

Is the body a republic?

Simona Giordano

J Med Ethics 2005;31:470–475. doi: 10.1136/jme.2004.009944

The ethics of post-mortem organ retention and use is widely debated in bioethics and law. However, the fundamental ethical issues have often been inadequately treated. According to one argument, dead bodies are no longer “persons”. Given the great benefits dead bodies offer to human kind, they should be automatically treated as public property: when the person dies, the body becomes a public thing (a *res publica*, a republic). This paper articulates the ethical issues involved in organ and tissue retention and use, both in the case in which the deceased’s wishes are known and in the case in which the wishes are not known. It contends that a dead body is not a republic. The state should maximise availability of organs and tissues by inviting or requiring citizens to make an informed and responsible choice on the matter.

arguments. Most people would probably not accept the idea that once they die the remaining body automatically becomes a public good or a public thing (a *res-publica*, a republic). In this paper we shall see whether cadavers should be regarded as a republic. In order to do so, I will examine in detail the ethical issues surrounding organ and tissue retention. The principal aim of this paper is to identify the real nature of the ethical problems at stake.

THE PRACTICE ADOPTED IN THE UK

The ethics of organ and tissue retention has been animatedly debated in various European countries, especially over the past 10 years. In the UK the most acute polemics arose after a number of scandals relating to organs and tissues retained by pathology services.⁶

One of most infamous is the case of Alder Hey Hospital,⁷ concerning doctors who asked parents of deceased children to sign forms or formulas of consent for retention and use of tissues from their children’s bodies (although many cases involved adults).⁸ Parents were told that this would help doctors understand the cause of their child’s death. The request was generally made very soon after the death of the child. The parents believed that “tissues” amounted to small samples of material, but later they found out that entire organs, such as the heart and brain, had been removed. They complained that they had not been adequately informed; that unknowingly they had buried “an empty shell”; that often these organs were left in storage and not used; that in many cases these were later put in the waste along with rubbish.⁹

Public inquiry into organ retention resulted in a number of public reports, the first of which was the Bristol Interim Inquiry.¹⁰ For other reports see references 11–18. I will not go into the merit of the inquiry that followed the case. I shall instead examine the ethical issues that this case raises. I will start my analysis by considering the social practice adopted in the UK but the ethical issues analysed here have a broad scope.

In the UK, the Human Tissue Act 1961 requires that:

- the deceased’s wishes, when they are known, should be respected.
- when the deceased’s wishes are unknown, the family (spouse or surviving relatives) has the right to object to organ and tissue retention and use. (A coroner or the courts can order post-mortem examination, regardless of the wishes of the deceased or of the family.)

A Human Tissue Bill is now before Parliament. It will replace the Human Tissue Act 1961 and the

Corpses provide a precious resource for humankind. Thousands of people are on waiting lists for transplants: roughly, around 60 000 people are waiting for a transplant in the USA, 100 000 in India, 8000 in Italy¹ and 5800 in the UK.² The life of many of these people currently depends upon the recruitment of organs.

THE IMPORTANCE OF DEAD BODIES

Cadavers are important for the advancement of science and for medical training. Anatomy would have not developed without the study of corpses.³ Leonardo da Vinci, who is regarded as the father of anatomy and physiology, is thought to have dissected at least 30 bodies of various ages. He meticulously studied organs and their functioning and compared them with the organs of other animals. The importance of his work for modern anatomy and physiology is universally recognised. Some examples of Leonardo’s studies and drawings of dissections are shown in figs 1–5.

Through his study of corpses, Leonardo offered remarkable insight into the anatomy and physiology of the digestive, reproductive, nervous, and cardiovascular systems.⁴ More recently, the study of human tissue archives has—for example, allowed advancements in the understanding of psychiatric disorders and of the effects of neuroleptic drugs on the brain, and dissection and study of cadavers has enhanced our knowledge of atherosclerotic cardiovascular diseases.⁵

From the point of view of benefits for humankind, it could be claimed that cadavers are a *public good*. However, the use of cadavers is surrounded by a clash of opposing principles and

Correspondence to:
Simona Giordano, Institute
of Medicine, Law and
Bioethics (IMLAB), School
of Law, University of
Manchester, Williamson
Building, Oxford Road,
Manchester M13 9PL, UK;
simona.giordano@man.
ac.uk

