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The Complexities of Victimhood: Insights from the Organ Trade

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Abstract

The aim of this paper is to explore the complexity of the concept of the victim within the context of organ trading. By examining the intricate phenomenon of organ trade, we show how prevailing notions of victimhood form the basis of concrete social practices. The empirical basis for this exploration comprises in-depth interviews conducted during fieldwork in South Africa and Kosovo. We also draw on research undertaken at various expert meetings. What our research in these locations attests to is that one-dimensional and generalised conceptualisations of victimhood are rife, and that these tend to be founded on a pre-theorised opposition between agency and victimhood. For persons who become practically and intimately involved in dealing with cases of organ trade – such as investigators and prosecutors – such conceptualisations do not hold. What is required is an understanding of victimhood that takes into account its complexity. In the paper, we explore attempts to grasp and reduce this complexity, and argue against generalised concepts of victimhood and for concepts that are sensitive to contextual and relational variations.

Introduction

The global trade for transplants is a growing practice notionally intended to meet the shortage of organs. With the aging of populations and growth in diabetes, heart and vascular diseases, demand for transplantation is increasing exponentially (Ambagtsheer and Weimar 2012).

Today's societies thus face a series of new challenges. One challenge is how to meet the demand for donor organs. Another is how to handle the increased value of these wanted body parts and people's desire to trade in them. In response to these new challenges, some voices have favoured the implementation of a regulated market in human organs. Such a market, it is argued, would greatly reduce the shortage of organs for transplantation (Radcliffe-Richards et al. 1998, Radcliffe-Richards 2012).

Proposals for a regulated market in human organs have not, however, been uncontested. During the last two decades a heated debate concerning this issue has emerged. At stake in this debate is, to a large extent, the potential and factual victimisation of one of the actors in the trade: the organ supplier.¹ While the proponents of a market solution argue that suppliers would not be victimised in such a market since they are autonomous, freely choosing agents who own their bodies (Friedlaender 2002, Savulescu 2003, Slabbert 2008, Matas 2004), opponents argue that they would indeed be victimised since they would primarily be vulnerable, marginal and powerless individuals easily exploited by the other actors (Zutlevics 2001, Scheper-Hughes 2003, Danovitch and Leichtman 2006, Budiani-Saberi and Delmonico 2008).²

As such, debates over the implications of a regulated market are an example of a more general discourse found in contemporary scholarly, as well as public, debates in which victimhood is reduced to a question of agency versus passivity (see Dahl 2009). In structuring the issue of commercially remunerated organ suppliers' victimhood around a dichotomy between autonomous agency, on the one hand, and exploitable passivity, on the other, the

participants in the organ trade debate reduce the complexity characterising victimhood into a binary trope that turns people into representatives of highly charged moral standpoints. This is to some extent a generalised claim; there are important variations between and within the two sides of the debate. However, its polarisation into a question of agency versus passivity is a real tendency, which has received little attention in research on organ trade, even though it structures much of the argumentation. We therefore argue for the need of a more contextual, situational and relational understanding of victimhood.

The vast majority of countries in the world have laws prohibiting the trade in human organs (Ambagtsheer, Zaitch and Weimar 2013). In addition, there are a number of international conventions and guidelines banning the trade,³ and since the year 2000, it is framed within the *UN Convention against Transnational Organised Crime* (2000) and is defined in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*. This protocol, however, is not concerned with the trade in or commercialisation of organs *per se*. Rather, it defines trafficking in persons through a set of actions and means used for certain exploitative purposes, one of which is organ removal. Notably, from the outset the protocol has a particular crime victim in mind – what we in this article refer to as a ‘victim by default’ – who in this case is the person from which an organ is removed, the supplier. An increasing number of countries are currently implementing versions of this protocol into their national legislation (Ambagtsheer, Zaitch and Weimar 2013). Although the crime is usually referred to as *trafficking in persons for the purpose of organ removal*, in this article we use the simpler term *organ trafficking*.⁴

Generally, bans on organ trafficking are founded on ethical principles of the body's integrity (Malmqvist 2012). The cornerstone is that humans are unique and must never be a means to someone else's end. This is a challenge for societies that perform transplants, which use one person's organs for the benefit of another person. One way to handle this

contradiction is to insist on altruistic donation. Consequently, the idea that organs are to be treated as gifts and never to be perceived as commercialised commodities is deeply rooted in many, especially Western, societies. Despite this, reports indicate that the trade in organs is growing across the globe (Lundin 2012). The World Health Organisation (WHO) and The Transplantation Society (TTS) have estimated that about 10% of organ transplants around the world involve these activities (Matas and Delmonico 2012, Ghahramani, Rizvi and Padilla 2012). The illegal organ trade, according to reports from 2011, generates profits of between \$600 million and \$1.2 billion annually (Haken 2011).

