achieve this by voluntary means, and the increasing length of the queues for donated organs testifies eloquently to this failure. On the other hand, a majority of the community express their belief that cadaver organs should be used for transplantation. Faced with this contradiction and the dilemma so caused, it appears to be morally and practically necessary for society to act to overcome this failure, and this could best be done by making the human cadaver the charge and responsibility of the state, to determine its best disposition. Without going into detail, it might be done by establishing an organisation for this purpose, under the authority of the state but at "arm's length", very strictly separated from government and politics. The rights and responsibilities of disposal of the cadaver should be vested in this organisation. When the cadaver has been used, if possible, as a source of transplantable organs it may, if the family wishes, be reconsigned to their care, for such religious and social observances as they desire. Practically, this might be welcomed by many, as removing the necessity for an agonising decision by the family. Also practically, it is impossible for the family, in such circumstances, to be able to tell what has been done; after routine autopsy the body is reconstituted so that there is no outward sign, to ordinary observation such as that at an open coffin funeral or memorial service, that any examination has been performed. Legally, this might be regarded as an extension of the doctrine of *Parens patriae*, the assumption by the state of parental responsibility when this is necessary, on behalf of the persons benefiting from organ donation and transplantation. Morally, I regard the rights of the potential recipient, because of the benefits accruing, to be preemptive over all others.

In this situation, the idea of consent and its corollary, refusal are not morally applicable. One may be able to give or refuse consent to a procedure which affects oneself, but organ donation affects no one physically; no human person is involved as donor. To grant the right and power of consent to an individual who may be affected emotionally, is to elevate the possible emotional affect of one person, as more important than the physical life of another. The imbalance of benefit is too great to permit of this, and I find it morally unacceptable. To require consent for cadaver organ donation from the one of whose person in life the body is a part, is unacceptably to extend control of that body beyond legitimate limits. To require consent from the relatives of a previously living person is unacceptably to extend their control over matters where the good of others should be the predominant concern. The concept of consent in this situation is morally incorrect.

This having been said, in a society which places predominant value in autonomy, it may not be possible to enact in law what is morally correct. Should this matter ever attain the status of a legislative proposal, as it has in some countries, it might be a practical necessity to extend the principle of autonomy to a right to refusal of cadaver organ donation, to a living individual—to legitimise, in effect, the attitude of the rich man in my parable. To me this would be immoral, but it might be necessary to condone this limited immorality, commonly expressed as the right to opt out, or to refuse, to the individual. It would be a limited sacrifice to the much greater good.

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Death, us and our bodies

# Death, us and our bodies: personal reflections

**J Savulescu**

## We need to rethink our attitudes to the bodies of the dead in order to increase our willingness to donate organs and tissues

My father died aged 87 on January 20, 1998. It was the day of his 42nd wedding anniversary. He been admitted to a major teaching hospital with jaundice of unknown origin. He died after a medical procedure and a delay in diagnosis and management of bleeding after the procedure. I believed it was important to understand why he had died and what the underlying cause of his jaundice had been. I requested an autopsy.

My father was not only the best father a person could have had, but my closest friend. The circumstances of his death were especially sad for me. I was on a plane while he was allowed to die of blood loss in intensive care over a period of hours, becoming progressively more delirious and experiencing the slow motion throes of death. I was told he had died while I was still in the air. My first thought was that I would never again see him or hear his deep chuckle. I would never again feel the gentle touch of his large hands. He would never see my daughter grow up as he had wanted to, playing, and laughing on the beach.

I have witnessed many autopsies. As medical students, we had to attend autopsy each morning at 8.30 am as a part of pathology in fourth year medicine. Before this, we had two years of anatomy dissection, probing every crevice of the formalin fixed human body. I learnt an immense amount from these activities. But I also knew how gruesome the autopsy is. I knew that an autopsy would mean that my father would be dismembered. But I had no hesitation in requesting an autopsy. Both I and my mother accepted that his body was dead. He would not be harmed. And important knowledge would be obtained.

