



Research Paper

Ethical challenges of kidney sale: A review of three major assumptions based on the theories of Ṭabāṭabā'ī

Rahim Dehghan Simakani

Shahid Beheshti University, Tehran, Iran

ARTICLE INFO

Keywords:
Ethics
Divine consent
Kidney sale
Brain death

ABSTRACT

This paper seeks to provide an ethical assessment of kidney sale based on the theories of a contemporary Shiite theologian, Muḥammad Ḥussain Ṭabāṭabā'ī. It aims to offer a mechanism to decide the justifiability or unjustifiability of kidney sale in ethical terms. Ṭabāṭabā'ī considers "Divine Consent" as the criterion for the morality of an action. An action meets the "Divine Consent" requirement if it is done with a sincere intention, confirmed by reason and Divine revelations, brings about an internal peace for the agent, and preserves the agent's dignity and autonomy. Given this criterion and through an analytic and qualitative method, this paper aims to evaluate kidney sale in three cases: during one's lifetime, during brain death when the agent has left no will, and during brain death when the agent has left a will. It seems that, based on the theories of Ṭabāṭabā'ī, the above requirements are only met in the first two cases. Thus, kidney sale is morally justifiable in the first two cases but not in the third.

1. Introduction

Today, many people throughout the world die due to kidney failures and their inability to find kidneys for transplantation, having hard times under dialysis machines. According to comprehensive international reports about kidney diseases, one out of ten people throughout the world has a kidney disease.¹ This fact, in addition to the shortage of donated organs, leads to a market of buyers and sellers of kidneys. Thus, kidney sale is a problem faced by people today. Thus, an inquiry into its ethical, Islamic jurisprudential, sociological, and medical aspects is required.

A wealth of research has already been conducted in this regard on medical and Islamic jurisprudential grounds. However, no mechanism has been put forward to ethically assess the act of kidney sale, although every ethical school can provide its own mechanism. In general, three positions regarding the problem of kidney sale can be found in previous studies. Some of them argue for the permissibility of kidney sale. For example, some proponents of the legalization of kidney sale argue that there is no essential difference between kidney donation and kidney sale with respect to harms they ensue²; pp. 610–614^{3,4}; pp. 87–89). Thus, if kidney sale is intended for the Divine Consent, it will be as valuable as kidney donation. Others argue for the permissibility of kidney sale on the ground that denying the permissibility of kidney sale is tantamount to the denial of the person's autonomous character⁵; V 55, p. 728). Others argue that if kidney sale is to be prohibited because

of harms it causes for the seller, then dangerous jobs should be prohibited as well (Dworkin, 1994, p. 157). Malmqvist argues that just as some tough jobs possibly involve disabilities, amputations, and even death, without being thereby prohibited, kidney sale should be permitted too. Nevertheless, he eventually admits that this might be a false analogy, because dangerous jobs are profitable, while kidney sale is not.⁶

On the other hand, some people have argued against the permissibility of kidney sale. For one thing, they argue that organ sale is in conflict with the human dignity. In fact, it is taken by to be equivalent to prostitution⁷; p. 35). Others take organ transplantation to amount to intervention in God's actions, holding that the person who purchases another person's body organs will always feel sinful⁸; p. 376). And some people argue for the impermissibility of kidney sale from its harms. For example, Goyal's research in India and Zargooshi's research in Iran suggest that kidney sale is impermissible because of harms it ensues.^{9–11}

However, some people believe that no universal mechanism can be proposed for the problem of kidney sale; instead, it should be assessed proportionately to different geographical and ecological regions.¹ Greasley adopts a particularized approach, holding that the matter should be assessed on a case by case basis given the particular circumstances of each case.¹² In his paper,¹³ has challenged arguments put forward by opponents of kidney sale, without providing a clear argument for its permissibility. Farhat Moazam has adopted a similar

E-mail address: r_dehghan@sbu.ac.ir.

<https://doi.org/10.1016/j.jflm.2018.10.009>

Received 17 April 2018; Received in revised form 14 July 2018; Accepted 26 October 2018

Available online 01 November 2018

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approach. She holds that the permissibility or impermissibility of kidney sale depends on each country's religious values and cultural norms; thus, no single criterion or mechanism can be provided¹⁴; p. 83).¹⁵; p. 1700) believe that kidney sale is morally permissible only if it is altruistic.

