



***Never let me go:*¹ science fiction and legal reality**

J.H. de Villiers & M. Slabbert
Department of Jurisprudence
UNISA
PRETORIA
E-mail: dvillj@unisa.ac.za
slabbm@unisa.ac.za

Abstract

Never let me go: science fiction and legal reality

This article offers a law and literary perspective on Kazuo Ishiguro's novel 'never let me go'. The article engages with the existentialist themes of the novel and examines various medico-legal issues pertaining to cloning and organ transplants. By examining the contemporary social and legal framework, the article exposes the inadequacies of the current (legal) approach to organ donations, and advances an alternative approach that balances personal autonomy, free choice and the right to self determination.

Opsomming

Never let me go: wetenskapsfiksie en regs werklikheid

Hierdie artikel bied 'n regs- en letterkundige perspektief op Kazuo Ishiguro se roman 'never let me go'. Die artikel bespreek die eksistensialistiese temas van die roman en ondersoek

1 *Never let me go* is a novel written by Kazuo Ishiguro (2005). Kazuo Ishiguro was born in Nagasaki, Japan. At the age of six he and his family moved to England. He earned a Bachelor of Arts degree in philosophy and literature with honours and then completed his Master of Arts in creative writing. Each of his first three novels won awards. The third, *The remains of the day*, won the prestigious Booker Prize. All five his novels to date have earned critical acclaim. Ishiguro's novels typically deal with self-deception, regret and personal reflection (cf. Ishiguro, 1989).

verskeie medies-juridiese kwessies met betrekking tot kloning en orgaanoorplantings. Deur die huidige sosiale- en regsraamwerk te ondersoek, lewer die artikel kommentaar op die tekortkominge van die huidige (regs)benadering tot orgaanskenkings, en stel die artikel 'n alternatiewe benadering voor wat persoonlike outonomie, vrye keuse en die reg tot selfbeskikking balanseer.

1. Introduction

There is undeniable reciprocity between law and literature – literature having a legal dimension and law having a literary dimension (Hanafin *et al.*, 2004:1). This reciprocity is nuanced and covers more than the substantive legal principles regulating literature or the rhetorical character of law. The reciprocal interaction creates the possibility of a symbiotic relationship with ensuing mutual reinforcement. Legal texts can be approached as literary texts, or literary texts as legal texts, thereby employing interdisciplinary interpretive tools to explore meaning and create new forms of scholarship.

Using a broad brush to contextualise the law and literature movement, two basic schools of thought can be distinguished. The law-in-literature approach originates from the study of legal themes in classical Western literature. This school of thought is based on the belief that the classics offer a valuable medium with which to interpret and comprehend the relation of law to certain social phenomena like vengeance and punishment. In addition it also helps to generate hermeneutical insight essential to the understanding of legal concepts such as formalism and subjectivity (Minda, 1995:150; cf. also Slabbert, 2006:237-241). The law-as-literature perspective draws on literature as a form of critique that may be used to investigate legal texts and to philosophically engage with the law. Proponents of this approach use narrative to question and problematise presuppositions underlying socio-political norms and to advance alternative interpretations of the law (Minda, 1995:151). To this end philosophers like Drucilla Cornell use literature and the medium of film to engage philosophically with issues of justice, masculinity and the inability of the law to address female subjugation (cf. Cornell, 2009). There are, however, voices arguing that the law-in-literature/law-as-literature partition need not be drawn and there are even scholars who reject the law and literature designation in general, arguing that “legal and literary criticism are deeply unified in method and temperament” (Minda, 1995:151).