### A. US AND OUR BODIES

Let me say what my beliefs about the dead body are and why I hold them. There is a large philosophical literature on the relationship of mind and body to personal identity. I do not intend here to propose a philosophically robust or comprehensive account of personal identity. I outline here merely my personal reasons for holding the view that I do.

#### 1. Mind and body are different

I believe we are different from and not identical with our body, at least in the morally relevant sense. Our body is a complex machine that supports our conscious and subconscious life. But it is our mental life which constitutes who we are, not the machine that supports it. I am my mind. My body allows my mind to express itself and shapes who I am, but mind and body are different.

This is consistent with several practices and beliefs:

##### 1. Brain death and organ harvesting

Most people in the West accept a brain death definition of death. According to

this definition, we are dead when our brain dies even though our body lives on. Organs and tissues can be taken because they continue to live after the brain has died.

### 2. Withdrawal of medical treatment from brain damaged individuals

There are several legal cases and many medical examples of life prolonging medical treatment being withdrawn from people who are permanently unconscious[1] or conscious but severely brain damaged.[2] These practices are consistent with the view that what matters is our mental functioning, our mental lives, and that treatment which keeps our bodies alive (including our brain) can be stopped because mental life is so impoverished. For this reason, I do not believe "we" in the sense that matters are identical with our brains. The reason why we withdraw these medical treatments is because life in the significant sense has ceased. Our biography, as James Rachels once described it, has closed.

### 3. Beliefs about the possibility of "continued existence" in other bodies

In the recent science fiction film, *The Sixth Day*, Roger Spottiswoode, explores the concept of immortality through cloning. In this film, true cloning or copying of a person is perfected. This begins with "blanks" or drones stripped of all characteristics and DNA. DNA from the individual to be cloned is introduced into the drone and creates a physical replica of that person's body including their brain. This process differs from the cloning of an entire genome (which occurs with nuclear transfer) because scientists have also perfected a "cerebral syncoiding process"—whereby an exact picture is taken of the mind of the individual being cloned, which is then transplanted via the optic nerve of the blank. This reproduces all of the individual's memory and mental states up until that point including personal characteristics, learnt behaviours, and instincts.

Imagine that I have a tumour deep in my brain. It will grow slowly and kill me quickly in six months time. Up until that point, I will be asymptomatic. But there is no treatment and I will certainly die in six months. I have a choice—I can undergo the cloning process described in *The Sixth Day*. But there are two caveats. It must (for technical reasons) be done now and not later. And it will destroy my existing body. But it will create a replica without the tumour (let's assume the process can be tweaked to make subtle genetic changes). This body would die but it would be replaced by a replica with identical mental states. Would I survive the cloning process?

This is a complex question. But I would undergo the cloning process which destroys this body rather than continuing to live in this body for only six months. Even if "I" do not survive, I do not believe this matters. What matters is that my mental states persist, albeit supported by a different body. This suggests, to me at least, that what matters is not material bodily existence, but certain kinds of mental states.

I would still undergo this cloning process in this example if the clone was not an organic life form programmed by DNA and the syncoiding process, but a non-organic machine, providing the syncoiding process was accurate and the resulting being was conscious. This suggests to me that I am not identical with any particular physical substrate or support of my mental states. The physical substrate of our mental states is usually our brain but it could be something else. What matters is this mental life, not its physical basis.

This may seem to draw to sharp a distinction between mind and body—after all, we are embodied beings by our nature. Yet even on a less dualistic picture, there is an important distinction between embodied subjectivity (what matters) and the subjectless object. There is still an important distinction between the embodied mind and the body.

### 2. Any afterlife cannot depend on how the dead body is treated

Religions which include a belief in the soul or spirit which can be distinguished from the earthly body and which can exist in a disembodied state are committed to a view that what is essentially us or most important about us is different from our body.