During the past ten to fifteen years researchers and medical doctors have studied and mapped the global trade in organs. One of the earliest and most significant efforts in the field was made by anthropologists Lawrence Cohen and Nancy Scheper-Hughes (see e.g. Cohen 2003, Scheper Hughes 2000, see also e.g. Lundin 2012, 2014, Moniruzzaman 2012, Moazam et al. 2009, Mendoza 2012 and Goyal et al. 2002). This research has constituted a valuable source of knowledge for international as well as national legal bodies in their efforts to define and prohibit the crime. Despite this extensive body of work, the information available to judicial and law enforcement authorities on the trade is insufficient (Pascalev et al 2013).

Aim, theoretical tools and empirical data

In this article, we intend to show that in order to grasp the complexity that characterises organ trade and the status of the involved actors, it is necessary to go beyond the reductive dichotomies on which prevailing notions of victimhood are based. As our data show, simple opposites such as victim/agent and legal/illegal do not always hold. The aim is therefore to highlight and explore the complexity of the concept of the victim and victimhood. This means that we also direct our attention to the moral and cultural charge of reductive versions of this

concept, and ask what purposes are embedded in these. In so doing, we wish to show how prevailing notions of victimhood form the basis of concrete social practices.

Analytically, we draw on cultural theory that emphasises the contextual nature of human existence and action (Hoeyer 2010, Lock & Nguyen 2010, Sanal 2011). Our analysis takes inspiration from critical examinations of discourses in which the concept of victim and victimhood are used. Several, especially feminist, scholars have pointed out that there exists a pervasive and powerful discourse, noticeable in both academic writings and public debates, within which victimhood and agency are made each other's opposites (Schneider 1993, Kroløkke et al 2012). Gudrun Dahl calls this dichotomy the Agents Not Victims- or ANV-trope (Dahl 2009). According to Dahl, this trope is founded on a will to portray disadvantaged and marginalised people as active agents rather than passive victims. The result is that the complexity of victimhood is disregarded, in favour of a conceptualisation of it as coincident with passivity. What this means, is that any presence of agency can disqualify a person from victim status, which, our empirical data show, may be incredibly unfortunate. Another consequence is that victimhood is portrayed as a personal trait (cf. Kleinman 1997). In lacking a structural and contextual analysis, the trope depicts victimhood and agency as 'essential aspects by which persons can be characterised' (Dahl 2009:396-397). The ANV-trope thus, rather than being a comprehensively theorised concept, represents a 'pre-theoretical moral commitment' to a group of people or an individual (Dahl 2009:392). We want to get away from this by highlighting the importance of the complex contextual and structural circumstances within which victimhood always occurs.

The present article is based on empirical material collected within two research projects: *The body as gift, resource and commodity: Organ transplantation in the Baltic region and Combating trafficking in persons for the purpose of organ removal (The HOTT-project)*⁵. The aim of the former is to examine general ethical and socio-cultural issues related to organ

transplantation, while the latter focuses specifically on organ trade, and aims to provide recommendations to improve the non-legislative response to organ trafficking. Forming the empirical basis of the article more specifically are field notes and audio recordings gathered at two expert meetings where surgeons, bioethicists and others convened to discuss organ trade, and documents and in-depth interviews gathered and conducted during two studies on prosecuted organ trafficking cases.

