strategies it should not be mistaken as advocating a regulated market in organs. The key point is that Law enforcement needs to form part of a wider strategy, addressing the social determinants that sustain demand for illegal organ transplants. Any arguments for or against a regulated market would need to be context specific, taking into consideration the availability of resources necessary to implement a high level of regulatory oversight.

juxtaposed with a foreboding statistic reporting that "millions" of people are trafficked each year [119].⁷ Extrapolating from the most extreme cases, an idealized image of victim suffering and criminality becomes representative of the phenomenon as a whole, despite evidence based research indicating otherwise [1, 122, 37]. Attitudes are adjusted and resources are allocated according to a particular regime of truth, belonging to the meta-narrative of human trafficking. Other factors or variables, such as human agency, migration patterns, cultural difference and socio-economic conditions are all overlooked. While there is no doubt that trafficked persons can and do suffer from extreme forms of violence a selective focus on exceptional cases of human trafficking, predominantly with a strong sexual component, does not account for the diverse circumstances and environments that foster exploitation of various kinds. In short, this discourse or meta-narrative represents a standard vision and approach to the problem, despite important intersections of agency, identity, culture and politics.

The genealogy of the major international instruments that deal with human trafficking is revealing in this regard. Both the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention on Transnational Organized Crime [112] (hereinafter the Trafficking Protocol) and the Trafficking Victims Protection Act (TVPA 2000) were, largely, established in response to the persistent lobbying of abolitionist feminist groups and conservative Christian groups opposed to sex-work [6, 123, 7]. For these groups the phenomenon of trafficking was assimilated into a moral crusade to abolish 'prostitution'. Advocates of this particular strand of feminism argue that women only resort to selling sex because they lack the same socio-economic opportunities as men [123]; therefore prostitution represents female subjugation to male dominance. Whereas the religious right is concerned with the threat commercial sex poses to marriage, family and moral order [123]. Integral to the construction of the meta-narrative was the belief that all sex-workers were in fact passive victims of predatory men whose subjugation had reduced them to the lowest form of moral deprivation: prostitution. As Laura Agustín reveals in her incisive book *Sex at the Margins* this narrative feeds into the governmentality (the techniques and/or strategies by which the population is rendered governable) of regulatory agencies and politically motivated NGOs who respectively aim to tighten migration control and abolish the sex trade [1].⁸

Without the sort of pressure described above, it is unlikely that trafficking as a phenomenon would have been elevated beyond the margins of political debate to the mainstream of political concern.⁹ A similar "moral panic" precipitated the movement to make the illegal organ trade an object of international concern (see [Introduction](#)). In this instance the meta-narrative of human trafficking is being instrumentalised to advance

⁷ It is unsurprising then that the TIP report 2012 'estimates' that there are currently around 27 million people trafficked around the world. A seemingly static figure alluded to by several authors and advocates since Kevin Bale's account of modern slavery in 2000.

⁸ This is evident in the legislative bias of domestic human trafficking laws targeting trafficking for sexual exploitation ([8, 22]).

⁹ While originally spearheaded by a moral campaign to abolish sex-trafficking the final draft of the Trafficking Protocol includes human trafficking in various forms, i.e. organ removal. The TVPA does not directly recognise organ trafficking or the removal of organ(s) as a form of exploitation.

See, Pugliese, E. (2007). Organ Trafficking and the TVPA: Why One Word Makes a Difference in International Enforcement Efforts. *J. Contemp. Health L. & Poly*, 24, 181.

the interests of the transplant industry,¹⁰ concerned that the illegal organ trade will undermine the integrity/reputation of transplantation and essentially its economic validity. While it is important that organ trafficking is recognized as a trafficking offence, evidence based research ([130, 85, 55, 12, 83, 128, 80]) indicates that the majority of organ sellers¹¹ do not conform to the typical victim profile popularized by the meta-narrative of human trafficking.

The global crisis in organs

The organ trade is represented as being symptomatic of the "global crisis in organs", where the demand for organs has outreached supply to the extent that transnational criminal networks are now involved in the organisation and commission of organ trafficking [36, 39]. Various reports and accounts of this new form of trafficking construct a common narrative whereby impoverished donors are deceived into selling an organ, in most cases a kidney, for use in transplantation [75, 99, 125, 126, 35]. Brokers invariably use their position of power/authority to manipulate, deceive and/or coerce "vulnerable persons" into selling their organs [53]. Live donors are then typically trafficked to a medical facility where they are detained, if necessary, before having their organ(s) (predominantly kidneys) removed by unscrupulous medical professionals [99].

Despite there being different manifestations of the organ trade (i.e. transplant tourism, organ sales, organ harvesting) the emerging discourse characterising this phenomenon is centred on the trafficking of persons for their organ(s) and is thus situated within the meta-narrative of human trafficking [103]. This allows for a clear demarcation between the legal institution of transplant medicine and the illegal underworld of human trafficking and organised crime. Organ trafficking is represented as the "the dark side of transplantation" ([90]: 3); the counter-narrative to the "gift of life" rhetoric extolling the virtues of altruistic organ donation [14, 86]. It is externalised as a criminal practice operating outside the legitimate institutions that support the transplant industry. Essentially, a dyadic division is constructed between the "great medical and scientific miracle of transplantation" ([90]: 4) and the organised crime of organ

¹⁰ This is not an indictment of the transplant profession or a dismissal of the therapeutic benefits successful transplantation can provide. In referring to the 'transplant industry' the author is referring to the various parties, i.e. pharmaceutical companies, insurance companies, private transplant clinics, organ sharing organisations, medical professionals etc. that have a commercial stake in transplantation. Accordingly, it is argued that the transplant industry has a vested economic interest in the international promotion of transplant medicine.

¹¹ According to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) "victims of crime" are defined in the broad sense as "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are violations of national criminal laws or of internationally recognized norms relating to human rights". However, used in this broad sense the term victim has no specific legal status. Not all individuals who sell an organ can be considered a 'victim' of trafficking. I use the term 'organ seller' to make this distinction. In regards to organ trafficking the term 'victim' assumes that an individual has been trafficked. For legal purposes this can only be established after a judicial process. Unless the three elements of human trafficking (action, means, purpose) are satisfied an individual who may indeed be a victim, at least in the broader sense of the word, cannot be considered a victim of trafficking. Moreover, as this paper indicates the term victim is routinely used to convey a particular perspective or meta-narrative of trafficking which does not reflect the diverse experiences of trafficked persons.

trafficking. This rhetorical positioning deflects critical attention away from the transplant industry and the role it plays in producing demand for illegally sourced organs. Rather the shortage of organs is promulgated as a type of moral crisis [27] which threatens "to undermine the nobility and legacy of transplantation worldwide" (International Summit on Transplant Tourism and Organ Trafficking, 2008: 1227).