On the other hand, some people have attempted to provide a legal model for kidney sale,¹⁶ while others have tried to provide an ethical mechanism for the problem. For example, Lawlor insists on legalizing kidney sale instead of its prohibition,¹⁷ offering a mechanism based on fairness and justice, although he is not satisfied with the mechanism in the end.¹⁸ Giving an essential role to conditions like harmlessness and the respect for the individual's free will and autonomy, Malmqvist came to believe that kidney sale can be ethically justified if these conditions are met.⁶ Cameron and colleagues have focused on the ability to choose, a sense of responsibility towards others, and principles such as autonomy and justice, trying to provide a rational solution to the problem of kidney sale, although they have admitted that there are certain challenging matters which cannot be explained in terms of this mechanism.¹⁹ Some Muslim intellectuals, including Farhat Moazam, have also tried to tackle the issue in accordance to common religious and cultural attitudes in Pakistan^{14, 20}; Sherine Hamdy has adopted the same approach with respect to Egypt⁸ &.²¹ However, they do not seek a specific mechanism in their research; instead, they aim to explain the problem of kidney sale in terms of jurisprudential and cultural attitudes in Pakistan and Egypt. This paper seeks to provide a coherent mechanism to decide the ethical rightness or wrongness of kidney sale based on the thoughts of a Shia thinker. I also present arguments for the claim.

The research provides a criterion for individuals who are in need of kidney sale, on the one hand, and have moral concerns, on the other hand. They can assess their act through the mechanism proposed in this essay and, thereby, decide the ethical justifiability or unjustifiability of their act. Moreover, the paper yields a specific mechanism for morality or immorality of kidney sale based on the views of Shiite scholars, which can contribute to the present English-language discourse regarding kidney sale in Islam. Scholars in the present English-language discourse can compare researches regarding kidney sale in Egypt²¹ as well as research in Pakistan²⁰ with the present research done in Iran in accordance to cultural and religious attitudes of Iranian intellectuals, and thereby, know more about kidney sale in Islam and different solutions to its moral challenges.

Hence, the main problem this study deals with is to inquire about the mechanism proposed by Ṭabāṭabā'ī,¹ as an important contemporary Shiite thinker, concerning ethical challenges of kidney sale. The general thesis of the research is that, in his view, 'kidney sale is morally justified if it meets the criterion of Divine Consent. To establish this thesis, it is required to elaborate the criterion of morality in Ṭabāṭabā'ī's intellectual system. Thus, the first section of this paper is devoted to a specification of the criterion of values, which lies in the realm of normative ethics. In this section, I will seek to investigate the criterion of moral will then provide a specific framework for judgments about kidney sale. The second section aims to explain the practical ethical challenges of the issue, which lies within the realm of applied ethics. In this section, I will first introduce arguments for and against the permissibility of kidney sale, and then evaluate the most important ethical challenges of kidney sale we are confronted with in practice, in terms of the mechanism proposed by Ṭabāṭabā'ī.

¹ Muḥammad Ḥussain Ṭabāṭabā'ī (1902-1981) was a contemporary Shiite Muslim intellectual and among the most important teachers of philosophy and jurisprudence in the Islamic Seminary of Qom, Iran. Many of his works regarding the philosophy of religion and theology have been published, including *Principles of Philosophy and the Method of Realism and Shia in Islam*. His most important work is considered to be *al-Mizān fi Tafsiṛ al-Qur'ān*, which is a complete exegesis of the Quran in 20 vol, written in Arabic.

2. The criterion of the morality of an action

Theories in moral philosophy that provide criteria for the morality of an action can, in general, be classified into three categories:

- (1) Consequentialist theories, according to which no action is intrinsically right or wrong—an action is right or wrong depending on its consequences. The best-known consequentialist theory is Jeremy Bentham's utilitarianism as well as John Stuart Mill's view which has its origins in the views of Hobbes and Hume concerning the human nature²²; p. 13).
- (2) Deontological theories, according to which, an action's consequences have no effect on its rightness or wrongness; instead, rightness and wrongness are intrinsic to actions²³; p. 200). The main advocate of the deontological theory in ethics is Kant followed by other philosophers, such as Ross and Robert Nozick.²³
- (3) Virtue theories, according to which the rightness and wrongness of an action is neither dependent on its consequences, nor is it intrinsic to the action; instead, it depends on the character (*arête*) of the moral agent. Telling the truth is virtuous in virtue of its being required by the character of a virtuous agent²⁴; p. 136). Thus, Aristotle—the founder of virtue ethics—highlighted the significance of moral characters.²⁵ Different versions of this view have been defended by contemporary philosophers, such as Rosalind²⁶; Philippa Foot, and others.

3. The criteria of the morality of an action in Islamic ethics

The three views above are not to be rejected from an Islamic standpoint. However, the Islamic perspective involves elements that are partly in agreement with all the three ethical approaches above, although it refuses to accept any of them as the only accurate account of the morality of actions. More precisely, there are two general accounts of criteria for moral actions from an Islamic point of view.