The article is arranged as follows. The next section presents two short observations from expert meetings, of which the first took place in Istanbul in 2008, shortly after we had initiated our first research project, and the second in Vienna in 2013, after we had completed the documentation of the two prosecuted organ trafficking cases discussed in this article. The inclusion of these two expert meetings is motivated by the major influence they have had on the way organ trade and trafficking is understood and acted upon on a global as well as a local scale. The following section then focuses on the prosecuted cases: the Netcare case in South Africa and the Medicus case in Kosovo. These cases were selected primarily because they constitute rare examples of successful prosecutions and convictions of central actors in organ trade networks. Consequently, they also constitute cases in which perpetratorhood and victimhood were considered and established. Our analyses in this section are primarily based on interviews with persons responsible for negotiating such perpetrator- and victimhood, such as police officers, prosecutors and defence counsellors.⁶ Rather than comparing two national contexts – South Africa and Kosovo – what we do in this section is analyse the similarities and differences of two transnational organ trade networks with regard to how, in particular, victimhood was established. We then discuss the complexity found in our data and locate this in relation to the shortcomings of generalised and reductive concepts of victimhood. Finally, we argue for the need of concepts that are sensitive to case-by-case variations and local conditions.

Two scenarios from expert meetings

In recent years, we have attended a number of meetings where medical professionals and various organisations have discussed how to combat the organ trade. The situations we describe in the following two meetings unfolded in different and specific contexts, yet general ideas about organ trade and its stakeholders are expressed.

The meeting in Istanbul in 2008 gathered transplant professionals and other experts to outline principles for how to combat organ trade. The result was *The Declaration of Istanbul*⁷, an incredibly influential document that has contributed to the implementation of international as well as national guidelines condemning the trade in organs. The meeting lasted three days and 152 participants from 78 countries were present. The last day was devoted to creating a common document with internationally accepted principles – *The Declaration of Istanbul*. To begin with, the very form of the session was a challenge; giving 152 committed individuals from 78 countries and different socio-economic systems a voice is difficult. Even if the initial text of the document had been prepared by a multicultural steering committee and there was a clear majority that drew up the guidelines for discussion, a minority also existed who persistently emphasised their opposing ideas regarding what constitutes the core problem of organ trade and what strategies should be applied to deal with it.

The majority advocated altruistic donation to combat organ trade, which they suggested would prevent ‘the exploitation of vulnerable and poor people’ (Field Diary 2008). But the minority group wanted to discuss some form of material compensation for donation. They argued that ‘poor people can’t afford to be altruistic’, and asked the other participants what tools should be used to increase altruistic donation (Field Diary 2008). The response they received from the majority was that ‘we must inform people about the importance of donating’ (Field Diary 2008). Their protests of ‘donations are only relevant in welfare states’

were ignored with statements such as ‘accepting payment undermines our altruistic system’, which would ultimately make poor people even more vulnerable as ‘commercialisation leads to an illegal organ market where suppliers often become brokers and exploitative people themselves’ (Field Diary 2008).

It is evident that the Istanbul Summit in 2008 was not a simple transplant meeting, but a gathering where universal principles collided with various local practices. Our description of the events that took place is no attempt to undermine the organisation.⁸ The work of *The Istanbul Declaration* is of tremendous importance. The consensus achieved at the meeting was truly remarkable. Nevertheless, the event is only one of many illustrative examples of how easily the complexity associated with organ trafficking is concealed by generalised and highly morally charged views of the actors involved in ethically challenging practices such as organ transplantation. As such, the event attests to the prevailing focus among many organisations combating organ trafficking on the victimhood of the supplier and of their use of a conceptualisation of victimhood that is insensitive to the desires and needs of those who are understood as victims.

Five years later, in 2013, we attended a meeting in Vienna organised by the United Nations Office on Drugs and Crime (UNODC) to which experts on organ trafficking had been invited. The purpose of the meeting was to discuss and provide comments on the draft of a so-called Assessment Tool regarding trafficking in persons for the purpose of organ removal as defined by the UN. In the version of the tool that was distributed among the experts prior to the meeting, the organisers had commented in the margins of the document. In one of the comments the question was asked, ‘Who do we actually consider to be victims of trafficking in persons for the purpose of organ removal as defined by the Trafficking in Persons Protocol?’. Despite the fact that the protocol designates the person from whom an organ is removed as a victim by default, the organisers seemed to view this as an open question.

However, the full complexity of this issue did not emerge in the discussion. Rather, it soon deteriorated into a question of monetary remuneration and informed consent. If the supplier of an organ actually receives the amount of money that he or she has been promised prior to the operation and if he or she has not been lured into parting with one of his or her organs for this amount, is he or she then a victim of trafficking? This seemed to be the issue at stake.