Accordingly, efforts to control the organ trade have looked at ways to reduce the global shortage of organs. The Declaration of Istanbul on Organ Trafficking and Transplant Tourism [88] suggests a number of measures to increase the donor pool, "to prevent organ trafficking, transplant commercialism, and transplant tourism" and "to encourage legitimate, lifesaving transplantation programs." In particular deceased organ donation is encouraged as a measure to prevent organ trafficking:

In countries without established deceased organ donation or transplantation, national legislation should be enacted that would initiate deceased organ donation and create transplantation infrastructure, so as to fulfil each country's deceased donor potential (International Summit on Transplant Tourism and Organ Trafficking, [88]: 1229).

In a joint study between the Council of Europe and the United Nations [35] "the need to promote organ donation and establish organisational measures to increase organ availability" is outlined as a key recommendation to prevent the organ trade/organ trafficking:

Preference should be given to deceased organ donation, which should be developed to its maximum therapeutic potential. In addition, there is a need to extend worldwide the organisational and technical capacity for the transplantation of organs ([35]: 7–8).

The World Health Organisation (WHO) Guiding Principles on Human Cell, Tissue and Organ Transplantation [127] supports this strategic approach; reproducing and reinforcing the rhetorical drive towards a global strategy to develop the technical capacity of transplantation by increasing altruistic and deceased organ donation to its 'maximum therapeutic potential' ([127]: Guiding Principal 3).

Despite the fact that demand continues to outweigh the supply of transplantable organs in countries with established organ procurement programs, this strategic intervention has gained political support by way of the perceived threat of organ trafficking. Curiously, the probability that a narrow emphasis on increasing the donor pool is liable to encourage more drastic/illegal ways to meet demand is either blithely accepted or completely ignored by policymakers. The proposal in Utah to "permit" prisoners to donate their organs is a case in point [68, 20]. It is evident then that even in states, such as the US, that have the necessary technical capacity to support dedicated 'organ-sharing' programmes, the business of saving lives is not a simple altruistic endeavour. The organ trade co-exists with state sanctioned organ procurement and transplantation networks, to meet demand that altruistic systems fail to fulfil [3].

Moreover, while there is a perceived shortage of available organs in one part of the world (predominantly Western Europe and North America) this does not represent a global concern as it does not reflect universal values or standards in healthcare. The

benefits of transplant technology and bio-medicine in general only apply to states with advanced healthcare infrastructures and where the prerequisite insurance policies are available to cover the expenses involved in treatment and aftercare. Thus, the implications of this apparent "crisis" are radically different depending on one's locality. For example, in a country like Moldova, where according to a Council of Europe report ([31]: sec II, para 23), the average monthly salary was around 30 USD and the unemployment rate was higher than 50 % the shortage of organs could not be described as a problem associated with national demand but rather supply. Moreover, in the Philippines Yea [128] has observed that there are more organ sellers than buyers. Surely then the universal benefits of transplantation are somewhat overstated.

Undoubtedly transplantation has tremendous therapeutic value but the merits of such are contingent on economic prosperity. Considering the economic reality of the global South (where organ trafficking is reportedly most active) it would seem much wiser to prioritise the investment of available capital into primary health care rather than expensive bio-technologies, such as transplant medicine, that the majority of people simply cannot afford. This is not to suggest that low-income countries should not develop their transplant capacities, but rather that the development of such should not come at the expense of primary health care (see, below). In other words, the emphasis should be on preventing organ failure as opposed to instituting transplant programmes with limited accessibility. Similarly, in the advanced economies of the global North and West increased investment into end stage bio-medical treatments has correlated with a decline in the standard of primary healthcare and the rise of "diseases of affluence" such as diabetes, obesity and hypertension, which increase the demand for transplantable organs ([28]: 42). Additionally, ageing populations (in the global North and West) have increased demand for "life-enhancing" technologies like transplantation ([128]: 362).

However, a shift in policy towards better primary care is unlikely as this would compromise the commercial interests of transplant medicine. Transplantation is part of the multibillion dollar biomedical industry.¹² Therefore there is a vested economic interest in ensuring that medical expenditure continues to be invested into the private bio-medical sector [24]. Crucially, the transfer of biotechnologies to the global South presents an unbridled opportunity to establish new markets. Thus in dealing with the undesirable consequences and notoriety of the illegal organ trade, it becomes necessary to control it in such a way that does not affect the commercial design of this new bio-market.

Representing the organ trade as a human trafficking issue linked to a global shortage in organs produces a particular rationality or mode of thinking that supports specific forms of intervention. The belief that organ trafficking is a direct result of the global crisis in organs blunts a critical appraisal of the bio-medical process that has rendered our bodies subject to new modes of exploitation. Rather, the virtues of transplantation are celebrated as an indicator of social progress and prestige, generating demand

¹² To put this into perspective: the Swiss pharmaceutical firm Novartis, which produces essential immunosuppressant drugs for transplantation, posted an annual profit of \$12,811 m in 2012. See, Novartis <http://www.novartis.com/downloads/investors/financial-results/quarterly-results/q4-2012-media-release_en.pdf> accessed 16 May 2013.

amongst a new wave of consumer-patients in emerging economies in the global South [96]. States are encouraged to increase organ supplies and to develop their healthcare infrastructure to support the transfer of bio-technologies, such as transplantation [127]. Failure to do so could result in organ trafficking:

The scarcity needs to be urgently overcome otherwise unwarranted trade and crime are liable to thrive ([66]: 365).

Thus investing into advanced health technologies represents a legitimate domain of intervention for the betterment of society. On the other hand, co-opting the organ trade into the human trafficking discourse resists a wider critique of the phenomenon linking the emergence of a global market in organs to neoliberal globalisation and its discontents. Instead the organ trade as a whole is characterised by organ trafficking and positioned as an object of crime control. As the following section demonstrates, the predominance of the organ trafficking discourse obscures an analysis of the broader structural factors behind the organ trade.