Received 6 July 2004
In revised form
22 October 2004
Accepted for publication
28 October 2004

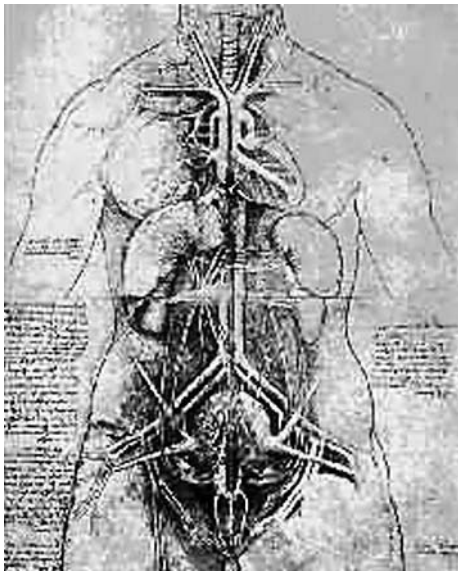


Figure 1 Dissected female body.³

Human Organs Transplant Act 1989, which currently represent the relevant legislation. Scotland proposes to introduce separate legislation (M Brazier, *The Human Tissue Bill*, unpublished).^{19 20} I will now discuss the rationale for respecting a person’s post-mortem decisions. Later I shall discuss the rationale for respecting the family’s wishes. Both cases present important ethical issues that need to be clarified.

WHEN THE DECEASED’S WISHES ARE KNOWN

The rationale for respecting a person’s post-mortem decisions is that it is considered a way of respecting patient autonomy. However, it may be objected that this is based on a misrepresentation of the idea of respect for autonomy. Dead bodies are not “persons” in the relevant sense—they have no “autonomy”. People no longer exist once they are dead, therefore the issue of “respect for autonomy” does not apply to the dead. To think that we can “violate” someone’s autonomy or best interests by acting on a dead body is therefore fallacious, because the person is extinguished and there is no autonomy and no best interests to protect.²¹

Since we respect people’s wills, we seem to believe that there are interests that survive a person’s death. But here, it is not a matter of allocating goods (*to some people* instead of *other people*)—here organs and tissues would be utilised for research and teaching, or for therapeutic purposes, or would be wasted—considering that *this* is the alternative, the answer is simple. That is, from this point of view, it could be argued that because the deceased is no longer a person in the relevant sense, and because of the importance of



Figure 2 The cranium.³



Figure 3 Dissection of a pregnant woman. Representation of a fetus *in utero*.³

availability of organs for the thousands of people on waiting lists for transplants and for the whole of society, the deceased has no moral right, and should have no legal right, to consent or refuse to donate their organs and tissues. As soon as a person dies, the body should automatically be regarded as a republic, a public thing.

The origins of this argument

The argument is based on the assumption that people cease to exist *when their mental function is lost forever*. The current accepted definition of death in the UK (brain death = cortex + brain stem) is consistent with this view.^{22 23} This “scientific” notion of death seems to reflect a philosophical view that is deeply rooted in Western thought: what we consider as a “person” must have some “mental” capacities. It is based on a metaphysical conception of the human being as composed of “mind” on the one hand and “body” on the other.

Among the origins of the body/mind split is Orphism,²⁴ a composite of doctrines that had very significant influence on

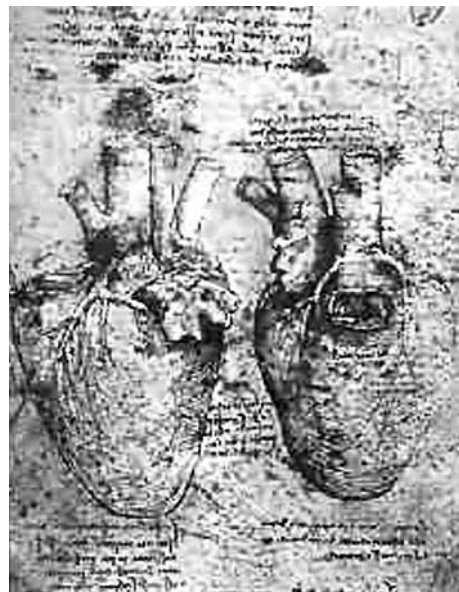


Figure 4 The heart.³



Figure 5 Study of the respiratory system: the thorax.³

Greek thought and consequently on the Latin world. Orphism understood the human being as composed of soul and body. The soul is a *demon* (*δαίμων*), a divine principle that occupies the body. For the first time, the human being was presented as composed of two sides in contrast with each other: a conception that had an irreversible effect on the original Greek naturalism.