Around this issue, different positions became visible. Some argued that the presence of money in itself makes any consent from the supplier invalid. A prosecutor, for instance, contended that ‘consent is destroyed by money’ (Field diary 2013-12-05). Others tended to view the amount received by the supplier as a central issue. If the supplier has consented to part with one of his or her organs for money and has received the agreed amount, it was argued that his or her victimhood is, if not impossible, then at least very difficult to establish. With this example, we want to illustrate how generalised protocols like this can have the adverse effect of reducing the complexity that characterises the phenomenon it aims to identify. In fragmenting the complex reality of organ trafficking into a set of criteria that needs to be fulfilled, the trafficking protocol generates a discussion in which it becomes possible to isolate certain points in the chain of events of which organ trafficking consists. As our examples below will show, in practice it is not possible to isolate the issues of consent and monetary remuneration, as is done above, from the otherwise constraining circumstances under which some of the actors live.

What both of these examples show, is that the debate about organ trade and organ trafficking located on the policy level often fails to take into account the complexity that characterises victimhood. In the next two sections, drawing on empirical data from South Africa and Kosovo, we illustrate how, in practice, this complexity often becomes impossible to ignore.

Case studies: South Africa and Kosovo

*South Africa – The Netcare case*⁹

Between the years 2001 and 2003, over 100 persons underwent kidney transplantation with traded organs at three hospitals owned by the medical company Netcare in South Africa (Bengiveno 2014). The absolute majority of these persons came from Israel, where the state insurance system at the time covered a part of the costs for transplantations performed abroad. The price they paid for a kidney varied between \$120,000 and \$160,000, money that they transferred to their countryman Ilan Perry's company UDG Medical Services. Ilan Perry was the initiator of the operation. To reduce costs, Perry and his partners recruited poor people to sell one of their kidneys, first from Israel, later from Romania and finally from Brazil. This slide from Israel to Brazil was economically motivated. Perry and his accomplices realised that they could access donated kidneys much more cheaply in Brazil. While they paid the Israeli suppliers around \$20, 000, the Brazilian suppliers would settle for between \$3, 000 and \$6, 000. Consequently, in the end, the vast majority of suppliers were recruited from the favelas around the Brazilian city Recife.

The South African police found out about the activities that took place at Netcare's hospitals through a whistle-blower. As in most countries in the world, trading in organs was at the time prohibited in South Africa. But the law on which this prohibition was based, *The Human Tissue Act of 1983*, was old and badly written – 'ancient' and 'defective', in the words of one of our respondents (Representative of the South African Ministry of Health, interview 2012-11-30). For instance, it targeted the person who unlawfully received money for a body part as the main offender, consequently making the person selling his or her organ the primary perpetrator.

This construction of those who sold their organs as the primary perpetrators created difficulties when, in the beginning of the police investigation, a supplier jumped off the operating table and, together with his wife, tried to leave the country with the money he had already received. What baffled the police, and what motivated them to act, was that one of Perry's accomplices, Sushan Meir, reported the theft of the money. Before getting to Meir, however, they caught the supplier and his wife at the airport in Johannesburg. Here, a dilemma arose. As we mentioned above, the law targeted the person who unlawfully receives money for an organ, which in this case was the supplier and his wife. But the questions were: were these really the persons that the police and prosecution wanted to target? Were the supplier and his wife not instead victims of the trade?

These were the thorny issues that the lead investigator and his team were now acutely confronted with. In the end, they found a solution in section 204 of the South African Criminal Procedure Act, which allows accused persons to avoid charges by giving a truthful testimony in court, which the supplier and his wife agreed to do. However, they were initially arrested, and before a judge accepted their testimonies, they risked being charged for unlawfully receiving money for an organ. As the investigation progressed, the police and prosecution continued to apply this policy. But it was not an obvious decision. This is how the lead investigator describes it:

If he voluntarily goes and says, 'Listen, due to poverty I want to sell my kidney', in most countries he is going to be involved in that crime. He is going to be an accused, unless he is seen as a victim, which we more or less did. But legally they are part of a crime because they signed and said, 'I'm related'.¹⁰ They signed and said, 'I did not receive payment.' They even got into the country and said they were visitors. They didn't come into the country and say what their real purpose [was]... So they are part of a misrepresentation. [...] So when you look at the case you must have a perspective on what you are dealing with. Do you see this poor person from