Any kind of afterlife (if there is one) cannot depend on what is done to the dead body. This claim is supported by the widely differing practices concerning the dead—some religious believers bury the body, others burn it, and others eat it. Many people never have the chance to have religious ritual performed after death—they die at sea or in the mountains or are eaten by animals. It cannot be that God would disadvantage those unlucky enough, through no fault of their own, to be consumed by animals or who have died in some other tragedy.

(Indeed, if there is a God, and He is all loving, and our bodies do not belong to us but to Him, surely what He would want to happen to our organs and tissues is that they save the lives of those whom He loves but are suffering from kidney or heart failure?)

### 3. We should show respect for the dead

Burials (and other rituals) serve the function of showing respect for the dead. But it is only one way of showing respect for the dead.

We should show respect for the dead but how should we show such respect?

I felt that I should remember my father by being the kind of person he was. I felt I showed respect for him and the kind of person he was by giving to my children what he gave to me: love. I still have some of his ashes in a small urn. I will one day take these to a mountain where he used to climb in Romania and disperse them in the air. He asked me to do this. It will give me a time to reflect on his life and what he gave me. But this act is not as important as trying to be a better father. We show respect for the dead by thinking about them and helping their memory to shape our lives.

When my father died, I felt guilty at not being present at, and just prior to, his death. Guilty for not saying goodbye. But I decided to channel this guilt into to trying to help my children rather than suing the hospital and doctors for mismanagement or flagellating myself for my (significant) failings. This is what he would have wanted. And this was what he lived for.

If we can show respect in these many ways, through many symbolic acts, it is best to remember the dead in and through the living, whose lives can be made better by the acts of remembering. Organ and tissue donation to others symbolises the greatest goodness of a person—the capacity to make others's lives better.

## B. SOURCES OF ORGANS AND TISSUES

Tissues and organs from humans have enormous potential value for research, transplantation, education, and training. There are several sources of organs and tissues:

1. the living, where the tissue is taken solely for the benefit of others (live kidney or liver transplantation)
2. the living, where the tissue is redundant to procedures (diagnosis or management) which were performed in the interests of the patient (for example, discarded appendix or colon)
3. the dead person.

## C. ETHICAL ISSUES

When should we use tissue or organs from one person to benefit others?

There are two approaches: (1) the autonomy centred view; (2) the beneficence centred view.[3]

### 1. The autonomy centred view

Liberal societies place importance on people freely forming and acting on their own conception of how their life should go (and end). "Autonomy" comes from the Greek, "autos" "nomos" meaning self rule or self determination. The importance given to the freedom and

values of individuals is captured in the concept of respect for autonomy. In the case of living people, this is thought to imply that (1) body parts can only be used with the consent of the individual. And in the case of dead people that (2) organs can only be taken from dead people if they consented to their removal prior to death.

What should be done if the person did not express a desire about the use of her organs after her death? Here we must make a determination of what she would have wanted, and what is most consistent with her values. If a doctor used her organs, and this conflicted with the deceased patient's values, then on one view, that patient's past autonomy is not respected. But likewise, if doctors do not use her organs, and the deceased patient would have wanted them used, then we also fail to respect his past values and autonomy by not releasing the information.

Thus, even if we adopt an autonomy centred view and give weight to the deceased person's past values and desires, it is important to make an evaluation, based on the evidence available, *of whether this person would have wanted her organs used after death*. To fail to take a person's organs who would have wanted them used for medical purposes is to fail to respect that person's autonomy, to fail to respect that person's values, even if families do not want those organs or tissues used.

More controversially we could reject (2), the claim that respecting autonomy requires we satisfy the past desires of the dead. We could claim that, when we die, we cease to exist as autonomous beings and our past desires are of no direct relevance to self determination after our deaths because there is no self. This is a radical view that would involve disregard of the desires of the dead—I will not pursue it here.