For the purposes of this article, these arguments will not be examined on the various levels needed to address the interplay between law and literature adequately. Our modest engagement with the law-literature interaction will be limited to an exploration of the capacity of literature to disrupt and problematise the law through narrative. To this end, the first part of this article will be devoted to a philosophical discussion of Ishiguro's novel *Never let me go* (2005). In this part we offer an existentialist reading of the novel and highlight the novel's relevance for contemporary medico-legal problems. As with any work of fiction, Ishiguro's novel can be interpreted from different perspectives and applied to different contexts. It, therefore, comes as no surprise that there have been numerous focused and contextualised readings of the novel by scholars in the domains of political theory, critical feminist theory and queer theory (cf. Hyvärinen, 2009:202; Rachel, 2010:59). The novel has also been used as a framework for a fresh engagement with a range of legal issues, including multiparentage (Appleton, 2008:11) and even alternatives to the current same-sex marriage regime (Emens, 2011:235). In this article we read Ishiguro specifically from an existentialist perspective. We argue that the depiction of the interpersonal and intrapersonal conflict that the characters face as a result of their purposive existence, invites such a reading.

In the second part of this article the current legal framework in South Africa, as it pertains to cloning and organ donations, will be analysed. The conclusion can be reached then that, given our legal reality, the scenario sketched in the novel cannot be a real life situation and the novel, therefore, remains essentially a work of science fiction. As with most works of science fiction *Never let me go*, however, confronts us with a world that is foreign to us and with that which is *other* to ourselves. This confrontation with otherness affords us the opportunity to expose ill-conceived schematisations and to generate new insight in order to understand ourselves and the status quo better.

Like so many other novels that inspire a law and literature interpretation, Ishiguro's novel prompts us to examine, question and re-think a specific area of legal theory. Our reading of this novel therefore reiterates the notion that literature can play an important role as a critical tool through which to examine various aspects of the law. Many works of science fiction thus have practical significance. Hans Vaihinger (1935:viii) states that

... an idea whose theoretical untruth or incorrectness, and therewith its falsity, is admitted, is not for that reason practically

valueless and useless; for such an idea, in spite of its theoretically nullity may have great practical importance.

Ishiguro’s novel, albeit a work of fiction, may thus have great practical importance in that it also alludes to the reality that someone’s healthy organ can save another’s life. The overwhelming demand for healthy organs and events like the recent Netcare scandal in Kwa-Zulu-Natal where kidneys were bought from the poor to be transplanted into Israeli patients (*The State v Netcare Kwa-Zulu Natal*, 2010), suggest that the events depicted in the novel might indeed be closer to possible realisation than we would like to believe. With this in mind, we look at systems of procuring donor organs and propose an alternative approach in the second part of this article. We side with a legal framework that respects autonomy and balances the various factors that intersect to configure the subject.

2. *Never let me go* – law(lessness) in literature

Ishiguro’s novel does not take law as a theme in the same way as is the case in Franz Kafka’s *The trial* (Kafka, 1968), or William Gaddis’s *A frolic of his own* (Gaddis, 1994). The storyline does not evolve around any legal proceedings, nor is there any direct reference to the law. Instead, Ishiguro actually confronts the reader with a state of lawlessness; he depicts a world characterised by an uncertain distance separating the characters and (the existence of) the law. The expression “lawless” has more than one meaning – *inter alia* referring to instances of disregard for the law. For the purpose of this article, “lawlessness”, however, designates a status of a-legality, the non-application (or non-existence) of an ethically-sound regulatory legal framework. By reading Ishiguro from a law and literature perspective, we can generate a new understanding of the various nuances that intersect to form the complex socio-legal configuration that comprises the status quo pertaining to organ donations.

Set during the late 1990s in England, *Never let me go* is an unsettling story about three young people, Kathy H, Tommy D and Ruth, as it unfolds through their eyes. The reader first encounters them as students at a seemingly idyllic private school called Hailsham. The story is written in the first person with Kathy H, now 31 years old, narrating the story with hindsight. From the onset the author creates an unusual yet credible milieu and rhythm that form the backdrop to the lives of the students at Hailsham. We are introduced to a world of “guardians”, “carers”, “donors”, “completions”, “possibles” and “the Gallery”. This unfamiliar vocabulary draws the reader

into the leitmotif of uncertainty that haunts the lives of the characters. Having “been told and not told” (p. 73),² the students of Hailsham are left to speculate on the significance of these constants that form part of their everyday existence.