Brazil as a victim or do you see him as an accused that should be charged? (Lead investigator, interview, 2012-11-29)

According to South African law, the suppliers did not only commit the crime of receiving money for an organ, but by committing numerous misrepresentations they also breached several other criminal codes. Hence, far from being passive, the organ suppliers actively participated in the series of events that led to them agreeing to part with one of their kidneys for money. In the lead investigator's view, however, this did not disqualify them as victims. 'Due to their circumstances, they are victims', he said. 'But strictly speaking, they are [...] section 204 witnesses', which means that they can be charged if they do not give a truthful testimony to the court (Lead investigator, interview, 2012-11-29). Thus, as he implied in the quote above, as a person involved in investigating and prosecuting this type of crime, one has to be aware of the various perspectives from which one can view the complex role of suppliers, and from this make an informed choice concerning how one should view them. In the end, the investigators and prosecutors involved in the case chose a kind of middle ground: the suppliers were obliged to give testimonies, but they decided not to charge them right away.

A person who had a different perspective on the suppliers was the defence counsellor representing the accused surgeons. When we asked him whether or not he considered the suppliers to be victims, he said: 'I don't see that, no. No, they know, they knew very well what they were doing and they knew... It's a commercial transaction for them' (Defence counsellor, interview, 2012-11-27). Rather than being victims of oppressive and marginalising circumstances, the suppliers, in the defence counsel's view, were 'very, very willing participants', who were 'predominantly motivated by greed' and who had, due to irresponsibility and recklessness with money, put themselves in a situation where selling a kidney seemed like a viable solution. Thus, according to the defence counsellor, 'it's easy to

judge the donors'. With the recipients, however, 'it's a lot more complicated, because the recipients are terminally ill people who go through hell' (Defence counsellor, interview, 2012-11-27). According to the defence counsellor's way of reasoning, the suppliers can and should be held accountable for their acts, since the economic misery that they are in is of their own making. The recipients' position as moral and ethical subjects, however, is more uncertain since their desperation and suffering is not self-inflicted.

What this case illustrates is that only attending to an actor's activity and/or passivity may not be sufficient to determine whether or not he or she is to be considered a victim or a perpetrator. It is essential also to take into consideration other factors. However, despite this complexity, it is apparent that attempts can still be made to use the dichotomy between agency and passivity to afford some actors and deny others the status of victimhood, as was the case with the surgeons' defence counsel. In the next section, we move on to Kosovo, where the preconditions for investigating and prosecuting an organ trading case were quite different.

*Kosovo – The Medicus case*¹¹

In 2008, 24 commercial transplantations took place at the private clinic Medicus in Pristina, Kosovo (Bengiveno 2014). The urologist Lufti Dervishi ran the clinic and set up the illegal surgeries. In 2006, Dervishi contacted the infamous Turkish transplant surgeon Yusuf Sonmez, and from March 2008 they started performing commercial kidney transplantations at the Medicus clinic. The buyers of the organs were primarily Israelis, while the majority of the suppliers were poor people from Eastern Europe. The police discovered the activities in November 2008.

At the time of this discovery, the legal situation in Kosovo differed in interesting ways from that in South Africa at the time of the uncovering of the illegal activities at Netcare.

Unlike South Africa, Kosovo had existing trafficking laws. Moreover, according to Kosovar law, no form of transplantation of human organs was allowed to take place on Kosovar soil. In other words, organ transplantation was, and still remains, illegal in Kosovo. However, for the prosecutor who brought the case to court – an international prosecutor employed by the European Union Rule of Law Mission (EULEX) – the chief offence of Dervishi, Sonmez and the other main perpetrators was their violation of trafficking laws.

According to the prosecutor, and in line with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, the persons who had sold their organs at the Medicus clinic were victims by default. Since they were the persons from whom organs had been removed, they were the ones who had been trafficked. However, the prosecutor still had to inform himself of, and prove, the various exploitative acts and means that the perpetrators had used in order to remove the organ suppliers' kidneys commercially. This was how he described the exploitation that the suppliers had been exposed to:

The conduct of the doctors in this clinic was outrageous. They knew full well that they were recruiting and trafficking kids [*this does not refer to children but to persons in general, authors' note*] from poor countries, having their organs extracted, on false promise of payments. The victim from Ukraine was not even paid a cent. He was put back on the flight and he never received a single dime. Others received a fraction of what they were promised. The post-operative care was horrific. As soon as they were able to walk, they were out the door. Many of them have suffered lifelong physical, psychological, emotional scars, injuries, and some of them have died. So it's just outrageous behaviour. Criminal behaviour (Prosecutor, interview, 2013-09-17).