### 2. The beneficence centred view

Beneficence is doing good for other people. A beneficence centred view states that we should use organs and tissues if doing so does more good than harm, regardless of people's desires. This raises the complex philosophical question in the case of using organs and tissues from dead people of whether the dead can be harmed. On some views, the dead cannot be harmed. On these views, there would be strong obligations to taking organs and tissues from the dead.

Most people accept a weak moral obligation of beneficence. According to this weak version, which can be called a duty of easy rescue, an individual (living or dead) has an obligation to give up for use some tissue or organ only when the harm to that individual is minimal, and the benefit to others is great. If we do not have a moral obligation to save another person's life when it is of no cost to us, what do we have moral obligations to do?

This is consistent with the way in which the doctor/patient relationship has come to be viewed. The standard view is that doctors should act in their patient's interests. There are, however, many statutes that require disclosure of confidential information in the public or other people's interest.[4] Breaching confidentiality is justified in some cases in the public interest—for example, outbreaks of infectious diseases and notifiable diseases, or when identifiable individuals are at grave risk. An example of the latter is when a doctor knows that an HIV positive patient is putting a partner at risk without the partner's knowledge and the patient refuses to practice safe sex or inform the partner. The General Medical Council has provided specific guidance for doctors with regard to HIV infection and confidentiality. In essence these allow the doctor to breach confidentiality.

Thus, this position justifies the use of organs and tissues when there is minimal harm to the person. Provided that confidentiality is protected, this would mean that redundant organs and tissues could be used. If one believes, as I believe, that the dead cannot be harmed, it would justify the use of organs and tissues from the dead.

### The moderate position

The implications of the beneficence centred view, even in its most moderate version, can be extreme. A more moderate position combines both the autonomy centred and beneficence centred views as the moderate position. According to this, doctors should use organs and tissues if:

- there is a significant interest in that tissue or organ
- there is no good reason to believe that the person had or would have objected to its use
- using the organ is not against the person's interests.

## D. IMPLICATIONS

Organs and tissues are special. In life, they allow us to be people. But we are not the same as our bodies or body parts. There is no intrinsic value in organs and tissues. We should change the significance we attach to body parts. What matters is people. Body parts are valuable only and in so far as they make people's lives go better. And when mental life is absent or grossly diminished, we cease to exist in any significant sense. For that reason, I believed autopsy did not harm my father, though it mutilated his body. This kind of view of personal identity has other implications.

Many people should be attracted to the moderate position, which constitutes an autonomy centred weak obligation of beneficence. Such a position implies we have moral obligation to give organs and tissues after death or medical procedure, provided no one is significantly harmed and there is no reason to believe the person objected or would have objected to such use. If one divides mind and body, the moderate position supports an opt out system of organ donation after death (see the paper by English and Sommerville[5] p 147). Since we are not harmed by the removal of organs or tissues, and these are of great benefit to others, there is an obligation to donate these or to register an objection, or at least there is no good reason to fail to donate these tissues.

It also supports encouraging people to complete advance directives or organ donor cards, specifying whether they do have an objection to organ donation.

How can we encourage people given the current system where there are ever greater legal requirements to obtain consent for organs and tissues to be used for the benefits of others?

There are two things we could do.

1. Commerce in tissues/organs: what matters is how well our lives go, not whether we have two kidneys or one. When we realise that our bodies are not constitutive of us, are merely the means for us to effect our lives, objections to the sale of organs wither. Several articles in this issue argue in favour of the sale of organs and tissues.[6–9]

2. Tax breaks for organ/tissue donors. We reward those who donate to charity by allowing them to claim such donations in their tax returns. I believe we should have a mandatory system of registration—for example, on a driving licence—of willingness to donate organs and tissues after death. We should offer tax breaks to those who contribute to the public good of organ and tissue donation. If we reward people for donating money to others, we should reward those who are willing to donate their organs and tissues for the benefit of others.

Where a person has consented to organs and tissues being used for the benefit of others, that wish must be respected regardless of family preferences for the fate of the body. To fail to respect such wishes is wrong for two reasons:

1. it fails our obligation to respect the autonomy of people
2. it fails the most basic duty of rescue, to benefit others.