The organ trafficking discourse

Early reports of organ trafficking were strongly denied by state authorities. In 1994, for example, the United States Information Agency described reported cases of organ trafficking as stories that "encapsulate widespread anxieties about modern life" and only achieve their credibility because they give, "voice, form and substance to unarticulated anxieties or suspicions" ([70]: 4). In 1997 the Bellagio Task Force investigated allegations of kidnap and murder for organs; largely propagated by "the baby parts rumour" (see [Introduction](#)). Although there was substantial evidence of organ sales the Task Force could not find reliable information to corroborate claims of organ theft and murder [98]. Subsequently however there have been documented cases of organ trafficking (See, [78]: [108]). Despite sustained academic interest and media attention such cases are extremely rare and are not representative of the phenomenon as a whole.

The clandestine and illegal nature of the organ trade makes it difficult to gather reliable data and to confirm trends in global patterns [3]. Therefore in an attempt to influence state policy advocates tend to accept and reproduce popularised accounts and figures rather than challenge and critique them [4]. In the past decade reports and studies into the organ trade have proliferated, making various claims about the nature and extent of trafficking in persons for organ removal [35, 125, 126, 63, 71, 44]. Nevertheless there have been relatively few cases to appear at the judicial level. Despite the growing interest in what has been described as "a fatal form of exploitation" in a "fast and expanding black market" there remains a critical deficit of evidence based research into this area [61, 106].

In the absence of clear qualitative and quantitative data anecdotal accounts hold sway, influencing public opinion and therein political interest. At present, the only 'official' data that is available on the actual scope of the organ trade comes from a World Health Organisation (WHO) report in 2007 [101]. In this report it was estimated that 5–10 % of the 65,000 organ transplants that take place annually are performed

using illegally sourced organs. In other words, one in ten organ transplants are illegal. How exactly this figure was recorded or corroborated is unclear. Nonetheless this statistic has been uncritically accepted and relied upon ([35]: 58). Although this statistic refers to illegal organ sales [11] reports on the organ trade frequently reproduce this figure in conjunction with incidental victim accounts used to underscore the prevalence and seriousness of organ trafficking [15]. More often than not the macabre details of isolated "victim" experiences are taken as evidence that organ trafficking is a ubiquitous crime. The emphasis on victim suffering attracts media attention and political support for government resources. However, it also constructs and reinforces a conception of the organ trade as a human trafficking issue that warrants an expansion of the law enforcement apparatus.

The New Generation Foundation of Human Rights (NGFHR), an NGO in the North Sinai, Egypt, has reported on "hundreds" of West African refugees being kidnapped and murdered for their organs. Although there is some evidence to support a hypothesis that there is or has been instances of human trafficking in the Sinai region, accusations of widespread organ theft are completely unfounded [92]. Nevertheless in 2011 CNN released a two part report/story on organ theft in the Sinai as part of its "Freedom Project" [92]. Hamdy Al Azazy, the founder and director of NGFHR is quoted/misquoted as the authoritative source, alleging that ethnic (Bedouin) trafficking groups systematically drug and kill refugees for their organs:

The organs are not useful if they're dead. They drug them first and remove their organs, then leave them to die and dump them in a deep dry well along with hundreds of bodies [92].

Accordingly, CNN reported that Bedouin smugglers "may" be stealing organs from African refugees in the Sinai desert [92]. Without evidence to the contrary it remains to be seen whether organ trafficking is occurring to this extent.¹³ The concern is that exceptional cases of organ trafficking will become the focal point for political action, such that more implicit (and more common) forms of exploitation manifest in an organ seller's lack of bargaining power, often due to acute income disparities and information asymmetry regarding transplantation, are overlooked.

More credible information on the organ trade does exist. Evidence based studies reveal the acute financial difficulties that push people into selling their organs and the negative consequences that follow ([130, 85, 55, 12, 83, 128, 80]). There is little or no information to suggest that such cases involve organ trafficking [17, 128]). Moreover, as these studies pertain to small sample populations in multiple states or regions, the findings do not represent a global perspective of the organ trade. Nevertheless, numerous reports continue to link the organ trade with sophisticated international organ trafficking rings; usually operating between Israel and Eastern Europe [60]. The majority of these reports reproduce and refer to a handful of documented cases of

¹³ While conducting fieldwork in Cairo, the author did discover photographic evidence that kidneys were in fact being removed in the Sinai. However it was impossible to determine if this was an isolated incident or

organ trafficking (i.e. the Netcare Case in South Africa and the Medicus Clinic case in Kosovo) to describe what usually amounts to organ sales or transplant tourism.

Conceptual misrepresentation

While organ sales are illegal in almost every state (Iran being the exception) to sell an organ does not constitute trafficking. For a trafficking offence to be established there must be evidence of an illegal act (i.e. recruitment) followed by an illegal means (i.e. coercion) for the purpose of exploitation (i.e. organ harvesting) ([113, 114]: Art.3 (a)). Further, transplant tourism refers to the practice of travelling to another state to purchase an organ. This does not necessarily involve organ trafficking. Nonetheless intergovernmental and media reports consistently use these terms interchangeably giving the impression that organ trafficking is a prevalent crime orchestrated by transnational criminal organisations [35]. Hence a sort of undifferentiated complacency prevails, reframing and linking singular victim accounts of organ sales and/or transplant tourism to the meta-narrative of human trafficking. Notwithstanding the current lack of empirical evidence on the organ trade reports consistently allege that organ trafficking is the fastest growing business of organised crime and is worth several billion dollars ([63, 50, 67]).

Organ trade is the second most profitable trade behind only weapons trade...It brings in more money than drug dealing and prostitution [92].

In 2011 Global Financial Integrity, a Washington based research and advocacy organisation working to curtail illicit financial flows, estimated that the organ trade has profits of between 600 million and 1.2 billion per year [56]. Such estimates have no empirical foundation; they are simply estimates of estimates [104, 123]. Similar to how sex-trafficking was conveyed in the late 1990s organ trafficking is said to be a prevalent and growing crime. In effect organ trafficking, as opposed to the organ trade as a whole, has become the focal point of investigation where emotive accounts of victim suffering come to define how this phenomenon is conceptualised.