Furthermore, the prosecutor contended, the suppliers were 'marginalised' and exposed to a vulnerability that was abused by the doctors at the clinic. 'Many of them reminded me of victims of prostitution', he told us, 'in fact many of them were involved in prostitution. They

were involved in narcotics'. Moreover, the suppliers were told to sign documents that they could not read, saying that they were related to the recipient. Upon returning home to their country of residence, some were also told that in order to receive all the money that they had been promised before the operation, they had to 'get others'; that is, recruit other organ suppliers. 'That's typically the modus operandi of trafficking... for sex slaves, for labour, for body parts,' the prosecutor told us. Consequently, some victims 'move into the organised crime group and become agents, criminal agents, themselves' (Prosecutor, interview, 2013-09-17).

Unlike the lead investigator in South Africa, it is clear that the prosecutor in Kosovo, from the outset directed his focus towards the abuse and exploitation that the suppliers had been subjected to, rather than the misrepresentations that they themselves had committed. While the law enforcement in South Africa was at first unsure about how to view the status of the suppliers, the prosecution in Kosovo viewed them as victims by default. However, in the cited accounts above, the prosecutor also indicates that the line is fine between victimhood and criminality. In trafficking schemes, he told us, victims are not infrequently lured into the crime group, finally becoming 'criminal agents' themselves.

In the end, the prosecutor in Kosovo treated the buyers in a similar way as the prosecution in South Africa treated the suppliers.¹² Instead of prosecuting them, they were made witnesses, since, in the prosecutor's view, 'the recipients were also victims because what they got was a black market organ and there were complications, difficulties with many of these people'. However, choosing not to charge them was, he told us, as much as anything 'a tactical decision'. He needed the buyers as witnesses, since he was primarily 'after the doctors', and decided therefore that it was not in the interest of the public to charge them (Prosecutor, interview, 2013-09-17).

But the buyers, unlike the suppliers, never received the status of victims of trafficking.

This was a status that turned out to be important for at least two of the suppliers, both of whom were made protected witnesses and convention refugees according to the UN Convention relating to the Status of Refugees (1951). One of these was subsequently resettled in another country, since he and his family had received threats in their country of residence. According to the senior protection officer at the UNHCR office in Pristina whom we interviewed, the status of the two suppliers as victims of trafficking was of great significance, since 'it is one of the criteria for the person to be granted refugee status'. A further point was that 'as a victim of trafficking, there are solid grounds to believe that the person might face some form of persecution, suffer harm and persecution in the country of origin' (Senior protection officer, UNHCR, interview, 2013-09-19). Consequently, being understood as a victim and receiving formal victim status may provide grounds for protection and various rights, which one may be in great need of (Budiani-Saberi and Columb 2013).

What is interesting to note about this case is, again, the insufficiency of merely considering the actors' agency or lack thereof. As we saw, in the prosecutor's view, the organ buyers were also victims, even though they had actively chosen to go abroad to buy a kidney. Further, the case shows how fine the line between victimhood and criminality can be. The trafficking victims may be lured into assisting the perpetrators in their criminal enterprise and all of a sudden the former victims are 'criminal agents' themselves. Finally, this case attests to the importance of attempting to establish a person's status as victim, since victimhood provides the grounds for protection and a number of rights.

The complexities of victimhood – Discussion

As our examples show, victimhood is a complex concept. It is always contextual and situational and rarely completely lacks agency. In the Netcare case, for example, the decision by the prosecution and investigating officers to view the organ suppliers as victims did not

depend on whether or not they were active or passive. It was clear that the suppliers had actively participated in the offences and that they could be charged. This is a finding that is supported by research conducted by Nancy Scheper-Hughes (2011) among organ suppliers in Brazil. She found that many were eager to sell their kidneys; some so eager that they tried to bribe their way to the front of the waiting list created for kidney selling. The South African team's decision to view the suppliers as victims was rather a question of having a 'perspective on what you are dealing with', as the lead investigator put it. In our interpretation, what this means is that in complex situations like these, one has to rise above the law and the actions of single individuals and view these from a perspective that takes into account contextual, situational and relational circumstances. This is why legal investigations of organ trade cases can function as illustrations of the complexity of victimhood in general. What they show is that a person's status as a crime victim in intricate crimes such as these can never be completely separated from the socioeconomic, bodily and existential constraints that the person lives under, constraints that simultaneously limit and shape, but rarely completely eradicate, his or her scope of action.