Their (often misguided) search for truth propels the storyline and also presents a source of conflict within the complex triadic relationship between Kathy, Ruth and Tommy, as it gradually changes from innocent childhood friendship to a love triangle. Because of her dominant personality, Ruth dictates the relationship and she initially fosters a somewhat artificial romantic connection with Tommy, thereby suppressing the love between Kathy and Tommy. It is only towards the end of her (short) life that Ruth reflects on her destructive role in the relationship.

It should have been you two. I'm not pretending I didn't always see that. Of course I did, as far back as I can remember. But I kept you apart. I'm not asking you to forgive me for that.
(p. 212.)

The reader, being dependent on Kathy's narration, which draws on her imperfect and, therefore, inevitably flawed reflections, has to read between the lines to make sense of the situation. The same applies to Kathy and the other students who are left to interpret their lives, relying only on their limited, censored and superimposed frames of reference. The students are constantly told that they are “special” and they progressively realise exactly what this means. Miss Lucy, a “guardian” at Hailsham, is one of the very few characters in the novel who engages in candid discussions with the students. After overhearing a conversation between two students contemplating the pursuit of careers in the American film industry, she is profoundly affected by the innocent unawareness typifying the students' lives and thinking. She then acts on her unwillingness to be a complacent bystander:

[...] none of you really understand, and I dare say, some people are quite happy to leave it that way. But I'm not. If you're going to have decent lives, then you've got to know and know properly. None of you will go to America, none of you will be film stars ... Your lives are set out for you. You'll become adults, then before you're old, before you're even middle-aged, you'll start to donate your vital organs. That's what each of you was

2 References with only a page number refer to Ishiguro (2005).

created to do. You're not like the actors you watch on your videos, you're not even like me. You were brought into this world for a purpose, and your futures, all of them, have been decided. (p. 73.)

The students' reactions of dismissal to Miss Lucy's frank words are symptomatic of their obscured views of their reality, and their inability (and unwillingness) to reflect on the significance of their inescapable fates: "Well so what? We already knew all that." (p. 74.) This illustrates Miss Lucy's concern that they have "been told and not told" (p. 73), and one is reminded of the proverb that half a truth is ever the blackest of lies. In portraying the students' initial inability and unwillingness to interpret and conceptualise the significance of their predetermined essence, Ishiguro introduces the abstraction that the students are en route to "becoming" – to realising a project. This usage links him with existentialist themes like being-in-the-world, becoming, angst, and ultimately death.

2.1 Existentialist reflections

Our existence can very well be said to involve a plethora of experiences. For Jean-Paul Sartre, to be human means to have the ability to shape these experiences freely according to our reflections and will, to be the conductor of our lives and not a mere passenger. Our existence, according to the existentialists, therefore precedes our essence, and meaning comes about because of our actions. But to what does "existence", the very root and subject of philosophical existentialism, refer? In attempting to configure the existentialist discourse, we can delineate two nuances of the notion of "existence" that are central to this school of thought. Firstly, "existence" is limited to the being of man – to what it means to be a *human* being. Secondly, only those characteristics that differentiate humans from all else, from "mere' physical objects", are relevant (Cooper, 1999: 3). To quote from Sartre's (1948:26-28) famous lecture on existentialism and humanism:

If one considers an article of manufacture – as, for example, a book or a paper-knife – one sees that it has been made by an artisan who had a conception of it; and he has paid attention, equally, to the conception of a paper-knife and to the pre-existent technique of production which is a part of that conception and is, at bottom, a formula. Thus the paper-knife is at the same time an article producible in a certain manner and one which, on the other hand, serves a definite purpose, for one cannot suppose that a man would produce a paper-knife without knowing what it was for. Let us say, then, of the paper-

knife that its essence – that is to say the sum of the formulae and the qualities which made its production and its definition possible – precedes its existence ... [T]here is at least one being whose existence comes before its essence, a being which exists before it can be defined by any conception of it. That being is man.

Sartre's exposition then provides a framework in terms of which we can reflect on the *absurdity* of the students' lives. Firstly, one cannot help but to draw a link between their determined existence(s) and the lives of the non-human animals that we ceaselessly bring into this world simply as a means to an end. Like the sentient non-human animals bred to be eaten, worn and experimented on, the students have also been brought to life with the predetermined purpose of meeting someone else's demand.