If we believe that what matters is our mental state, then we should review the rule that we can only take organs from those who satisfy brain or cardiorespiratory criteria for death (see the papers by Zamperetti *et al*[10] and by Bell[11] p 176 and 182). This is called the "dead donor

**Summary: Changing practices towards organs and tissues**

- Duty of easy rescue—the moral obligation to give organs and tissues after death or when redundant.
- Adopt an opt out system for organ/tissue donation
- Tax breaks for organ/tissue donors
- Respect the wishes of those who choose to donate
- Encourage advance statements about organ/tissue donation
- Allow commerce in tissues/organs
- Review the dead donor rule

rule". Since I believe we die when our meaningful mental life ceases, organs should be available from that point, which may significantly predate brain death. At the very least, people should be allowed to complete advance directives that direct that their organs be removed when their brain is severely damaged or they are permanently unconscious.

## CONCLUSIONS

I remember seeing an exhibition at the Taiwan Museum depicting how Tibetan Buddhist monks showed respect for their dead. They ate parts of the body and made objects of art from others. One picture depicted a person blowing a trumpet made from a tibia from a deceased family member.

This is only one of the many ways we can show respect for those we loved. But surely the best way is through remembering their qualities to benefit others. If we change the way we think about our bodies and the bodies of those we love, and understand how beneficial body parts can be to the lives of others, an enormous amount of good could be done at no cost. It is time to rethink our beliefs about organs and tissues, and the bodies of the dead.

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Debate

# Organ procurement: dead interests, living needs

**John Harris**

## Cadaver organs should be automatically available

The shortage of donor organs and tissue for transplantation constitutes an acute emergency which demands radical rethinking of our policies and radical measures. While estimates vary and are difficult to arrive at there is no doubt that the donor organ shortage costs literally hundreds of thousands of lives every year. "In the world as a whole there are an estimated 700 000 patients on dialysis . . .. In India alone 100 000 new patients present with kidney failure each year" (few if any of whom are on dialysis and only 3000 of whom will receive transplants). Almost "three million Americans suffer from congestive heart failure . . . deaths related to this condition are estimated at 250 000 each year . . . 27 000 patients die annually from liver disease . . .. In Western Europe as a whole 40 000 patients await a kidney but only . . . 10 000 kidneys"[1] become available. Nobody knows how many people fail to make it onto the waiting lists and fail to register in the statistics. "As of 24th November 2002 in the United Kingdom 667 people have donated organs, 2055 people have received transplants, and 5615 people are still awaiting transplants."[2]

Conscious of the terrible and unnecessary tragedy that figures like these represent I have been advocating for more than 20 years now some radical measures to stem this appalling waste of human life. The measure which is the subject of Hamer and Rivlin's paper (p 196)[3] concerns the automatic availability of all cadaver organs—a measure, which I first advocated publicly in 1983.[4]

## THE AUTOMATIC AVAILABILITY OF DONOR ORGANS

We need to begin by being clear about just what it is I propose and why. At the moment in the United Kingdom we have an "opting in" system (donor cards) and there has been some pressure for us to move to an "opting out" system which is sometimes called "presumed consent". In this latter case organs would be available for transplantation unless the potential donor had registered his or her objections to donation prior to death. Both of these systems give central place to the individual's right to determine what happens to his or her body after death. I challenge this assumption. I suggest that consent is inappropriate as a "gatekeeper" for cadaver donations.[5]

All the moral concern of our society has so far been focused on the dead and their friends and relatives. But there are two separate sets of individuals who have moral claims upon us, not just one. There is the deceased individual and her friends and relatives on the one hand, and the potential organ or tissue recipient and her friends and relatives on the other. Both have claims upon us, the claims of neither have obvious priority. If we weigh the damage to the interests of the deceased, and her friends, and relatives if their wishes are overridden against the damage done to would be