As Dahl points out, agency has a 'basic ambiguity: it refers both to the basically human *ability and will to act freely and of effectively having an impact on the world*' (2009: 397, cf. Schneider 1993). Some theorists include both of Dahl's points in their definition, others one or the other. Dahl favours an approach that views the willingness to act as 'an (in principle) human trait', while the ability to effectively have an impact on the world should be seen as 'unequally distributed' (2009: 404, see also Agustín 2007). The advantage of such an approach is that it is sensitive to degrees of agency and that it highlights the power relations that regulate its distribution, qualities which are essential in grasping the complexities of victimhood.

Such an understanding of agency also requires a more comprehensive empirical approach to victimhood, rather than a pre-theorised moral one. To understand how an individual's scope of action has been shaped and is limited by structural constraints and/or criminal perpetrators, it is necessary to get close to the context of that individual's life. As our empirical examples show, reductive concepts of agency and victimhood – such as the ANV-trope – are advanced in varying contexts, not infrequently with the aim to support one of the opposing sides in a morally heated debate. This attests to the non-neutral nature of such concepts. When one's argument is based on simple binaries such as agent/victim, one often has an aim in mind that goes beyond understanding the actors involved. This was evident, for example, in the account above of the defence counsellor, who represented the surgeons in the Netcare case, in which he set the agency of the suppliers against the victimhood of the buyers. Clearly, his aim was to describe the events and the actors in a way that made the surgeons seem innocent, since at the time of our interview the trial against his clients was still ongoing. Consequently, he drew on a binary trope in which, on the one hand, the suppliers were seen as 'willing participants', personally responsible for the precarious circumstances under which they lived, and on the other, the buyers were seen as non-accountable victims of a life-threatening disease.

This way of reasoning is not new. In our research on organ trade we have encountered it several times. The view of organ buyers as non-accountable victims of a life-threatening disease is especially common. For example, a lawyer in Israel that we interviewed argued that the buyers 'are not criminals, they only want to save their life' (Lawyer, interview, 2013-10-07). If, instead of dismissing this argument, one views it in the context of the biomedical conceptualisation of the human body that currently permeates the (Western) world, one will see that the commercialisation of organs takes place in a context where disease is increasingly framed as an anomaly. This is a context in which 'a sense of entitlement to continuing life'

prevails (Waldby and Mitchell 2006: 177), and where sick persons to a growing extent are made personally responsible for their recovery (Lundin 2012, Rose 1999, Kaufman 2005). Framed in this manner, the view of buyers of organs as victims of the organ shortage, who should not be held accountable for responsibly taking the matter of their health into their own hands, is not so far-fetched.

However, as discussed above, the UN Protocol on organ trafficking that was under discussion at the UN meeting in Vienna had a particular victim in mind already from the outset: the organ supplier. Indeed, research has shown that organ trade primarily victimises the supplier (see e.g. Moniruzzaman 2012, Moazam et al. 2009, Mendoza 2012 and Goyal et al. 2002). But as was evident above, buyers may also be seen as victims.¹³ Why, then, does the Protocol from the outset limit the actors eligible for victim status? One answer to this question might be found within the concept of altruism. As we saw in the debate at the Istanbul Summit recounted above, the majority defended altruism ferociously. In an altruistic system, an organ should be donated freely and without personal gain. As such, altruism balances two incompatible approaches to human existence that are at work in organ transplantation: the notion of human existence as unique and as an end in itself, on the one hand, and the use of and need for human bodies for the ends of others, on the other (Lundin 2012). In this form, altruism is a way to protect the donor from exploitation. But if, as in organ trade, this balance is disrupted, the donor automatically emerges as the primary victim. Thus, the view of the supplier as the sole victim in organ trafficking can be understood as a product of the struggle to retain altruism as the guiding principle governing the exchange of organs in transplantation. Here, once again, the moral charge of reductive views of victimhood becomes evident.