Secondly, the theme of dehumanisation is introduced in the novel. Living beings are reduced to "mere objects". Like a paper-knife designed and manufactured to serve a predetermined purpose, the students were created for the single purpose of donating their vital organs – they were *given* an essence at the outset. The most palpable trace of dehumanisation in the novel is the use of the term *completed* to describe the final sequence in the "natural" progression of the students' lives. They don't "die" but are rather said to "complete" after three or four donations, once again invoking the image of an object fulfilling its purpose. The dehumanising effect is inculcated in the students and perpetuated through other peoples' behaviour towards them.

So you're waiting, even if you don't quite know it, waiting for the moment when you realise that you really are different to them; that there are people out there ... who don't hate you or wish you any harm, but who nevertheless shudder at the very thought of you – of how you were brought into this world and why – and who dread the idea of your hand brushing against theirs. The first time you glimpse yourself through the eyes of a person like that, it's a cold moment. (p. 33.)

Here we see Kathy caught up in the clash between her mission for an individualised sense of self, and the categorisation by others that accompany the inevitable communality of existence. For Karl Jaspers, *being* means to balance the singular-plural dichotomy without subscribing to preconceived social constructs of identity:

Although my social I is ... imposed upon me, I can still put up an inner resistance to it ... Although I am in my social I at each

moment, I no longer coincide with it ... I am not a result of social configurations ... [for] I retain my own original potential (quoted by Cooper, 1999:110).

It is within this singular-plural ambiguity that the individual experiences phenomenological angst that provokes her to reflect on her (singular) existence and potential. It is through angst that we individualise our being-in-the-world. The individual's response to angst manifests in either authenticity (if she recognises her own *existenz* and facticity), or inauthenticity (should she disregard her *existenz* and live in fallenness). Sadly Kathy, Ruth and Tommy fail to recognise and respond to the alternative possibilities regarding the structure (and restructuring) of the world in which they find themselves; instead they blindly accept their functional state of existence as determined by society. They do not consider the possibility of pursuing authentic lives, thereby living in what Sartre calls “bad faith” – they act as if they were things. Their resistance is limited to the hope of a deferral and Tommy and Kathy explore the (ultimately futile) prospect of revealing their love for each other through their artwork, in the hope of postponing their inevitable fates. Not one of them ever questions their own existence. Instead, they embrace the roles carved out for them. Kathy prides herself on being a reputable “carer”, Tommy describes himself as “a pretty good donor” and even Ruth, the most pugnacious of the three, finds solace in her own resignation: “I was pretty much ready when I became a donor. It felt right. After all, that's what we're *supposed* to be doing, isn't it?” (p. 207.)

Not surprisingly then, the students fail to individualise their *being* and lend wholeness to their lives by positively utilising the angst arising from the anticipation of their deaths. By embracing their roles as organ donors the students are, of course, inevitably confronted with their looming deaths, as the fulfilment of their projects will inevitably result in their earthly demise. Angst arises from a person's anticipation of death, as “anticipation turns out to be the possibility of understanding one's *ownmost* and uttermost potentiality-for-Being – that is to say, the possibility of *authentic existence*” (Heidegger, 1962:17). It is thus not death in itself that is the object of angst, but rather one's self-understanding of one's own being-in-the-world and “one's life in relation to the prospect of that event” (Cooper, 1999: 133). Paradoxically, death constitutes both a limit and freedom, and thereby embodies the prospect of individualising existence. Sartre (quoted in Cooper, 1999:134) writes:

Death is the limit, but also a constituent of freedom ... If a being were endowed with temporal infinity, he would realise all his possibilities ... he would disappear with respect to individuality (the realisation of some possibilities to the exclusion of others) and to freedom (dangerous and irremediable choice of certain possibilities).