By co-opting the organ trade into the meta-narrative of human trafficking the multi-sited complexity of this issue is eschewed in favour of a reductionist response that constructs a definite set of actors with fixed roles and expectations, which fit neatly into a universal model of crime control. Following on from the epistemological tradition of "the white slave movement" [41] which classified all sex-workers as victims who need to be rescued; the subjects of this new form of human trafficking are the organ sellers who become victims of international criminal networks, composed of shady middlemen and rogue surgeons who operate outside the legitimate field of transplant medicine. Accordingly, international attention has responded to this issue with a focus on victim protection and law enforcement. This strategic response is evident in the UNODC 'toolkit' on human trafficking, which outlines four steps to prevent organ trafficking; notably emphasising the need to protect victims by building expertise in law enforcement to "identify potential and actual victims, and perpetrators of organ trafficking and trafficking for the purpose of organ removal" [116].

As encouraging as this may seem, at least from an advocacy perspective, this conception of organ trafficking lends authenticity and moral purpose to the pursuit of more punitive responses that fail to locate actual suffering within broader political and structural contexts [76, 48]). Vulnerability and exploitation are variables contingent on a broad constellation of interpersonal relations, power dynamics and personal experiences. Victimhood is not a static position. For example, there have been instances where organ sellers or "victims" have subsequently become brokers upon selling a kidney of their own [62, 81]. According to Yea [128] in the Philippines recruiters are often neighbours, relatives or friends of organ sellers. Furthermore, many organ sellers actively seek out brokers/intermediaries to arrange the sale of an organ [128, 80]. An extremely complicated set of social relations cannot be reduced to clear-cut categories of right and wrong. There is always a parallel story where the moral truisms that define a particular perspective (or meta-narrative) are brought into question. This is not to suggest that organ sellers are not coerced and trafficked for their organs. The point is that the organ trade is dynamic, context based and linked to wider social, cultural and economic factors.

An emphasis on victim suffering is morally/politically loaded. The image of the innocent victim deceived into selling his/her organ is represented as the binary opposite to the criminal offender (broker) who preys on vulnerable individuals. The normative power of these distinct victim and offender categories invests political capital into punitive measures that forego a wider critique of the socio-political structures that produce conditions where trading in organs has become an economic activity. The current international framework regulating organ sales and/or organ trafficking reflects this conception of the organ trade, advancing a formulaic criminal response. The efficacy of this response will now be explored

Criminalising the organ trade

Organ sales were first prohibited in 1987 by the World Health Organisation (WHO). Resolution WHA40.13 affirmed that the organ trade "is inconsistent with the most basic human values and contravenes the Universal Declaration of Human Rights (UDHR) and the spirit of the WHO Constitution" [129]. Subsequently the WHO Guiding Principles were established in 1991 (the guidelines were updated in 2010) declaring that organs should be "donated freely, without any monetary payment or other reward of monetary value" [127]. Other international standards followed suit. Article 21 of The Council of Europe Convention on Biomedicine and Human Rights asserts that 'the human body and its parts shall not give rise to financial gain' [30]. Further, the Declaration of Istanbul prohibits organ sales and calls for the prohibition of any 'financial considerations or material gain' for an organ donation(s).

Although the above international standards are not legally binding, with the exception of Iran the prohibition of organ sales has been adopted into domestic penal codes worldwide. In the UK, for example, under The Human Tissue Act [105] 'commercial dealings in human material for transplantation' are prohibited. In the US the National Organ Transplant Act [107] states that, 'it shall be unlawful for any person to

knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.’ In response to mounting concerns over the organ trade in India the Human Transplantation Act was established in 1994 to ‘provide for the regulation of removal, storage, and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in organs’. In Egypt, the Organ Harvesting and Transplant Law (2010), prohibits the illicit removal of organs for financial gain. However, notwithstanding the almost universal prohibition of organ sales new reports of illegal organ sales appear on an almost daily basis while prosecution rates remain low [83].

There are a number of reasons for this.¹⁴ First, there is a growing body of evidence to suggest that organ sales are largely advertised online [79, 5, 77, 78]. Individuals looking to bypass prolonged waiting lists in their nation states can find willing donors and/or brokers online without difficulty. For example, a cursory search on Facebook for ‘kidney donors’ or ‘kidney for sale’ returns multiple pages hosting advertisements from numerous individuals looking to sell one or more of their organs (see [appendix](#)). Advertisements typically include an individual’s age, gender and blood type requesting prospective buyers to make enquires via a private message. Jurisdictional complications, online anonymity and privacy rights make it extremely difficult to monitor and enforce laws against illegal activity conducted online [9, 121]. Second, the majority of domestic transplant laws prohibiting the organ trade are restricted to offences committed within state borders [3, 28]. Therefore if a patient purchases an organ on the territory of another state he/she will only be criminally liable while in that state. Upon return to his/her home state that individual is no longer subject to criminal sanction. Third, a number of loopholes around consent limit the substantive application of domestic transplant laws. In India for example, an unrelated donor is merely required to sign an affidavit in a magistrates court stating that he/she is donating an organ for reasons of ‘affection or attachment’ (Human Organ Transplantation Act (India), [109]). Clearly, it is not difficult to conceive of a situation where a recipient would develop a sense of ‘affection or attachment’ for a person who had agreed to provide a much needed organ. Critically however, criminalising organ sales does not effectively limit demand or address the cultural, political and socio-economic structures that precipitate the organ trade. Laws are introduced without any practical consideration of how to identify, prove and enforce measures against this phenomenon.

While the aforementioned instruments were primarily established to prohibit organ sales the Trafficking Protocol has principle carriage for the prohibition of trafficking in persons for organ removal.

Including "the removal of organs" in the trafficking protocol

The Trafficking Protocol was the first multilateral treaty to explicitly recognise human trafficking for organ removal as a practice that should be criminalised and punished [113, 114]. Supplementing the United Nations Convention on Transnational Organised Crime (hereinafter the Organised Crime Convention) the Trafficking Protocol was established in response to the threat posed by ‘transnational’ organised criminal

¹⁴ This is not an exhaustive list.

networks involved in human trafficking. It was not established to account for local actors involved in illicit activities, i.e. organ sales. Its primary purpose is to bring State Parties into agreement as to what constitutes human trafficking in order to encourage the convergence of national approaches to crime control; to facilitate cross border cooperation in investigating and prosecuting trafficking offences that involve one or more states. For example, in order to extradite an offender the principle of double criminality must first apply, which requires the requesting state to have analogous laws to that of the state in request.