- (1) The rightness and wrongness of actions depend on God's commands or prohibitions. The view is referred to as the “divine command theory,” held by the majority of Ash'arīs (an important theological fraction among Sunni Muslims) since the 10th century. They take the rightness or wrongness of an action to depend on God's commands or prohibitions. They maintain that “prior to Sharia laws, actions lack any goodness or badness, and God can always reverse [moral] propositions, turning what He considered as bad into something good, or making what He considered to be good into something bad” (al-Jurjānī, 2004; vol. 8, p. 182). The rightness or wrongness of an action is not, they believe, inherent in or intrinsic to actions themselves; instead, God's commands and prohibitions determine moral rightness and wrongness (ibid. p. 181-2). On this criterion, kidney sale is morally wrong if God has prohibited it, and is morally right if God has commanded it (and it is morally permissible at least if God has not prohibited it).
- (2) Rightness and wrongness are intrinsic to the action itself. This view is known as the intrinsicness of rightness and wrongness, advocated by the Mu'tazila and Imāmiyya (two other theological fractions of Islam) since the 8th century. For example, 'Abd al-Jabbār al-Mu'tazilī says, “Injustice is wrong, even if it were initiated by God”²⁷; vol. 6, p. 128). Although the approach is shared by the Mu'tazila and the Shi'a, there are, nonetheless, disagreements between them. The main difference is that the Mu'tazila take the scope of rationality so wide that there would be no need to a prophet²⁸; vol. 1, p. 56). This view is not supported by the Shi'a. Another difference is that the Shi'a have appealed to hadiths from their “Infallible Imams” to show that an action is morally valuable insofar as it is in agreement with the “Divine Consent.” Thus, for the Shi'a, the criterion of the morality of an action is its agreement with the Divine Consent; that is to say, an action is morally valuable only

if it agrees with the Divine Consent. As Ṭabāṭabā'ī—a prominent Shiite intellectual in the contemporary period—puts it, the rightest action is what is done only to attract God's satisfaction (1994, vol. 14, p. 142). This criterion has recurred in the Qur'an as well (the Qur'an 2:272; 18:28; 98:5). However, the Mu'tazila do not recognize the Divine Consent as the criterion for the morality of actions, although they appreciate its value in actions.

4. The criterion of the morality of an action in Ṭabāṭabā'ī's view

According to the Qur'an, an action is righteous only insofar as it is followed by the Divine Satisfaction (the Qur'an 98:7–8). Based on this Quranic approach, Ṭabāṭabā'ī believes that an act enjoys moral value only if it is in agreement with the Divine Consent (1994, vol. 14, p. 142). Hence, the criterion for the morality of an act, for Ṭabāṭabā'ī, will be as follows: "every act which is in line with the Divine Consent is morally right; otherwise, it is morally wrong."

Prima facie, this criterion seems to be vague. How can we recognize that an act is in line with the Divine Consent? In the works of Ṭabāṭabā'ī, a mechanism is proposed to recognize whether an act is in agreement with Divine Consent. This mechanism is based on four conditions. If an action meets all these conditions, it is in agreement with Divine Consent and will consequently be morally right. Here are the four conditions:

a. Doing the action with a sincere intention: An individual is said to do an action with sincere intention if and only if he/she does it only for the purpose of attracting the Divine Consent. According to Quranic verses, an action will enjoy the Divine Consent only if it is apt to be done for the purpose of attracting the Divine Consent and the agent does it with this intention (the Qur'an 61:10–11). Ṭabāṭabā'ī believes that an action is valuable only if it is done with the intention of obtaining the Divine Consent (1994, p. 353). People such as Hamdy, who wrote on kidney sale, also give a role to the person's intention when selling their kidney, but these authors do not have the intention of the Divine Consent in mind. Instead, they have in mind an intention to obtain a reward following the action²⁹; p. 101).

b. Compatibility with reason and the Divine Revelation: Avoiding irrational behaviors is required by human perfection. Thus, an action is in line with the Divine Consent only if it is compatible with the reason and contrary to carnal desires³⁰; p. 78). However, given the limitations of the human reason, the Revelation should be appealed to in some instances. Hence, an act, which is contrary to the reason or prohibited by the Revelation, will definitively be wrong³¹; p. 166). For instance, an immoderate action is neither rational nor endorsed by the revelation, and consequently, it will not be in line with the Divine Consent³²; vol. 4, p. 115).