Although we support the work that is done to combat organ trade and organ trafficking, we are critical of the way in which one-dimensional and generalised versions of victimhood,

such as those presented above, figure in the debates and definitions surrounding these issues. As we have tried to show in this article, victimhood is always a contextual, situational and relational phenomenon and never completely opposed to agency. The danger of disregarding this complexity is that it creates a concept that is insensitive to the ubiquitous spatial and temporal variations at play, and, as a consequence, may exclude persons who might be in need of the rights and protections that accompany victim status.¹⁴ But the danger is also that the possibility of holding victims accountable for other wrongdoings is completely ruled out. It only becomes possible for a person to hide within the victim category if victims are viewed as completely deprived of agency (Dahl 2009: 402).

Furthermore, in one-dimensional and generalised versions of victimhood, an ideal victim is created: a victim that only becomes visible when certain predefined criteria are met. The UN Protocol on organ trafficking and similar documents is considered to function as a generalised tool for use in identifying and prosecuting cases of organ trafficking. The faith put into this is in line with the global trend in which an increasing number of phenomena are understood and evaluated by means of auditable manuals and directives (Shore 2008, Hoeyer 2010, Svenaeus 2013). As mentioned above, such manuals and tools are liable to enable an unfortunate reduction of the complexity characterising the various actors' situation. This makes it possible to isolate certain points (e.g. the moment of consent or the moment of remuneration) in the chain of events, or to point out certain individuals, seeing them as vulnerable and passive individuals rather than persons whose actions are oriented by a complex and perilous situation.

In this article, we have highlighted and explored the complexity of the concept of victimhood through the case of organ trade. In addition to this, we have provided an analysis of the moral charge of pervasive and reductive notions of the victim. What we have found is that one-dimensional and generalised views of victimhood often follow the same pattern.

They tend to be founded on a pre-theorised opposition between agency and victimhood. As our analysis shows, such conceptualisations of victimhood do not hold for persons who become practically and intimately involved in dealing with cases of organ trade, such as investigators and prosecutors. What these persons need is a less dichotomised, more adaptable notion of victimhood that is sensitive to the complex contextual, situational and relational circumstances at play.

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Notes

¹ Rather than referring to persons who sell an organ as organ sellers – a term that suggests that these persons always gain financially from the transaction – in this article we refer to them as organ suppliers, or simply suppliers, which, in the context of organ trading, is a less ideologically charged term.

² Since Iran is the only country in the world that has implemented a regulated organ market, the participants in this debate have to draw either on insights from the existing black market in organs or on purely hypothetical scenarios to advance their arguments.

³ These are e.g. *The Declaration of Istanbul* (2008), *The WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation* (2008) and *The Council of Europe Convention on Human Rights and Biomedicine* (1997).

⁴ We are aware that organ trafficking is sometimes distinguished from trafficking in persons for the purpose of organ removal and used to target the trafficking of the organ itself rather than the person it was removed from. Since we do not make this distinction in this article, we use the term organ trafficking to denote instances of trafficking in persons for the purpose of organ removal.

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⁶ This does not mean however that only professionals have the power to determine who is a victim. As Lundin (2012) shows, for example, the peers of organ suppliers may constitute a strong force in undermining the suppliers' victimhood.

⁷ http://multivu.prnewswire.com/mnr/transplantationociety/33914/docs/33914-Declaration_of_Istanbul-Lancet.pdf (accessed 2010-01-11).

⁸ One of us is a member of the organisation.

⁹ Permanent Stay Judgment, In the KwaZulu- Natal High Court, Durban, Republic of South Africa, Case NO 13510/2011

¹⁰ In South Africa, there was a policy at the time stipulating that all donors and recipients who were not related to each other needed to obtain approval from a ministerial advisory committee.

¹¹ <http://www.eulex-kosovo.eu/en/pressreleases/0436.php>

¹² We refer to the persons who pay money for the organ and the transplant services as buyers rather than recipients since they are the ones who buy the "end product."

¹³ For writings highlighting the exposed position of buyers, see for example: Cohen 2011 and Berglund and Lundin 2012.

¹⁴ For writings that offer a similar criticism, see for example: Yea 2010 and Cohen 2011.