Under the terms of the Protocol the offence of trafficking can only be established where an action (recruitment, transportation, transfer, harbouring or receipt of persons) followed by the means (threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person) for the purpose of exploitation (in this case, the removal of organs) can be proven ([113, 114]: Art 3 (a)). Under Article 3 (c) the means are irrelevant in any case involving a child.

The decision to include 'the removal of organs' was made very late in the negotiations, at the ninth session of the Ad hoc Committee on the Elaboration of a Convention against Transnational Organised Crime [112]. In support of recommendations made by Argentina and the United States during the first session of the Committee, several delegations requested that the exploitative purposes outlined under Article 3 (a) should 'include the removal of organs or trafficking in human organs, tissue or body parts' ([112]: para 12). Consequently, it was decided 'to include such a reference for purposes of further discussion' ([112]: para 12). Thus unlike other exploitative purposes specifically referred to in the Protocol organ trafficking was not previously considered in international law and as such had no prior legal definition. This combined with the fact that 'the removal of organs' was introduced at the final drafting stage of the Protocol meant that the concept had been introduced into international law, despite not being well understood or defined. This is evident in the absence of any nuanced provisions targeting the specific ethical, legal and medical challenges that organ trafficking presents. For example, there is no distinction made between the different practices involved in the organ trade, i.e. organ sales and transplant tourism.

It was only in a subsequent report by the Conference of Parties to the Convention that it was explained that trafficking in organs, tissue or cells independent of the body is not covered by the Protocol (United Nations, 2011: para 8). Thus the Trafficking Protocol is only relevant where human trafficking for organ removal takes place. How exactly the 'removal of organs' becomes a criminal act or how *prima facie* a consensual agreement to sell an organ becomes exploitive and subsequently a trafficking offence is not elaborated. Therefore the substantive scope of the Protocol as it applies to organ trafficking, and related practices, is somewhat obsolete. The fact that Article 3 (a) includes the only reference to organ trafficking in the Protocol, where the term 'removal of organs' is listed as a form of exploitation, is in itself indicative of the lack of consideration given to this issue prior to its inclusion.¹⁵

¹⁵ The removal of an organ is not always illegal. It is only illegal to remove an organ under commercial terms or when there is no medical reason to do so. Hence the Protocol would benefit from clarifying the term 'removal of an organ'.

The Trafficking Protocol largely serves prosecutorial ends. The inclusion of open-ended terms like ‘the abuse of power’ or of ‘a position of vulnerability’ speaks to the definitional flexibility States Parties are granted when prosecuting suspected cases of human trafficking. For example, in the *Medicus Clinic* case [78] the Appeals Panel of the EULEX Court in Pristina confirmed the charges of human trafficking against the defendants on the basis that the particular means involved constituted an abuse of a position of vulnerability:

...the person who had come to Kosovo to donate their organs did not do so to assist a family member or for any of the usual reasons that people in a civilised society chose freely to donate their organs. They did so because of their position of vulnerability. To suggest that a person would travel to a foreign country, endanger their health through such invasive procedure on the say so of a stranger runs (if they were not in a position of vulnerability) contrary to common sense...[78].

Although there is some commitment to ‘victim rights’, states are merely urged to ‘consider’ implementing measures in cooperation with civil society to provide for the physical, psychological and social recovery of survivors of trafficking in persons ([113, 114]: Art 6 (a)). According to the Legislative Guide (para 368) the Trafficking Protocol does not oblige states to guarantee a victim’s right to compensation or other such remedies but rather calls on states to adopt all necessary legislative measures, such that remedies can be pursued [115]. Moreover, a major drawback against the Protocol is the absence of any kind of monitoring mechanism to ensure that parties implement its provisions effectively.

At the regional level the Council of Europe Convention on Action against Trafficking [32] (hereinafter *The European Trafficking Convention*) also enumerates ‘the removal of organs’ as a form of exploitation that constitutes the purpose element of human trafficking. While largely synonymous with the Trafficking Protocol the *European Trafficking Convention* makes some notable developments.¹⁶ The *European Trafficking Convention* represents a victim centred or human rights approach to human trafficking. As such the language in the Convention reflects much stronger obligations to adhere to provisions intended to protect victims [32; Arts 10–17]. However the anti-trafficking framework remains limited in its reach, particularly in regards to the organ trade. While the human rights approach has been important insofar as many states now mediate their criminal policies with provisions that take account of a ‘victim’s’ situation (i.e. granting victim immunity from criminalisation, operating victim shelters and institutionalising special visa regimes for trafficked individuals) such assistance is contingent on the outcome of criminal proceedings [23, 103]. Although estimates of

¹⁶ In contrast to the Trafficking Protocol the *European Trafficking Convention* established a Group of Experts on Action against Trafficking in Human Beings (GRETA) charged with monitoring the implementation of the Convention through country reports. The implementation of the monitoring body is made possible by the integrated status of the EU. This would not be effective on a global scale. Another important provision to note in relation to the legality of organ sales is Article 19, which invites states to impose liability on persons who ‘use the services of a victim of trafficking’ with the knowledge that the person is a victim of trafficking. Accordingly, recipients of a trafficked organ could –potentially– be held liable by States Parties to this convention.

trafficked persons are in their millions relatively few are identified [104, 123]. Of those who are identified only the most extreme cases go to trial and only the most ‘deserving’ victims receive assistance [8, 22, 7]. Moreover, rehabilitation often amounts to lengthy administrative procedures that result in the involuntary repatriation of victims [23, 103].

All too often the rhetorical appeal of the human rights discourse is used to create the illusion that positive action is being taken by compassionate governments to end the injustice of ‘modern slavery’ [42, 84]. Critically however, the anti-trafficking framework is individualistic in its approach attending (in the best case scenario) to the post-ante consequences of a criminal act. An ex-ante approach is needed that attends to the economic conditions and legal rules that leave individuals vulnerable to varying degrees of exploitation. Given the covert and complex nature of the organ trade it is difficult to see how organ sellers (whether subject to trafficking or not) will benefit from an anti-trafficking perspective.