c. Being in line with the fulfillment of a basic human need or flourishing and satisfying a natural human desire: inherent or innate human desires, including the desire for beneficence and altruism, knowledge, worship, beauty, survival and the like, are congruent with the Divine Wisdom, and a proper satisfaction of these desires is required by the Divine Consent. An indicator for the action being aimed at the flourishing of such basic desires is an internal peace one feels while doing the action. This is unlike actions that are contrary to the God-given human nature, for when one decides to do such actions one is interrogated by his or her conscience³³; p. 59).

d. Not being contrary to the human dignity: the Qur'an reserves a high rank for the human being, referring to him as the successor of God (the Qur'an 2:30). Appealing to this verse, Ṭabāṭabā'ī considers the human being to be the successor of God on the Earth, holding that any action contrary to the human dignity is not to be in line with the Divine Consent, and consequently, not to be moral (1994, vol. 1, p. 303).

These conditions can be classified under two categories: agential goodness (*al-ḥusn al-fā'ili*) and actional goodness (*al-ḥusn al-filī*). The first condition articulates agential goodness, according to which the agent's intentions have a role in an action's rightness or wrongness.

Other conditions are concerned with actional goodness, according to which the action itself should enjoy the features in question in order to count as morally right. In general, the Divine Consent is considered, in this approach, as the ultimate aim of human actions, and an action is considered as moral insofar as it is directed at this aim. Thus, Ṭabāṭabā'ī's approach to morality is consequentialist, although it is characteristically at odds with the type of consequentialism espoused by utilitarianists and hedonists. Let us now return to the main question to see what the proposed criterion implies about when kidney sale satisfies the aforementioned conditions and is, thus, morally justified, and when it faces moral challenges.

5. Three major cases in which kidney sale takes place

Kidney sale can be investigated in three cases: (1) selling the kidney during one's lifetime, (2) selling the kidney after a person's brain death in accordance with the will (*al-waṣīyya*) written during his lifetime, with his or her own free will and full cognizance, and (3) selling the kidney after a person's brain death in the absence of any will by him or her, for the purpose of saving another person's life, the advance of science and the like.³⁴ Which of the three cases meets the conditions involved in Ṭabāṭabā'ī's criterion of morality?

Before analyzing these three cases, a preliminary remark concerning Ṭabāṭabā'ī's account of the relationship between the human person and his own body parts is in order. Since all the created world is under God's dominion and He is the True Owner of everything, including the human being and his or her body organs, one might be tempted to say that human beings are not the owners of their body organs; instead, they are only trusted by God to deploy the organs in specific ways. Thus, they do not have the right to freely utilize what they are trusted with in whatever ways they wish to. However, Ṭabāṭabā'ī believes that human beings enjoy a conventional ownership over their body organs, which is aligned with the divine ownership, and such an ownership suffices for having the right to make a decision about their body organs. In his view, the conventional ownership of human beings over their body organs is rooted in the external reality, and hence, it is regarded as a kind of genuine ownership³⁵; p. 342). Therefore, although God is the true owner of the human body and soul, He has endorsed the conventional ownership of human beings in Quranic verses concerning commerce and inheritance (the Qur'an 4:5). In his view, human beings enjoy an ownership over their body organs and can manipulate them, just as they can own houses and manipulate them³²; vol. 2, p. 44). Thus, human beings have the right to donate or sell their body organs to each other, or write a will to the effect that their body organs be given to others. Having this point in mind, we now tackle the three cases above.

6. Ethical assessment of the three cases of kidney sale

6.1. Kidney sale during One's lifetime

Two kinds of life can be imagined for human beings. First: the full life of the body in which all body organs interact with each other and there is a high level of consciousness and perception. Second: vegetative life in which the brain is damaged and only the brainstem is alive and, consequently, the body only displays some non-volitional acts. Here, by life, we mean the former, that is the full life of a person's body. Kidney sale in this case is susceptible to several challenges:

a. The ethical challenge of self-harm: This challenge can be articulated through the first form of the Aristotelian deduction:

P1. Selling one's kidney is an instance of self-harm.

P2. Self-harm is contrary to the teachings of the divine revelation.

C. Kidney sale is contrary to the teachings of Divine Revelation. (Thus, it does not meet the second condition involved in the Divine Consent. Hence, it is not morally justified.)