Plato embodied these concepts in his philosophy. In the *Gorgias*, for example, he wrote, “the body is for us a grave”.²⁵ We *are* our soul, and until our soul is in the body, we are dead. It is by dying that the soul is set free and that we come to life. Aristotle considered the human being as a compound of matter and form. The material is the body, the animal part, and the form is the mind, (the *nous*): “the part of the soul by which it knows and understands”.²⁶ The *nous* expresses our very nature.²⁷ Having a mind is essential to being a human; there is no human being without *nous*.

The metaphysical dualism was accepted in the Latin world. Christianity presented the body and physical life as secondary and unimportant. The body does not ultimately matter. We find this conception throughout medieval Western philosophy and theology, in the different denominations of Christianity and Renaissance humanism.

Descartes argued that human beings are made of two things: the *res cogitans* (the thinking thing) and the *res extensa* (the material thing, the matter). The body is the matter, the organism (from the Greek *ὄργανον*, instrument), and the mind is the controller or the engine—two different substances with different functions and statuses. The superior thing is the thinking thing, the other is the animal thing, less worthwhile, less valuable.

A large part of Western moral philosophy has absorbed these ideas. The most influential contemporary speculations on personhood (for example, Peter Singer,²⁸ John Harris,²⁹ Derek Parfit,³⁰ H Tristram Engelhardt Jr³¹) rely on a similar conception of the “person” as having “mental” capacities—such as self-awareness, capacity to consider itself as the same being over time, and so on—as distinct from “physical capacities”. The body is intrinsically insignificant without the mind. A person is a person by virtue of their mental capacities, not by virtue of their physical capacities. Consistent with this conception, some argue that once mental function is lost, the person has ceased to exist and to matter as a subject of moral concern.

“I” am my body

This dualistic metaphysics, however, is not a “Truth” that we are bound to accept.^{32–33} For example, Ayer argued that “mind” and “body” are logical constructions, inventions of philosophers and theologians.³⁴ Although many contemporary bioethicists seem to adopt without doubt the “metaphysical” traditional dualism of body and mind, the issue of

“what it is that makes an individual ‘a person’” is widely debated in philosophy. For example, some philosophers have shown that splitting the mind from the body meets with insurmountable logical difficulties. Peter Van Inwagen³⁵ showed that any attempt to think sensibly about the concept of “mind” and “body” as conceptually distinguishable functions inevitably results in irresolvable logical problems. Gilbert Ryle argued that the “dogma” of the mind–body split is a myth.³⁶

I will not go into the merit of the philosophical debate on personal identity. However, it should be noted that the fact that people want to make decisions about what happens to their body once they are dead (and the strong reactions of people in the Alder Hey Hospital case and other scandals) may indicate not simply that these people are irrational and superstitious but instead that the dead body is not clearly as some people claim, a mass of organic material that has no connection with the person who has died and, which, therefore should be automatically regarded as state property or public good. People seem to consider their body as a part of themselves, or, more precisely, there does not seem to be such a clear cut-off point between “body” and “mind”, in the way people relate to themselves and to others. Given that there is no clear line of demarcation between mind and body, it could be argued that once dead, we have not ceased to exist *in all relevant senses*. If “what I am” is a complex notion that includes what is said to be “my body”, then I am still in some sense *me*, when my body is still palpable to the significant others. What is left after the brain ceases to function is still, in some sense, a person—the dead person—and so we properly speak of “dead people”.

I am not saying corpses should be treated in the same way as living people and the wrongs done to the living are equal to the wrongs that may be done to the dead. I am saying the argument that the dead can no longer be persons and *therefore* their previously expressed wishes have no moral weight raises a number of philosophical issues that need to be addressed before this argument can be accepted. The argument that no consent should be sought because the dead are no longer persons in any relevant sense is incomplete.