Council of Europe convention against trafficking in human organs

The Council of Europe Convention against Trafficking in Human Organs was adopted on July 9th by the Council of Europe Committee of Ministers, with the objective to prevent and combat trafficking in human organs. The Convention aims to achieve its objectives ‘through the introduction of new offences supplementing the existing international legal instruments in the field of trafficking in human beings for the purpose of the removal of organs’ ([33], Preamble). However, considering the Convention is intended to supplement existing international instruments, it is curious that there is no reference to ‘trafficking’ as defined in Art 3(a) of the Trafficking Protocol. Rather, for the purposes of the Convention trafficking in organs is broadly defined as the ‘illicit removal of human organs’. Articles 4 (1), 5, 6, 7, 8, and 9 outline a number of instances where removing an organ can be considered illegal, however similar to the Trafficking Protocol the draft lacks any kind of normative basis to support the notion of an ‘illegal removal’. This fragmented conception of ‘illicit removal of organs’ as distinct from the definition of ‘trafficking’ established in the Protocol is likely to serve a source of confusion for those states that adopt this Convention.

As expressed in Article 4 (a) and (b) criminalization is contingent on (1) the lack of informed consent (2) the exchange of money. This is problematic for a number of reasons. Consent is generally taken to denote a voluntary agreement to another’s proposition. It involves the capacity, intention, and knowledge to make the decision of the kind purported. Accordingly, the majority of transplant laws require that voluntary and informed consent is obtained before a transplant can be approved.¹⁷ The majority of organ sellers consent to the sale of their organs [13, 128, 80]; Naqvi et al., 2007, [57]). They do so for a number of reasons (i.e. poverty, debt, familial pressure, etc.) largely rooted in their socio-economic status [55, 130, 83, 10]. Although from a moral perspective it is not ideal to sell one’s organs this need not necessarily be exploitative insofar as the seller may at some level benefit economically, or in some other way, from the transaction. It is when consent gives way to exploitation that the

¹⁷ All the domestic transplant laws referred to in this article require that voluntary and informed consent is given prior to an organ donation.

force of the law should be called upon.¹⁸ Before we can determine whether consent is fully informed we must look at the context in which it is given. How was it obtained and for what purposes? Here however the notion of ‘consent’ is fixed to a particular construction of illegality and used as a standard bearer for criminality. The ex-ante structural conditions that render people vulnerable to exploitation are dismissed by a narrow emphasis on criminality. Organ sellers are not exploited because they sell their organs. They are exploited because of conscious choices at the global level to invest in transplantation facilities rather than basic public health [59].

Critically, the Convention does not distinguish between organ sales and organ trafficking; albeit the intended purpose of the Convention is in fact to prevent and combat organ trafficking as opposed to organ sales. The reliance on ‘financial gain or comparable advantage’ reflects the moral underpinnings of the predominant prohibitionist stance against organ sales. On this basis the act of exchanging an organ is rendered criminal by way of material advantage, regardless of the conditions involved. To equate the act of selling an organ with a serious criminal offence is wholly misconceived and disproportionate. Without any investigation into how consent is obtained or why it is given ‘consent’ becomes an open-ended judgment, open to state interpretation and manipulation for prosecutorial purposes. Accordingly, the Explanatory Report to the Convention (para, 53) notes that the question of prosecution of “organ donors” will be left up to individual states. At present there is wide divergence amongst states in regards to the level of punishment to be administered for the offence of selling an organ and/or organ trafficking. Punishment can range from 3 months imprisonment and/or a fine (i.e. the UK) to over 8 years imprisonment and/or a fine (i.e. Egypt, Venezuela).¹⁹ Rather than address such inconsistencies the Convention merely encourages states to adopt a number of new offences that will apparently prevent and combat trafficking in human organs. Ironically then we have a situation where unless an organ seller is considered a victim of organ trafficking he/she will be criminally liable.

Misconceptions aside this Convention has little substantive purchase. Similar to the Trafficking Protocol the Convention uses discretionary non-binding language and terminology to convey various provisions. For example, Article 4 (4) only requires state parties to ‘consider’ taking the ‘necessary legislative or other measures to establish as a criminal offence under its domestic law the removal of human organs from living or deceased donors [...]’. The Convention consistently uses vague and open ended terminology, such as “undue advantage” (Article 7) and “vulnerable person” (Article 13) failing to bring any kind of conceptual clarity to this phenomenon.²⁰ Further, important provisions such as Article 11 pertaining to corporate liability are subject to existing state laws which may or not be proportionate to the offence involved. In terms of prevention (see Article 21) there is no commitment to reducing organ failure as a

¹⁸ This is an important point to consider. However, it is beyond the scope of this article to deliberate on this further.

¹⁹ See, Arab Republic of Egypt, Law No. (64) Regarding Combating Human Trafficking (2010) <http://www.protectionproject.org/wp-content/uploads/2010/09/Egypt_TIP-Law_2010-Ar+En.pdf> accessed 12 June 2013; See also, Law of 19th July of Venezuela on Organ Transplantation

²⁰ It is noted in the Explanatory Report that drafters are intending Article 21 to be limited to persons who are vulnerable because of age (presumably children, already covered under the previous clause), mental development or familial or social dependence on the perpetrator(s)).

viable strategy to prevent ‘trafficking in human organs’. Rather punitive measures are conveyed as the only viable strategy to regulate the organ trade. Similar to the Trafficking Protocol, there is no mention of reporting requirements or implementation machinery. The follow-up mechanism outlined in Chapter IV of the Convention is reliant on the discretion or States Parties are their willingness to allocate the necessary resources. Given that there are several opt out clauses (Art 9 (3); Art 10(3); 10 (5); 30 (2)) undermining the scope of the treaty, it is unlikely that State Parties will feel ‘obliged’ to do so.