Both premises of the argument need to be supported. As to the first premise, medical evidence confirms that removing a kidney is harmful

to the body. Medically speaking, it results in side effects, such as a high blood pressure, which raises the probability of a stroke up to 400%³⁶; pp. 248 & 304). In addition, it can cause pre-eclampsia, which hinders blood supply to the womb during the pregnancy and causes a disorder in the growth of the fetus, preventing it from having normal blood pressure as well as causing kidney diseases, and it might even lead to miscarriages³⁶; pp. 274–275). Also, the consumption of drugs to compensate for the lack of the removed kidney can lead to side effects such as headaches, a faster pace of the heartbeat and the like³⁶; p. 220). All these issues can be considered as instances of self-harm. What is more, field research in India, Iran, and Pakistan shows harms resulting from kidney sale. According to Goyal's research, 86% of Indian kidney sellers have reported failures in their health conditions, and 50% have complained about kidney pains⁹; p. 1591). According to Zargooshi's research, 58% of Iranian kidney sellers have reported that their general health was negatively affected by kidney removal, and 89% have reported about its negative effects on their physical abilities¹¹; pp. 1797–1798). And according to another research, of 139 Pakistani kidney sellers, 98% reported failures in their health condition¹⁰; 936). The ground for the second premise is that the prophet of Islam said on behalf of God: no believer should harm oneself or the other³⁷; p. 233³⁸; p. 294). The same point is also implied by certain Quranic verses like "and do not throw [yourselves] with your [own] hands into destruction" (the Qur'an 2:195).

b. The ethical challenge of dignity: Kidney sale during one's lifetime does not accord with the fourth condition, i.e., the human dignity. Indeed, putting a price on human organs and the money exchange by the seller and the buyer are not congruent with the human dignity, undermining one's self-esteem. Hence, it cannot be in line with the Divine Consent because it is impossible to put a price on the human body, and indeed, doing so with respect to a body organ amounts to the humiliation of the person in question.

However, it seems that these two ethical challenges to the first case cannot show any conflicts between morality and kidney sale. Suppose a man is in dire need of a kidney in such a way that he can only survive if he receives a kidney. In the meantime, he is a wealthy man and has to buy a kidney. Hence, he willingly accepts to pay 100,000\$ to receive a kidney. On the other hand, there is a poor man who cannot afford a living unless he sells his kidney and receives 100,000\$. He will accept all the side effects of the loss of his kidney. In such a case, kidney sale does not negate the conditions outlined by Ṭabāṭabā'ī for the Divine Consent because:

Firstly, both sides have good intentions. They want to solve each other's problems and this will surely bring about the Divine Consent. In fact, the kidney sale in this case is motivated by a feeling of altruism and empathy. It is believed that in a human society, the human emotion does not allow one to have a second car unless all people can afford to buy a car and, correspondingly, it does not allow one to have two kidneys while there are individuals who do not have a healthy kidney³⁹; p. 667). In fact, both parties in this transaction intend to obtain the Divine Consent, doing what satisfies God.

However, since market transactions are generally considered as self-interested or egoistic, and not altruistic⁴⁰; p. 30), it might be objected that if the permissibility of kidney sale were conditional upon altruistic motivations, then such a transaction would be practically impossible to take place. In response, it should be noted that this is not in conflict with our assumption, because one might have interests with varying degrees of priority. One might ignore smaller interests in favor of a greater one. For example, a person who sells his kidney with the motivation to obtain the Divine Consent may temporarily suffer from pains, but he expects a greater benefit of an eternal life imbued with the Divine Consent. In other words, although this person acts in order to obtain the Divine Consent, he seeks his personal interests as well.

In addition, it should be noted that the position of people, such as Smith, is not palatable because it is based on a version of moral anti-realism. Proponents of this view believe that a person's personal interest

is central to every transaction, that is, one should act in self-interested ways.⁴⁰). However, moral realism as assumed in this paper requires that we are obligated to do the morally right action, even if, *prima facie*, it involves no interests for us. Thus, although market transactions are mainly self-interested, it does not imply that they are moral. If kidney sale is *only* intended for greater financial benefits, then it will not be morally permissible. This is why I previously specified conditions for the morality of kidney sale, including the intention to obtain the Divine Consent.