This does not mean that refusal of post-mortem retention and use of tissues and organs should necessarily be respected, or that there are no valid reasons to harvest organs and tissues without consent. If my arguments are accepted, what we should discuss is not whether dead people are people, in what sense they are people and so on, but whether people are entitled to exercise their right to make autonomous decisions about what will happen to their bodies after their death, given the good that can be done with their organs and tissues. Thus the real ethical issue is how to balance potentially different values—respect for autonomy (as applied to post-mortem events) versus other goods (medical advances and saving lives).

So far I have focused on the “least controversial” cases, those in which the person’s wishes are known. I will now turn to the cases in which the wishes of the deceased are not known. Again, my principal aim is to clarify the ethical issues around these cases.

WHEN THE DECEASED’S WISHES ARE UNKNOWN

When the deceased’s wishes are unknown, the Human Tissue Act 1961 establishes that the family (spouse or surviving relatives) has the right to object to organ and tissue retention and use. How much power the relatives should have is under discussion in UK law (the Human Tissue Bill stresses the importance of obtaining relatives’ consent to the activity,³⁷ whereas the Human Tissue Act 1961 only required that the

relatives *did not object* to it), but generally some decisional power is accorded to the family of the deceased.

The rationale for the power accorded to the family may be:

- Relatives are the best interpreters of a deceased's wishes—respect for the deceased's autonomy. In the case of a minor or an incompetent person, the relatives are the best guarantors of the deceased's best interests.
- Relatives have a right to decide because the cadaver "belongs" to them.
- The relatives' psychological wellbeing has to be preserved.

Let us analyse these points in turn.

Relatives are the best interpreters of a deceased's wishes

The idea that we should respect the wishes of those who are thought to be the best interpreters of the deceased's wishes rests on the principle of respect for people's autonomy. Those who believe that there is no autonomy to respect will also contend that relatives do not have a right to decide or, at least, that they have not this right based on the principle of respect for autonomy. I have already suggested that this argument is incomplete, because there is a sense in which the autonomy of a person is violated, when something against their post-mortem wishes is done to their body. But even if we accept my argument that the dead body is still in some sense a person, it is still unclear whether the relatives should be entitled to decide on the ground that they might be the best interpreters of the wishes of the person who died.

There are epistemic problems involved in setting up the rules for deciding who "the best interpreter" is. We cannot argue or verify that we have identified who that person is. To put it simply: Who counts as "the relatives"? The Human Tissue Act 1961 mentions "the spouse or any surviving relatives".³⁸ Are they necessarily the best interpreters of the deceased's wishes? And what if they disagree? Who is the person whose view best reflects the deceased's? How do we identify this person? (In the Human Tissue Bill, now before Parliament, more specifications are provided as to whom should count as "the relatives".³⁹) This does not imply that relatives' wishes should not be respected, however, if relatives' opinion has to count, it should count on other grounds.

The deceased's body "belongs to the relatives"

Although in common law there is "no property in a corpse",⁴⁰ the issue of the property of the dead body is a controversial one in UK law. I will not be discussing the legal issues. I will be considering whether there are conceptually valid arguments to maintain that the bodies of the deceased belong to their relatives.

There are two main arguments against the idea that the deceased's body belongs to the relatives.

- (1) The body is a property of God. In some religions, the body is property of God and therefore nobody can claim that the body belongs to them—not even the person themselves. People are not allowed to do whatever they want with their body: they are not allowed to commit suicide or to sell parts of their body because the body belongs to God.
- (2) The body is a republic. Some people believe that once "I" die, the issue of ownership is irrelevant, because there is no longer any "I", when "I'm" dead. Therefore, I have no right to decide about my body once I'm dead. Although most people consider this view as diametrically opposed to point 1, it is in some way very similar to it. From both points of view, my body is something that "I have happened to use" while my brain stem was alive (in

point 1 this idea is generally expressed in terms of "spirit"—"until my spirit resides in it"). Once the brain stem has ceased to function (once my spirit returns to the Creator), "I" no longer exist. If the body does not belong to a dead person, still less does it belong to the relatives. The dead body, this "mouldering casket",⁴¹ does not belong to anyone (neither to God nor to the relatives) and therefore belongs to everyone: it is a *res publica*. Morally, it is worth no more, at least in itself, than the carcasses of cats and rats in the streets. However, this material can be used for research, teaching, and therapeutic purposes. The good uses of these *disjecti membra* make them valuable, and for these reasons, these *membra* are a *public good*.