By concretising the limit of finitude, death affords the possibility of individuation. Humans are budget-constrained children in a candy store, unable to sample everything. We individualise our existence by choosing to pursue X rather than Y, and the inevitability of death rudely awakens us to the reality that there is a temporal limit to the number of choices we can make – it is ultimately a matter of either-or. This prospect of individuation exists only in life, for the deceased can no longer through her actions “give lie to the Other’s summation of [her], nor pit [her] own interpretation and evaluation of [her] life against the Other’s” (Cooper, 1999:135). Their knowledge of the direction in which they are heading, grants the students the opportunity to evaluate the significance of their status quo, to “stand back from [their] situation so as to assess the place [they] might occupy in that final judgment” (Cooper, 1999:137). Yet, not even the anticipation of their deaths prompts any of them to explore pathways that would allow them to withdraw from their socially constructed roles – their deaths thus give effect to the essence that precedes their existence. This raises two possible questions: Are these characters real people who have the freedom of choice? And secondly: Was it Ishiguro’s aim to get clarity about humanness?

It needs to be recognised that our striving for individuation is never absolute; we face various societal and legal restraints. The clones in the novel find themselves in an ill-fated societal arrangement, constantly occupying a space at the struggling end of power relationships. This admittedly hampers their ability to determine their own essence. It is, however, also true that none of the clones even contemplated action that would demonstrate a rejection of the roles society carved out for them, or reflect a claim to self-determination. We have to conclude that there was no revolt. They never attempted to escape or pose any form of resistance to their oppressors; nor did any of the clones confront the possibility of committing suicide – an issue that existentialist philosopher Albert Camus considered to be life’s most profound question.

It is not hard to classify *Never let me go* as science fiction, a novel exploring an imagined alternative that is scientifically possible, yet not credible given our contemporary reality of constitutionality and

culture of human rights. Yet, the novel also serves as a bridge between the law and literature, using narrative to emphasise the significance of autonomy and indirectly the need for a comprehensive legal framework regulating organ transplants. Discourse on organ transplantation is nuanced and there are various factors that warrant extensive consideration. In the novel the reader is confronted with only one aspect of this formation, namely the students (donors). We never meet the architects of this scheme or the recipients of the organs. All of these aspects and others play a role and intersect to comprise the reality of (the need for) organs and especially kidneys. This dictates the need for an all-inclusive legal framework that acknowledges and addresses all these various inputs.

3. Cloning and research

In 1996 Dolly the first sheep clone was created in England and died a few years later (Anon., 2003). Like Dolly, the students at Hailsham have also been cloned – in their case for the sole purpose of donating their organs. Ishiguro challenges the reader to read between the lines and deduce that scientists came up with the idea of cloning so that these clones could serve as containers of organs for transplants, all the while believing that the clones would somehow be subhuman, that they would lack the (essential) human component of a soul.

As you say, why would anyone doubt you had a soul? But I have to tell you, my dear, it wasn't something commonly held when we first set out all those years ago. We took away your art because we thought it would reveal your souls. Or to put it more finely, we did it to prove you had souls at all. (p. 238.)

The term *clone* is derived from the Greek word *klon*, which means twig. Clone refers to a group of identical individuals, particularly plants, which originates from asexual procreation – mainly by artificial means from a single individual – resulting in all the members of the group being identical (cf. Swanepoel, 2007:56). The cloning of human beings is possible by means of the “nuclear transfer” technique. Nuclear transfer requires the nucleus of a cell from an individual to be inserted into the unfertilised egg (ovum) that has its own nucleus removed. The resulting “reprogrammed” egg is given an electric shock to “persuade” it to develop into an embryo, a clone of the nucleus donor (Swanepoel, 2007:56). The idea that the clones have no souls could have been the scientists’ assumption, as they have not been conceived by “parents” – they were created artificially and could, therefore, not be classified as humans. The novel clearly

suggests that this interpretation is erroneous, because it depicts the students as beings with emotional intelligence and with the ability to “expose” their souls through their artwork and relationships with others. Being an identical replica of another human being does not strip the clones of emotions, nor does it leave them without an individualised sense of self.