Secondly: the kidney sale in this case is rational and is not contrary to the teachings of the Revelation. Although religious teachings do forbid self-harm, not all cases of self-harm are reprehended. Self-harm can even be an instance of sacrifice, which is one of the most virtuous human acts as well as the highest level of faith, as is a case when one harms oneself in order to save the life of a pious person⁴¹; p. 90). The Qur'an says, "and who saves the life of one, it shall be as if he had saved the life of all mankind" (5: 32). For example, 7000 patients with kidney failures were observed in Iran, most of whom die in Iran⁴²; p. 45). Now, if one helps one of these patients by selling a kidney to him or her, it would be a valuable action. In addition, some studies have shown that in healthy people who do not have particular diseases, removing one kidney will not do any harm, because numerous factors, such as weight, age, etc., contribute to the increase of blood pressure and it is not merely caused by the removal of one kidney⁴³; p. 78). According to some other studies, even those who suffer from high blood pressure (*hypertension*) see no change in their blood pressure after removing one of their kidneys⁴⁴; p. 276–282). Although field research in Iran, India, and Pakistan has found kidney removal to be harmful, for one thing, it seems that this research is based on the emotions of the subjects, which is not a valid ground for adjudicating the moral status of an action. For example, in Moazam's research, most people who have been interviewed have used phrases that indicate anger, which implies that their moral judgments were emotion-based. In particular, some subjects refer to surgeons as "butchers", or express their aversion by saying, "we will never ever step in the hospital"⁷; p. 35), or pointing out that "people in the community made fun of those who sell kidneys." Moazam's subjects were in general angry or crying or complaining that they did not receive the whole payment despite having sold their kidney.⁷) This reveals that their tendency to believe in the impermissibility of kidney sale is generally grounded in their emotions, and not in any kind of reasoning. I do not mean to say that emotions are not significant, but since a central element of my argument for the permissibility of kidney sale is its compatibility with rational grounds, I cannot easily lend credence to conclusions based on emotions. A second consideration about the above research is that another central element in my argument, that is "Divine Consent," is not accurately captured in research done by people such as Goyal and Zargooshi. If an action is done for the sake of the Divine Consent, it will involve no complaints. If one sells his kidney with the intention of obtaining the Divine Consent, he will no longer complain about its consequences, he will not be offended by people's sarcastic remarks, and he will not refer to surgeons as butchers. Instead, he will be happy because he did what he did in order to obtain God's Consent. A third consideration is that, according to research by Zargooshi and Moazam, kidney sellers do not regret their action because of harms they suffer; rather they regret their action because they failed to achieve their goals¹¹; p. 386⁷; p. 35). When "the goals of vending were achieved not at all by 75% of donors," it will be natural for them to make such judgments. In other words, the finding that 82% of kidney donors are unhappy with what they did, as well as the finding that over 60% of donors believe that kidney sale should be prohibited, will come as no surprise¹¹; p. 386). Thus, the challenge of self-harm cannot be a ground for the impermissibility of kidney sale.

Thirdly: kidney sale in this case is also not contrary to the human dignity. There are different approaches to the exact nature of the human dignity and whether it will be contradicted by kidney sale. Some people take the human dignity to be grounded in the human

autonomy.⁴⁵ On this approach, dignity is a redundant concept whose meaning is exhausted by autonomy⁴⁶; p. 680). Others take dignity to mean the integrity or totality of the body⁴⁷; p. 196). This approach takes anatomic wholeness into account. On this account, any attempt to destroy the body's anatomic wholeness or totality is impermissible except when it is required for treating a disease. It is not permissible because it leads to the loss of natural health grounded in bodily integrity⁴⁸; p. 7). There is another dignity-based approach that considers dignity as a social value. On this approach, human dignity is valuable in that it unifies the society, since it is agreed upon by all people⁴⁹; pp. 59–60). Thus, kidney sale is prohibited on this approach, because it conflicts the human dignity, leading the society to disunity.⁴⁹

However, we take dignity to be a status given by God to human beings by way of supplying them with the reason and free will (the Qur'an 17: 70), and this is not violated by kidney sale given that it is aimed at the Divine Consent. This is because the two sides of the act respect each other's requests and attempt to secure each other's natural needs. The money exchange in such a case where there are mutual consent and sincere intentions can be an act of dignifying one another. This is particularly the case because 80% of kidney sellers do it because of dire financial needs⁵⁰; pp. 213–215) and saving a man from such a financial condition is an act of honoring. Cherry and Wilkinson subscribe to this approach, holding that kidney sale will be compatible with the human dignity, hence permissible, if it is based on the principle of charity⁴⁵; p. 123⁵¹; p. 338).

Fourthly: kidney sale in this case is in line with the satisfaction of genuine human needs or the fulfillment of natural and innate human desires. Specifically, it is in line with the desire for self-protection and altruism, which eventually produces a feeling of peace of the conscience for both sides of the deal. Since most kidney sellers belong to low classes of the society⁵²; p. 110), if one financially helps them respectfully, it would be a fulfilment of the desire for altruism.

Therefore, there are instances of kidney sale during one's lifetime, which adequately meets the conditions of the Divine Consent. Therefore, in terms of Ṭabāṭabā'ī's criterion of morality, kidney sale can be morally justified.