Points 1 and 2 are in principle incompatible with relatives' "property rights" over a deceased's body. From both points of view, relatives cannot claim that the body of the deceased person belongs to them. I contend, however, that there is a sense in which the body of the person *belongs* to the relatives, and I also contend that they are therefore *prima facie* entitled to be "in charge" of the destiny of that body.

"As in my breast, and now on the cross, I call you 'My love'".⁴²

There is a sense in which other people figure in my psychological and ethical universe as "my daughter" or "my father" or "my siblings". Not only are the relevant others "mine" in some psychologically important sense (they are a part of my life, they have relevance in the way my life takes shape, and in the development of my identity)⁴³ but they are also "mine" in some important ethical sense: this "link" or relationship between them and me entails some moral responsibility.

This sense of "belonging" seems to be an essential component of bonds and affection in humans and other animal species.^{44 45} The possessive adjective "my", which we use to refer to "my daughter" or "my father" is not a merely semantic clause. "My" indicates the sense of "reciprocal belonging", which is an essential part of "love" and an integral part of meaningful human and animal relationships.⁴⁶ We experience *some* others (the significant others) as *a part of ourselves*. Even once the loved person is dead, she or he continues to be, in some important way, "my daughter" or "my father". This person *belongs* in some sense to the significant others. He or she is still "Jason", "Marie", "Hannah"—"my Jason", "my Marie", "my dear Hannah".

This "belonging" generates some moral responsibilities—it is because she is *my* child, that I am in charge of her education and upbringing. Likewise, it is because she is my child that I am in charge of her body, or more in charge than others are. Because of our special relationship, I have reason to consider myself as the person who has the strongest entitlement to decide what will happen to her body. The argument that relatives should be asked because "the body (the person) belongs to them" is to some extent correct.

From this it does not follow that the wishes of the relatives should necessarily be regarded. There may also be cases, which go beyond the scope of this paper, in which the interests of the relatives may conflict with the previously expressed wishes of the deceased (cases in which, for example, relatives may be induced to consent or not to object by financial or other means). These may also be cases in which the relatives' wishes should not necessarily be followed, but I will not analyse this. Here I focus on whether the significant others are entitled to decide about what should be done with the body of the dead based on the idea that that body is in some way *theirs*. I contend that a deceased

person in some relevant sense belongs to relatives and that they (or the significant others) are *prima facie* entitled to decide. Nonetheless, relatives' wishes do not have an overwhelming normative force. If the wishes of relatives are not to be followed, it is not because "they are not entitled to be in charge", but because other values override their entitlement. Thus, whether or not relatives' wishes to refuse donation of tissues and organs should be followed does not depend on whether the body belongs to them: it rather depends, as stated before, on the balance between two different values. On the one hand, the value of the respect for this "entitlement" (which the significant others have to make decisions regarding the dead person) and, on the other hand, other values (the good that can be done to other people with the deceased's organs and tissues).

The final reason for giving weight to relatives' wishes could be that their psychological wellbeing has to be preserved.

Relatives' wishes should be respected to protect their psychological wellbeing⁴⁷

"Let us cry louder for those who won't return".⁴²

Some people argue that it is simply irrational to want to bury a body intact—or indeed is any similar form of "morbid attachment" to the dead body. There is something superstitious and fetishist about these practices, and superstition and fetishism cannot be good bases for moral choices.

It is, however, debatable whether the attachment to the deceased's body is irrational or morbid in the sense that is meant by some philosophers. Funeral rituals are an essential part of the psychological resolution of a loved person's death. In all societies, and indeed in many other animals' societies, funeral rituals are performed. The Egyptians mummified the body and offered much tribute to the dead. In some societies the body is burned in a public place, in others the body is cannibalised. Psychological studies testify the importance of these rituals. Interfering with them is interfering with the way people articulate their loss. This may be extremely distressing and may have a profound impact upon the psychological welfare of the survivors.⁴⁸

If people's welfare matters, and it certainly matters to those who claim that corpses should be used for promoting people's welfare, then the survivors' welfare also matters. Thus, from this point of view too, there is good ground to seek the consent of relatives.