There is currently no legislation in South Africa specifically regulating or prohibiting the cloning of human beings. Reproductive cloning of human beings will, however, be prohibited by section 57 of Chapter 8 of the National Health Act 61 (SA, 2003). The National Health Act came into effect on 2 May 2005. Section 93(1) of this Act repeals the Human Tissue Act 65 (SA, 1983) in totality, but this will only take effect on a date fixed by the president, as published in the *Government Gazette*. This has not been done yet. It is, therefore, submitted that the prohibition of genetic manipulation of gametes or zygotes outside the human body (as referred to in section 39A of the Human Tissue Act), amounts to a prohibition of human cloning for the interim. Thus, whilst it is clear that the cloning of human beings is illegal, the scenario depicted in the novel is not an impossible one.

Since the first international code of ethics for research involving human subjects, the Nuremberg Code of 1947, was ratified (Moodley, 2011:320; cf. also Dhai & McQuoid-Mason, 2011:167), society has become increasingly concerned about the need to ensure that humans are protected against abuses that could arise in the context of research. The Declaration of Helsinki³ (1964) to which South Africa is a signatory, expressed society’s fundamental concern for the protection of the rights and welfare of all human subjects used for experimentation. Furthermore, in its guidelines on ethics for medical research published in 2002, the South African Medical Research Council (SAMRC) drew attention to the risks associated with cloning technology. The SAMRC accordingly recommended “that the use of human nuclear transfer cloning to create a new life should be prohibited” (SAMRC Guidelines, 2002:3.4.4.1.2).

3 The Declaration of Helsinki drafted by the World Medical Association, is a watered-down version of the Nuremberg Code. It was last amended in 2008 and includes 35 principles. In South Africa the guidelines are endorsed as the South African Medical Association is a member of the World Medical Association. All research ethics committees in South Africa require researchers to adhere to the Declaration of Helsinki (2008) when conducting research (cf. Moodley, 2011: 321; and for a full text of the Declaration of Helsinki (1964) cf. Moodley, 2011:358-362. Cf. also Dhai & McQuoid-Mason, 2011:167).

Using the process of cloning humans for the sole purpose of being organ donors in fiction, albeit illegal or contrary to established research guidelines, makes one aware of what could happen in the absence of adequate legislation and ethical guidelines.

4. Living organ donations

As mentioned earlier, chapter eight of the National Health Act (SA, 2003) has not been promulgated yet and until such time the Human Tissue Act (SA, 1983) remains in force. It is thus necessary to examine both these acts when considering living organ donations. In general, it is clear that the way in which the students' organs are harvested in the novel is not possible in the South African context (currently or in future), as the donation of organs by living donors is controlled by stringent legislation.

4.1 The Human Tissue Act 65 of 1983

Section 18 of the Act (SA, 1983) stipulates who may consent to an organ being harvested while still alive.

No tissue, blood or gamete shall be removed or withdrawn from the body of a living person for a purpose referred to in section 19

- (a) except in accordance with the prescribed conditions; and
- (b) unless written consent thereto has been granted –
 - (i) where such a person is a major, by that person;
 - (ii) where such a person is a minor, by the parents or guardians of that person

In South Africa, although this is not a legal requirement, donations from living persons are accepted only if such persons are related or married to the patient. If a friend or an altruistic donor wants to donate a kidney, an application has to be lodged with the Department of Health, who will investigate the offer thoroughly so as to establish that the donation is not being made for financial gain. Section 28 of this Act specifically prohibits any payment for donated human organs.

4.2 The National Health Act 61 of 2003

Section 55 (SA, 2003) addresses organ donations by living donors:

A person may not remove tissue, blood, a blood product or gametes from the body of another living person for the purpose referred to in section 56 unless it is done

- (a) with the written consent of the person from whom the tissue, blood, blood product or gametes are removed granted in the prescribed manner; and
- (b) in accordance with prescribed conditions

Unlike the students in the novel who became participants in a process of organ donations without their own consent, South African legislation clearly requires an element of (written) consent from a living donor.

The demand for transplantable organs far outnumbers the supply, and the need for kidneys is the most desperate, as patients are dialysed only as an interim solution until a kidney becomes available for transplantation. This might have been the reason why the “unspoken of” scientists in the novel have cloned people. The story remains fiction, yet the dire need for transplantable organs is a reality.