6.2. Kidney sale after death in accordance with one's will

The second case is that in which the individual wills that his kidney be sold after his death. We should first elaborate on the notions of "will" and "death." "Will" is to give someone the permission to manipulate one's possessions after one's death⁵³; p. 11). "Death" here does not refer to the full-fledged death in the sense of the death of all body cells. Instead, it refers to the brain death, in which the brain and its stem stop functioning, while the life of other organs can be preserved by some machines.⁵⁴ Kidney sale in this case faces three serious challenges and it might, therefore, be deemed immoral:

a. Challenge due to the problem of the will: this challenge is broached by those who believe that one's body organs are not his personal properties; instead, they belong to God.²¹ Thus, one cannot will to permit another person to manipulate his or her body organs.^{55,56} Hence, the will to sell one's kidney is basically immoral and is an intervention in God's ownership. This challenge suggests that kidney sale in this case does not meet the first two conditions of the Divine Consent, since it counts as a usurpation of another person's property, which is not apt for a sincere intention, and it is not compatible with the teachings of the revelation because the violation of the rights of another person is considered as an instance of injustice in religious teachings³⁸; vol. 1, p. 459).

b. Moral challenge due to the recognition of brain death: another moral challenge in the second case of kidney sale is how to recognize if there is actually a brain death and how to assure the family that their loved one is in an irrecoverable condition. Brain death is a situation in which the brain ceases to live but medical devices can keep the heart and respiratory system alive. The serious problem is that unplugging

the ventilator leads to the full stop of the respiration, and is, consequently, a kind of murder. Since unjustified murder is forbidden by God (the Qur'an 4: 93), this case of kidney sale does not meet the second condition, and is, therefore, morally unjustified.

c. Moral challenge due to the dignity: post-mortem kidney removal amounts to a mutilation of the body, and this is contrary to the human dignity. The reason is that to honor a man is to honor his body organs as well, and hence, the humiliation of the body organs, even after death, is tantamount to a humiliation of the human dignity. The prophet of Islam said, "You must avoid mutilating even with respect to biting dogs"³⁰; p. 246). He also said, "God dignifies deceased Muslims, just as He dignifies the living ones"³⁸; p. 349). Since kidney sale leads to the mutilation of the body, it does not accord with the dignity of the human body.

However, it seems that these three objections cannot show any conflict between kidney sale and moral values either. Concerning the first challenge, based on Ṭabāṭabā'ī's approach, men do possess a kind of conventional ownership over their body organs, which is aligned with the divine ownership, and this conventional ownership suffices for having the right to decide and will about one's body organs. Therefore, just as men have the right to donate or sell one of their body organs for altruistic purposes, they can also will that their body organs be donated or sold by their heirs after their death. This is confirmed by the Qur'an: in verses concerning commerce and inheritance, God has permitted human beings to manipulate in their property and has endorsed their conventional ownership (the Qur'an 5:29; 2:279).

With regard to the second challenge, it can be replied that unplugging the ventilator machine can be considered as an act of murder only if the person has a chance of returning to the normal life. However, today's medicine declares that the decisive death of the individual occurs by the brain death⁵⁷; p. 159) because it is shown that the human soul intervenes in the body only through the centers of the brain. Consequently, by the death of these centers of the brain, the separation of the soul from the body does occur⁵⁸; pp. 69–70). Thus, according to the science and experiments of medicine, physiologically speaking it is impossible for a person with dead brain cells to return to the normal life⁵⁹; pp. 123,128). One might object that supernatural factors play a role in this case; thus, given such factors, the probability of returning to the normal life cannot be zero. In fact, the possibility of supernatural interventions renders the issue ethically problematic because, in this case, we are not entitled to stop the natural life of a man by unplugging the machine, although chances of his return to the normal life are very low. In response to this challenge, we should take the will or the consent of the individual into account. An individual who wills that his kidney be removed after his brain death has accepted that supernatural factors be ignored in the case of his brain death. Therefore, the challenge due to the recognition of the brain death cannot undermine the morality of kidney sale in this case.

Concerning the third challenge, some points should be taken into account. First, according to Islamic teachings, the life of a living man, who is in need of a kidney, is, in the least, as respected and dignified as a dead man's body. In other words, a living man might as well be more worthy of respect and honor than a corpse, and when there are two conflicting demands for dignity, the one that is more important should be preferred. Second, the kidney sale in this case is done with the consent of the individual, which is signified by his or her will. Hence, given this element of consent, the notions of disrespect or humiliation cannot apply to this case. In addition, mutilation is wrong only if it is done with a bad intention, such as showing one's anger and hatred. However, if it is done with the intention of transplanting a person's body organ to another in order to resuscitate him, it cannot be regarded as an instance of disrespect or humiliation. It is also confirmed by the Quranic verse according to which to revive one person is tantamount to the revival of the whole humankind (Qur'an 5:32).