Again, one might argue that saving lives and promoting advances in medicine are greater goods than the psychological wellbeing of relatives, and that the latter could well be sacrificed in the name of the greater good. Once more the issue of whether consent should be sought hangs on the balance between different values—the welfare of the family and the welfare of third parties and the society as a whole. How should we balance these different values?

THE BALANCE: A RESPONSIBLE USE OF AUTONOMY

One possibility is to rank the values discussed above, and to say that the value of public good should prevail, or the other way round. In this way, one set of values will necessarily be sacrificed. An alternative way of looking at the problem is how to combine these values, rather than how to rank them. I will now show that trying to combine these values is a better alternative than either, on the one hand, relying purely on individual judgement or, on the other hand, considering the dead body as a republic.

In order to combine these values, the state could promote a responsible use of autonomy. Whereas clearly autonomy is not an absolute right, it is desirable that people use it responsibly. In most democratic societies, it is in fact

accepted that the social good should be sought while minimising intrusions in individual autonomy.⁴⁹ In the case of tissue and organ donation, the state may invite, or require, its citizens to make a responsible choice on the matter. A responsible choice is one based on information, education, and consideration of the reasons for acting in one sense or the other.

The issue of "death", instead, is seldom openly discussed in public settings. Psychological and anthropological studies show that in Western societies death is a taboo.⁵⁰ Consequently, people often come across the issue of organ retention only when they lose a close relative, and, minutes after death, they are asked to make a choice about the deceased's body.

The complete absence of public information on the topic was striking in the Alder Hey Hospital scandal. People had no idea what procedures had been carried out on their children, what "tissue" meant, what these "tissues" were retained for, why they were often stored and not utilised.⁵¹ Some parents said: "If those organs had been used I would have been pleased but they hadn't and it has devastated us".⁵² Comments such as these indicate that these parents were not familiarised either about the practice of or about the importance of retention of tissues for medical sciences. And interestingly, some parents said they would have donated their children's organs, if asked and informed.⁵³ As Margaret Brazier said: "About three years ago I got my donor card out and it was looking tired and tacky. So I needed to put myself on the National Donor Register, but I thought to myself 'is there any point in this? My 50th birthday is approaching ... : who is going to want to use your organs for transplantation?' It never occurred to me then that there might be all sorts of other beneficial uses that ... my organs could be put to. That is the message that has to be got across".⁵⁴

The reluctance to talk about death affects post-mortem choices in many ways. It affects individuals, who, understandably, may be reluctant to consent to practices they are unclear about and for purposes that are often obscure. It affects professionals, who often feel that the topic is one that "will distress" the relatives—one that needs to be silenced. It affects the relatives, who are caught unprepared and are asked, sometimes at the most difficult time of their life, to sign formulas that mean little to them with no time to think through the meaning and importance of what they are being asked to do.

People may refuse to donate their organs or their relatives' organs because of beliefs that need to be corrected or at least analysed (for example, that the person "may wake up" again or that the person may "perhaps feel pain"); or because they have not thought through the issue sufficiently; or because they do not want to consent to medical practices they do not know enough about.

There is clearly a strong public interest in increasing availability of organs and tissues, but rather than including dead bodies among its properties, the state may consider:

- correcting people's false beliefs
- promoting public information
- encouraging clear discussion of the usability of corpses for medical and scientific purposes

In practice, this may mean including education on the topic in schools and universities, and/or provide clear information to the general public about what is involved in post-mortem tissue and organ retention—for example:

- Why it is important for science (for example, which medical advances have been gained through the study of samples taken from cadavers)?

- Why it is essential for saving lives?
- How pathologists work and why organs and tissues are often stored in banks rather than being directly utilised?
- What is meant by “tissues”?