The current systems of organ procurement might be one possible impediment to the ideal of balancing the demand for and supply of healthy kidneys. The United States of America, the United Kingdom and South Africa, among others, follow a procurement system of “opting-in”. “Opting-in” relies on individuals to donate organs on a voluntarily basis by simply informing a next of kin of the decision to donate organs (Blackbeard, 2003:47-48). Unfortunately “the most significant aspect of this method of procuring transplant organs is its clear failure to secure anywhere near the number of organs that are required” (Goodwin, 2006:9-10). In South Africa, approximately 3 500 people are in need of a “new” kidney. To meet the demand at least 1 000 kidneys should be transplanted annually, but yearly less than a quarter of these desperately needed transplants are performed.⁴

Apart from the “opting-in” system, some states in America also follow a system known as “required request”. Every person is asked to

4 The statistics are for both the public and the private health care sectors. There is no official national waiting list for patients waiting for a transplant in South Africa. The figures are, therefore, estimates. Statistics are available on the website of the *Organ Donor Foundation* – a non-governmental organisation in South Africa promoting organ donations (<http://www.odf.org.za>).

become an organ donor when admitted to hospital. Despite the fact that both of these systems try to motivate people to become donors, the demand for transplantable organs far outnumbers the supply.

Those who can avoid America's transplantation system will do so. They will bypass the American waiting list process for greater access abroad, even if that choice involves paying a destitute living donor and violating the law. (Goodwin, 2006:6.)

The organ shortage is as critical in Europe despite the fact that Belgium and Austria follow a system of "opting-out". In terms of this system, all citizens of a country are considered to be organ donors unless they request otherwise before death. This method resonates with the circumstances of the students at Hailsham who, despite having no say about joining the organ harvesting program, certainly had the option (of at least attempting) to escape from the programme by running away or committing suicide, but they failed to identify and pursue these alternatives. The trouble with "opting-out" is that it allows the state to take possession of a person's property⁵ without consent, which can be interpreted as undermining personal autonomy (Taylor, 2005:23).

The procurement systems above are mainly focused on donations from donors who are brain dead, but such donations are clearly not adequately addressing the demand. A better option that could perhaps meet the total demand for kidneys, in particular, is to use unrelated living donors in accordance with the legislative requirements of informed consent. From a medical law perspective, informed consent can only be given by an autonomous individual.

The word *autonomy* was first used in connection with states that were self-governed. Philosophers adapted this term to apply to the rights and interests of individuals. Respect for a person's autonomy means respect for his/her voluntary choices and can be summarised as follows:

I wish my life and decisions depend on myself, not on external forces of whatever kind. I wish to be the instrument of my own, not of other men's, acts of will. I wish to be a subject, not an object; to be moved by reasons, by conscious purposes, which are my own, not by causes which affect me, as it were, from outside. I wish to be somebody, not nobody: a doer – deciding,

5 Property rights in human organs are a separate topic and cannot be dealt with in this article. For a discussion on this topic, see Slabbert (2009:499-517).

not being decided for, self-directed and not acted upon by external nature or by other men as if I were a thing, or an animal or a slave ... I wish, above all, to be conscious of myself as a thinking, willing, active being, bearing responsibility for my choices and able to explain them by references to my own ideas and purposes. (Quoted in Young, 1998:441.)

The reason why there are not enough living donors is that only blood relatives are currently allowed to donate organs. As mentioned earlier, the current administrative process concerning a living donation by an altruistic donor – who is not a relative to the recipient – is a cumbersome and discouraging process. Financial implications also come into play. The medical expenses of a recipient of an organ will be paid by a medical aid scheme should she/he be a member, but the donor's expenses are left for her/his own account. The question that must therefore be asked is why anybody would come forward as a donor when they will be suffering physical pain in addition to incurring huge financial expenses. It should also be remembered that surgeons, nurses, hospital administrators and staff charge a significant amount for access to medical goods and services, yet the donor is expected to act altruistically (Cherry, 2008-2009:365-366). Given the notions of informed consent, autonomy, and section 12(2) of the South African Constitution (SA, 1996) concerning self-determination, the question of donor financial compensation is a legitimate one (cf. Slabbert & Oosthuizen, 2007a:44-69; 2007b:304-323).