Beyond criminalisation

The above international instruments follow a clear ideological trajectory whereby the moral framework underpinning the prohibition of organ sales has been subsumed into the meta- narrative of human trafficking. This has prompted states to adopt more punitive measures in response to the organ trade as a whole; regardless of whether or not trafficking or organ harvesting has occurred. Consequently, organ sellers are as likely to be prosecuted for selling an organ as actors involved in the organisation and commission of organ trafficking (See, [93]).²¹ It can come as no surprise then that sellers are reluctant to come forward and report instances of abuse, fraud or deception to state authorities when such violations have actually transpired [62].²² For an organ seller to receive assistance (limited as this may be) he/she must conform to a fixed victim profile attributed to an a priori criminal act. Consequently, the organ seller becomes a ‘victim’ of trafficking oppressed by a criminal underworld that threatens the moral fabric of society and must therefore be brought to justice. Such ‘victims’ are utilised to spearhead campaigns for increased crime control and tightened security measures, which conveniently displace the need to challenge the social, cultural, economic and political factors that push people into selling their organs. Conversely, many organ sellers who do not conform to a trafficking victim profile are likely to be excluded from assistance despite being subject to varying degrees of exploitation. Organ sellers are not necessarily trafficking victims per se, but are no less deserving of assistance.

While criminal prosecution is important insofar as it represents society’s intolerance for particular crimes and may act as a deterrent for future offences, punishment does little to alleviate the conditions that produce crime. Rather an emphasis on prosecution

²¹ See, Wang Chin Sing v Public Prosecutor <http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/sgp/2008/wang_chin_sing_v_public_prosecutor.html?tmpl=old> accessed 10 July 2013; In this case both the organ buyer and organ seller (S.D.) were prosecuted. S.D. [Public Prosecutor v S.D. and Another [2008] SGDC 175] was convicted of entering into an arrangement to supply a kidney for valuable consideration under the Human Organ Transplant Act (Cap 131A, 2005 Rev Ed) section 14(1) read with section 14(2). He was also charged with making false statutory declarations under the Oaths and Declarations Act (Cap 211, 2001 Rev Ed). Two charges under the Human Organ Transplant Regulations 2004 (S 213/2004) regulation 8 were also taken into account in sentencing. S.D. was sentenced to two weeks imprisonment and fined S\$1000. He was unable to pay the fine and was consequently imprisoned for another week.

²² See, J.A. v State of Israel <http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/isr/2007/j.a._vs._state_of_israel.html?tmpl=old> accessed 10 July 2013. In this case the organ sellers were warned that if they complained to the police they would be arrested, since they were complicit in an offence.

and crime control may serve a distinct ideological and political function [47]. As discussed previously, the organ trade is the subject of increased media, NGO and inter-governmental attention. The overall picture that is being presented is one of organised crime and human trafficking. Reports with an emphasis on criminality and victim suffering generate social fear which in turn wins public support for punitive measures and symbolic promises of ‘victim’ assistance. In spite of the limited number of legal cases that involve the level of force, fraud and coercion described in the organ ‘trafficking’ discourse, select prosecutions involving aggressive organised criminal networks are used as an investigative template for government strategies to counter the organ trade [89]. High profile prosecutions give the appearance that positive action has been taken, without challenging the broader political framework that produces victimisation. Nevertheless, it is these cases that receive media attention and ingrain a particular perspective of criminal phenomena into the social consciousness.

Rights of victims are consistently referred to without any substantive basis for how these rights can be enforced. Various ‘official’ reports make grandiose claims of victim assistance and crime prevention appealing to a narrow conception of human rights, dignity, autonomy and empowerment, to convey a sense of commitment to laws which are symbolic in nature representing little tangible support ([117, 118]). While NGOs and interest groups can essentially motivate social change they often reinforce the meta-narrative of human trafficking by appealing to a mediated image of victim suffering to advocate for ‘remedies’ that have no substantive outlet [80]. Criminality is generally relegated to the global south where particular states are identified as trafficking hotspots [100, 101]. Advocates levy unrealistic demands on these states calling for a host of different victim services. However, the majority of states that are identified simply do not have the resources to follow through on commitments, which are essentially made to appease the prescriptive profile of international agreements.²³

The periodic assessment of ‘kidney scandals’ and high profile cases defers a more sustained inquiry into the local politics that underpin the everyday dealings negotiating the terms and conditions of the organ trade. Evidence based research indicates that the organ trade operates (predominantly) on a much more localised level where the experience of organs sellers vary, the operations differ and the push factors alternate ([55, 80, 83, 85, 130]). While local networks can and do interact with larger transnational networks of organ trading ([78, 108] the conditions that facilitate various aspects of the organ trade, are grounded in the particular circumstances and environments of a given context.

There is however a pattern of indebtedness amongst organ sellers suggesting that the organ trade is better understood as an issue of economic malfeasance rather than a major organised crime operation or a serious threat to national security. Undertaking research in Chennai, India, Lawrence Cohen observed that ‘kidney zones – the vakkams and belts of Tamil Nadu – emerge through interactions between surgical entrepreneurs, persons facing extraordinary debt, and medical brokers’ (26: 676). Cohen explains: ‘Persons sell kidneys to get out of debt, but the conditions of indebtedness do not disappear’ (26: 676). Thus rather than introducing new criminal

²³ For example, Article 27 of Law No. (64) Regarding Combating Human Trafficking (Egypt) outlines a commitment to establish a fund for victims of trafficking. This fund has never been established.

offences to deter the organ trade we should perhaps look at insufficient labour frameworks, local credit practices and ways of minimising the conditions of indebtedness that leave people vulnerable to varying degrees of exploitation [23]. In particular the nexus between medicine, politics and industry warrants closer inspection.

Re-assessing transplantation

While organ sellers may become victims of crime the fact the crime exists has nothing to do with their decision to sell. The organ trade can be considered an organised crime insofar as an organised criminal group is defined as:

...a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit'([114]: Art 2 (a)).

However, in contrast to the dark figure of the mob boss or predatory broker the diverse actors involved in the organ trade coexist with the legal institutions that constitute the transplant industry. There would be no organ trade without the necessary medical infrastructure or trained medical staff to remove/harvest the organ(s). Neither would there be demand without the life enhancing promise that transplant medicine holds out to terminally ill consumer-patients. The organ trade is not primarily a problem of crime control. It is an illegal subsystem of the transplant industry; an unregulated market solution to the surplus demand for organs, produced by the global transfer of transplant technologies. To be clear, this is not a critique of the therapeutic design of transplantation which as a last resort for terminally ill patients is a genuine life saving measure. What is at issue here is the economic design of a technology incoherent with local needs and/or resources.