This may have a profound impact on the way people articulate death and think about the importance of organ and tissue donation for transplantation and research. Once informed, people can be asked to make a clear choice. By asking to make a choice the state would not frustrate, but, on the contrary, would encourage a *responsible exercise of autonomy*, and, at the same time, it would promote recruitment of organs and tissues. A few countries have already adopted this policy, and in some cases this takes the form of a contracting-out policy—that is, people are asked to sign a card if they do not wish to become donors (for example Belgium). In New Zealand, people are required to complete a donor’s card if they want a driving licence.⁵⁵ This type of state intervention has proved to be highly successful. In countries where people are required to express their preference there is much larger availability of organs and tissues.⁵⁶

Instead of considering the body as a part of the republic, availability of organs and tissues could be increased through a ponderate and responsible choice. Thus we may promote the interests of the society and save many lives while encouraging the exercise of individual autonomy. We may thus avoid altogether the invidious situation of having to decide which value or sets of values should prevail.

ACKNOWLEDGEMENTS

The author wishes to thank John Harris, Margaret Brazier, Julian Savulescu, and Steve Lambert for the discussions they had with her about the topics in this paper.

REFERENCES

- Harris J, Giordano S. Trapianti e fecondazione, gli interessi delle persone. *Il Sole 24 Ore* 16 May 1999 (newspaper publication).
- NHS UK transplant. www.transplant.org.uk (accessed 28 December 2004).
- Leonardo da Vinci tra Arte e Scienza. www.o-vergerio.kp.edu.si/leo/leo1.htm (accessed 28 December 2004).
- For a historical analysis of anatomy, the use of corpses for medical studies see Richardson R. *Death, Dissection and the Destitute*. London: Penguin, 1988.
- Korn D. Contribution of the human tissue archive to the advancement of medical knowledge and public health. Report to the National Bioethics Advisory Commission, 1998.
- Brazier M. Human tissue retention. *Medico-Legal Journal* 2004;**72**:39–52, in particular p 51.
- Brazier M. Retained organs: Ethics and humanity. *Legal Studies* 2002;**22**:551–69.
- See reference 6: 51.
- See reference 6: 44.
- Learning from Bristol. *The Report of the Public Inquiry into children’s heart surgery at the Bristol Royal Infirmary 1984–95*. Presented to Parliament by the Secretary of State for Health by Command of Her Majesty, July 2001. Available at www.bristol-inquiry.org.uk/final_report/prelims.pdf (accessed 28 December 2004).
- The Royal Liverpool Children’s Inquiry Report (The Redfern Report). London: The Stationery Office, 2001, Available at www.rlcinquiry.org.uk/summary/sum1.htm (accessed 28 December 2004).
- Scottish Executive. *Final Report of the Independent Review on the Retention of Organs at Post Mortem 2001*. Edinburgh: Scottish Executive, 2001, Available at www.show.scot.nhs.uk/scotorgrev/Final%20Report/ropm.pdf (accessed 28 December 2004).
- Report of the Human Organ Inquiry (Northern Ireland 2002) as quoted in Brazier (reference 6).
- Retained Organs Commission. *Organ Retention at Central Manchester and Manchester Children’s University Hospitals Trust 2002*. London: Department of Health, 2002, Available at www.nhs.uk/retainedorgans/manchester_report.pdf (accessed 28 December 2004).