A system that recognises and respects personal autonomy and rewards the donor seems to be a much more reasonable dispensation than the current system, whereby the donor incurs a financial burden. It definitely seems more acceptable than the black market option where desperate poor people are “used” by unscrupulous middlemen who organise the sale of kidneys. The seller gets a fraction of the selling price and the middleman makes a good profit.

Every one of these unfair dispensations, and even the possibility of cloning, gives rise to its own kind of ethical and moral dilemmas. It is often believed that monetary compensation and free will are not compatible, that the element of remuneration affects (and even eliminates) free will. Kidney sales, however, need not be exploitative. To argue that the poor might be exploited in a system of buying and selling kidneys in the same way as the students at Hailsham were exploited, is not acceptable. We can say only one party is exploited but both benefit from the transaction. Of course a poor person would benefit more from a non-exploitative transaction, but the point is that they do benefit from the transaction, compared to an

alternative in which there is no compensation (Lawlor, 2009:251). An argument concerning the exploitation of the poor should furthermore guard against a one-dimensional approach that ignores the underlying problem of inequality in society and the assumption of its continuation. Sales could be regulated. The poor may suffer from stress about money and ill health could result, whereas a patient is desperate to keep on living. Both are, therefore, in a sense desperate for their own reasons, and it is not clear where the imbalance in bargaining power lies and who is subsequently in a position to exploit whom. It seems that the current black-market trend is that the middleman is exploiting both donor (seller) and recipient (Lawlor, 2011: 252-259).

Ishiguro alludes to the fact that an organ shortage with overwhelming demand will necessarily lead to complicated and often to undesirable options. He takes it even further and hints that desperate people might turn to children if needed organs are not available (Goodwin, 2006-2007:360). It is, however, *non sequitur* to equate a system that allows monetary compensation with the scenario depicted in *Never let me go*, as there is no ensuing preclusion of freedom (consent) or essence. If anything, these elements are emphasised, offering the individual the opportunity of self-determination and individuation.

5. Conclusion

It is not Ishiguro's intention to consider a specific legal framework in *Never let me go*, yet he indirectly raises and highlights the problematic nature of current medico-legal issues such as cloning, organ donations, the shortage of transplantable organs, and means of meeting the shortfall. The main characters in the novel, the students, are actually cloned so that their organs can be harvested. Their predetermined essence (of providing transplantable organs) precedes their existence. They are believed by some to be subhuman, without a free will or soul, but the events depicted in the novel suggest otherwise. We "see" their souls through their artwork and, later in life, how their relationships and accompanying emotions explicitly illuminate their humanness. Yet, they are stripped of choice; they are not the conductors of their own lives and occupy a space as objects to be used for someone else's purpose. They furthermore embrace the roles carved out for them, in essence fitting the description of an article of manufacture – like Sartre's paper-knife. One can only imagine what Sartre would have said about this scenario. He explicitly distinguished a (human) being from a thing, but could he

have foreseen the practice of cloning and the resulting questions? What are clones? Are they fully human or not? What exactly constitutes a human and what does it *mean* to be human?

The primary aim of this article was to utilise Ishiguro's popular and since filmed novel as a platform from which to consider, interpret and propose an alternative approach to the more specialised issue of organ donation. Ishiguro destabilises and disrupts the law through narrative, portraying a fictional but possible scenario of procuring organs and, thereby, illustrating the need for a comprehensive legal framework regulating the supply of organs for transplantation. Whilst cloning, as depicted in the novel, does not offer a satisfactory option, the current systems of organ procurement also clearly fall short in various regards. An alternative that is not science fiction and which recognises and balances personal autonomy, free choice and the right to self-determination is imperative (but keeping in mind that a donor should be allowed to choose between donating and selling a kidney) (Lawlor, 2011:250-259; Kishore, 2005:362-365). The approach of financially rewarding a donor seems to present such an alternative.

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orgaanskenkings
reg en letterkunde