In an increasingly globalised world where neo-liberalism pre-dominates there has been a systematic grafting of market values into all aspects of social life. Medicine and its rationality have been shaped by this discourse, where the self-regulating principles of the market are applied to life itself. New 'life-enhancing' biotechnologies have introduced new calculations of life, influencing the ways we conduct ourselves. Medicine materialises time in its intervention, offering the possibility of additional weeks, months or years of life. Hence, our capacity to live becomes a material aspiration. To quote Nickolas Rose:

Biomedicine, throughout the twentieth century and into our own, has thus not simply changed our relation to health and illness but has modified the things we think we may hope for and the objectives we aspire to. That is to say, it has helped make us the kind of people we have become ([97]: 25).

Viewed from the perspective of individual patient success rates one can understand the almost uncritical acceptance of bio-medicine as an unprecedented social good, in particular when we consider the merits of kidney transplantation. In the UK, for example, there were 1148 successful kidney transplants from deceased donors in 2012–2013, and 1068 successful kidney transplants from living donors in the same

period [86]. Yet, if we consider the success of transplantation in relation to the rise of 'diseases of affluence' (i.e., obesity, hypertension and diabetes) associated with end-stage renal failure (ESRF), ageing populations, rising medical costs, the decline of primary care and the emergence of the organ trade, it becomes apparent that our increasing reliance on transplant surgery is not an altogether convincing success story [38, 46, 64, 65]. The much vaunted 'life-saving' capacity of transplantation represents an undeniable medical achievement. Nevertheless, the fact that the global incidence of renal disease is increasing to epidemic proportions [102, 124] is a serious cause for concern, which calls for a re-assessment of how we structure our national health systems.

In a number of states, identified as being hotspots of organ 'trafficking', such as India, Pakistan and the Philippines [100, 101] where large sections of the population do not have access to basic sanitation and/or clean water, it seems counter-productive to invest limited resources into expensive transplantation programmes inaccessible to the general public. In such states where access to transplantation is limited, legal restrictions may be necessary to reserve treatment for the most serious cases (that is where transplantation is the only feasible option), while resources are made available to promote the early identification of diseases associated with organ failure. Early intervention is pivotal in responding to patients needs before transplantation becomes necessary [72]. Furthermore, there needs to be a focus on addressing the risk factors associated with organ failure. For example, rather than prioritising the investment of resources into a technology that attends to the consequences of organ failure, resources could be invested into public health schemes to improve waste management, sanitation, environmental degradation, food security etc. [58]. Essentially transplantation needs to be uncoupled from economic incentives and re-structured to accommodate domestic needs. Nonetheless, with a surplus demand for organs 'developing' transplant capabilities in the global South holds the dual promise of market expansion and industrial supply.

The industrial and technological structure that transplantation necessitates contends to a distinctly Western public policy design, responding to the interests of the transplant industry rather than internal health/development needs. For instance, while transplants produce high revenues for insurance and pharmaceutical companies, organ procurement organisations, medical professionals, hospitals and their shareholders, the profits are largely remitted into the private sector at the expense of public health care provision [29, 73]. Subsequently, access to healthcare is increasingly becoming a feature of one's ability to pay. This is particularly damaging in the global South, where existing inequalities are exacerbated further polarizing domestic populations [2, 74, 82]. Significantly then, it seems that in the context of uneven development in the bio-medical sector, transplantation has rendered the biological value of human beings subject to the relative and comparative wealth of individuals. It is from this socio-economic interface that exploitation can and does follow. The fact that few people with chronic renal failure can avail of transplant medicine is not so much an issue of crime control but is rather an indictment of privatised medicine and the political economy. Preventing the organ trade will depend more on political decisions than misleading technical crusades to improve enforcement and reform victims.

Conclusion

At present little is known about the prevalence or nature of the organ trade. Much of what we do know is based on anecdotal accounts that betray an empirical objectivity for a biased subjectivity. Clearly then more evidence based research is needed to illuminate the multi-sited complexity of this phenomenon and to determine the actual scope of the problem; particularly in regards to the role the transplant industry plays in producing demand for transplant services and therein organ supplies - this will be the focus of some future publications. Nevertheless, organ trafficking is represented as the defining feature of the organ trade. Despite empirical evidence indicating that the organ trade is better characterised by organ sales and transplant tourism and the fact that there has been relatively few cases of organ trafficking to appear at the judicial level, organ trafficking is repeatedly referred to as a global crime organised and commissioned by sophisticated criminal networks. Co-opting the organ trade into the anti-trafficking framework is not an adequate solution to the challenge the organ trade presents. The anti-trafficking framework is limited in its reach attending to the post-ante circumstances of exceptional cases of trafficking. The majority of organ sellers who suffer from varying degrees of exploitation do not correspond to the standard victim profile of trafficked persons and thus may be further disenfranchised by the ascendancy of the organ 'trafficking' discourse. For example, in cases where some trafficking elements are present, the level of fraud and/or deception involved in an organ sale may not be considered serious enough to constitute the offence of trafficking under domestic laws. Hence, rather than simply co-opting the organ trade into existing laws, law and policymakers need to consider the unique challenges this phenomenon presents. The belief that organ trafficking is a direct result of the 'global crisis in organs' blunts a critical appraisal of the structural process that has rendered our bodies subject to new modes of exploitation. Instead of focusing on the pain and suffering of victims, positive action needs to be taken to make the transplant industry, as a whole, more accountable. The organ trade is not symptomatic of the global crisis in organs; it is an illegal subsystem of the transplant industry.

Appendix



Am selling one of my kidney to fund my masters degree. I was orphaned at the age of nine and have a first class honors degree. This is the only way of achieving my dream

[Like](#) · [Comment](#) · 27 May at 08:05



Hi I'm from Venezuela I have 27 years to sell my kidney, I'm completely healthy, I have available to travel, I have passport. my blood is ORH +. Listen to offers. seriousness and discretion. my email is jorge.cvcg@gmail.com

[Like](#) · [Comment](#) · 23 July at 02:48



Want to sell as well, offer me a price. Blood group B
Can provide medical docs.
Can travel anywhere . Pm Me
Or mail me tanchienhuat@gmail.com

[Like](#) · [Comment](#) · 15 July at 19:46



I want to sale my kidney. My blood group is A+. If any person need
kidney plz contact me via email or Facebook.
kidneydonor16@gmail.com

[Like](#) · [Comment](#) · 28 May at 08:04

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