- Retained Organs Commission. *External Review of the Birmingham Children’s Hospital NHS Trust 2002*, Available at: www.nhs.uk/retainedorgans/birminghamrep.pdf (accessed 28 December 2004).
- Department of Health. *Report of a Census of Organs and Tissue Retained by Pathology Services in England*. London: Department of Health, 2001, Available at www.stanford.man.ac.uk/medsem4/orgtis00.pdf (accessed 28 December 2004).
- Department of Health. *The Isaacs Report—The Investigation of Events that followed the death of Cyril Mark Isaacs*. London: Department of Health, 2003, Available at www.official-documents.co.uk/reps/isaacs00/isaacs01.htm (accessed 28 December 2004).
- Department of Health. *Human Bodies, Human Choices. The Law on Human Organs and Tissue in England and Wales: A Consultation Report*. London: Department of Health, 2002, Available at www.doh.gov.uk/assetRoot/04/08/15/82/04081582.pdf (accessed 28 December 2004).
- Brazier M. *Medicine, Patients and the Law*, 3rd edn. London: Penguin, 2003: Chapter 19.
- Human Tissue Bill. Latest amendments available at www.parliament.uk/pa/ld200304/ldbills/115/2004115.pdf (accessed 6 January 2005).
- Harris J. Law and regulation of retained organs: the ethical issues. *Legal Studies* 2002;**22**:527–49.
- Department of Health. *A Code of Practice for the Diagnosis of Brain Stem Death*. London: Department of Health, 1998.
- Re A [1002] 3 Med LR 303.
- Reale G, Antiseri D. *Il pensiero occidentale dalle origini a oggi*, 3rd edn. Roma-Milano: La Scuola, 1984: Vol I.
- See reference 24: 112.
- Aristotle. *De Anima (On the Soul)*. Harmondsworth: Penguin, 1986, iii 4, 429a9–10; cf. iii 3, 428a5; iii 9, 432b26; iii 12, 434b3.
- Aristotle. *Metaphysics*. London: Penguin, 1998, i 1, 980a21; *De Anima* ii 3, 414b18; iii 3, 429a6–8.
- Singer P. *Rethinking Life and Death*. Oxford: Oxford University Press, 1995.
- Harris J. *The Value of Life*. London: Routledge, 1992.
- Parfit D. Personal Identity. In: Glover J, ed. *The Philosophy of Mind*. Oxford: Oxford University Press, 1976:143–63.
- Engelhardt HT. *The Foundation of Bioethics*, 2nd edn. New York-Oxford: Oxford University Press, 1996.
- Osion E. *The human animal: personal identity without psychology*. Oxford: Oxford University Press, 1997, 65–6, and 144–51.
- Thomson JJ. People and their bodies. In: Dancy J, ed. *Reading Parfit*. Oxford: Blackwell, 1997:202–9.
- Ayer AJ. *Language, Truth and Logic*. London: Penguin, 1990:130.
- Inwagen PV. Philosophers and the words “human body”. In: Inwagen VP, ed. *Time and Cause, essays presented to Richard Taylor*. London: Dordrecht, 1980:283–99.
- Ryle G. *The Concept of Mind*. London: Penguin, 1978:15.
- Human Tissue Bill section 20: 2 (7)(b), 3 (6)(c). See reference 20.
- Human Tissue Act 1961: Chapter 54, b1. Available at www.uktransplant.org.uk/about_transplants/legislation/human_tissue_act/human_tissue_act.htm (accessed 28 December 2004).
- Human Tissue Bill section 27 (4). See reference 20.
- Doodeward Spence (1908) 6 CLR 906. R v Kelly [1998] 3 All ER 741. See reference 7.
- Dickinson E. Letter No 54. In: Johnson TH, ed. *The Letters of Emily Dickinson*. Cambridge: Harvard University Press, 1958:140.
- De Andre’ F. *Tre Madri*. Milano: BMG Ricordi, 1971.
- Laing RD. *Self and Others*. London: Tavistock Publications, 1969.
- Hayes N. *Foundations of Psychology*, 3rd edn. London: Thomson Learning, 2000: Chapter 20.
- Lorenz K. *On Aggression*. Norfolk: Methuen & Co, 1973, Chapter 11.
- I am discussing experiences that seem to involve a perturbation of our emotive and affective spheres—love, life, death, suffering—but which escape any clear definition or conceptualisation. In psychology, the words that refer to these experiences are called “archetypal”, for their abstract nature and because they reflect something that seems very important to us but which at the same time we can only “roughly grasp”. There is thus a sense in which the discussion of these experiences is bound to be approximate.
- AB Leeds NHS Hospital Teaching Trust [2004] EWHC 644 (QB).
- See reference 44: 690ff.
- Giordano S. For the protection of others. *Health Care Anal* 2000;**8**:309–19.
- See reference 44: 690–93.
- See reference 7: 552–4.
- BBC News. Monday, 29 January 2001, 08:47 GMT. Available at news.bbc.co.uk/1/hi/health/1112486.stm (accessed 28 December 2004).
- “Everyone has a right to lay the dead to rest”, *Guardian*, Wednesday 31 January 2001.
- See reference 6: 49.
- Schwartz L, Preece PE, Hendry RA. *Medical Ethics: a case-based approach*. Edinburgh: Saunders, 2002:103–4.
- See reference 55: 103–4.