Therefore, kidney sale after one's brain death according to his or her will can be morally justified, because in some cases, it can meet conditions involved in Ṭabāṭabā'ī's criterion of morality. For instance,

consider a case in which one wills that his or her kidney be sold in order to save another person's life or advance scientific goals, such as the diagnosis and prevention of diseases. In this case, there is a divine intention, as it is in agreement with religious teachings (the Qur'an 5:32). In addition, it is in line with the satisfaction of a basic human need or desire, that is, the desire for immortality, which results in one's peace in his or her life after death, because, according to Islamic doctrines, the fruits of a good act will constantly provide peace for the person in his post-mortem life.

6.3. Kidney sale after death in the absence of one's will

In the third case, the individual has not left a will to the effect that his or her kidney be sold after the brain death, but the heirs decide to do so. This case faces the challenges of the two previous assumptions; however, it seems that the account provided for the justifiability of the previous two cases cannot apply to this case, because there is no evidence that the person has consented to kidney sale in this case. In fact, this case faces the challenge of the “consent absence”, and since there is no will that shows the person's consent, kidney sale will not be morally justified, because one's autonomy and self-dignity are ignored in this case. Moreover, the absence of consent leaves the second challenge for the previous case—the challenge due to the recognition of the brain death—unanswered since given the possibility of supernatural interventions, the probability of returning to the normal life is greater than 0. In other words, contrary to the previous case in which the individual expresses his consent through his will, and thus, ignores the probability of supernatural interventions, in the third case the probability of returning to the normal life still stands, although it is very small. Hence, it is not morally justified to unplug the ventilator machine and put an end to his life. Thus, some scholars believe that, based on ethical grounds, the heirs of a deceased person do not have the right to sell his body organs in the absence of his explicit will⁶⁰; p. 172).

7. Conclusion

Self-harm, ignoring the human dignity and honor, neglecting one's autonomy, and the indeterminacy of brain death are regarded as challenges, prima facie making kidney sale, or any kind of pricing for kidneys, seem to be inhuman. Ṭabāṭabā'ī—a contemporary Shiite scholar—has proposed a mechanism by which the above challenges to the moral permissibility of kidney sale can be overcome. In his view, kidney sale will be morally justified if it be in line with the Divine Consent. In order to recognize the Divine Consent, his proposed mechanism involves four conditions, including sincere intention with which the action is done, compatibility with judgments of the reason and the Divine Revelation, provoking a feeling of peace in the agent, and preserving the dignity and personal autonomy. When all these conditions are met in an act of kidney sale, it will be in line with the Divine Consent, and consequently, it will be morally justified. Now, if we consider kidney sale in three major cases—during one's lifetime, after the brain death in accordance to one's will, and after the brain death in the absence of a will—it can be morally justified in the first two cases. In other words, in the first two cases, we can provide some instances of kidney sale in which all the four conditions are met. Although certain challenges might arise in these two cases, including self-harm, the violation of the human dignity, usurpation in the will, and the indeterminacy of the brain death, none of them can undermine the moral justifiability of kidney sale. Hence, according to Ṭabāṭabā'ī, one is permitted to sell his kidney provided that the above four conditions are met. In this case, the act of kidney sale can even be an act of human dignity and honor. However, the third case—that is, kidney sale after the brain death in the absence of one's will—does not meet the dignity and personal autonomy condition, and thus, it cannot be tenable in Ṭabāṭabā'ī's ethical mechanism.

Thus, all forms of kidney sale cannot be taken to be morally

permissible, but cases may be found in which kidney sale is not morally wrong. Therefore, human communities should seek to legalize selling and purchasing kidneys, instead of a total ban on. The mechanism offered in this paper can be thought of as an ethical and religious mechanism for legalizing kidney sale, with which permissible and impermissible cases of kidney sale can be told apart. The legalization of kidney sale, and a legal and moral market for organ sale, can not only save the lives of millions of people who suffer pains under dialysis machines because they could not find kidneys for transplantation, but can also prevent black markets and other abuses, reducing people's emotional distresses. The four moral principles offered by Ṭabāṭabā'ī—that is, sincere intention, confirmation by the reason and Divine Revelation, the agent's mental peace, and the human dignity and autonomy—play a remarkable role in the legalization process by specifying the nature and the extent of people's authority in manipulating their body.

Appendix A. Supplementary data

Supplementary data to this article can be found online at <https://doi.org/10.1016/j.jflm.2018.10.009>.

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