Opt-out is a step forward, but it doesn't go far enough [1]

Written by **Ben Southwood** [2] | Friday 5 July 2013

The Welsh assembly on Tuesday voted to allow hospitals [3] to presume individuals have given consent for organ donation, in the absence of an objection from the individual themselves, or evidence from family or friends they would have had an objection. This a step forward. Nudges [4]?non-coercive changes in the presentation of options that result in different decisions?may [5] work [6]. Adults in the UK can expect to wait for over three years for a kidney [7], and the good transplants do is huge [8]?if we can do anything to cut down on the wait with something as innocuous as a nudge, we should, and let's hope the measure makes it over to the UK as soon as possible.

But it's not enough. Cadavers are not people, and they should not be accorded rights as if they were. A person has the right to guide and direct their life, but once they are dead their body is effectively meat. Given this, no one's wishes, or their families wishes, about what is to be done with their corpse should be taken as gospel. I know this is a controversial position, but really it shouldn't be [9]. Neither of the three main objections I've heard really seems to hold much water at all.

1. But we own our bodies! You are effectively licensing theft of our bodies!

We own our bodies while we are alive. Either we have this right because in general it promotes good consequences [10], social welfare, human happiness, or we have this right because it protects an important interest of ours, or to protect our choice or will [11]. I deal with the consequences issue below. Neither of the other justifications hold for cadavers. Cadavers don't have any interests in a meaningful sense. They cannot experience suffering, pleasure, pain, or happiness?they can't experience anything. They are things not persons. Nothing can be good or bad for them. And this feeds into what is even more obvious?they can't make any choices so there is nothing for a (transferrable) right to bodily integrity to protect. An objection here might be that the relevant choices are made before they die, but the choice-protecting right would fizz out as soon as they did die, and then we'd lose the reason we had to protect the choice in the first place.

2.The families will find it very difficult to deal with it.

At first glance this objection shouldn't be too compelling; consider that someone's speech causing offence is widely seen as a poor reason to forcibly stop it [12]. But I think we should take these sorts of effects on happiness seriously [13]. Under the Welsh scheme individuals would not dread their organs being used to improve or save lives because they could opt out, similarly families with strong views about retaining a dead body at the expense of real, living people who need the organs could also keep the organs inside the cadaver. But my scheme would appear to ride rougshod over these concerns in a relentless pursuit of keeping innocent people alive (1,000 die each year in the UK alone waiting for a donation [14]).

However, I believe individuals or families should be able to buy the right to not have their body used in this way, if they feel so strongly about it. We know from the Coase theorem [15], that if transaction costs are low enough, this will be efficient. NICE [16], or in a utopian future, private medical companies, can decide how much the organs are worth and if individuals feel so deeply they can pay the cost in order to keep the organs from those who need them. If few people want to do this, the price will be low as there will be sufficient organs. The system would actually work pretty much identically if we gave the initial right to the families and let them decide whether to sell the organs.

3. Instituting a norm of bodily integrity is difficult, this will break it down

In general, humans tend to have intuitions that bodily integrity should not be violated except in special situations. It might be that this intuition is coarse-grained?we can either have the intuition for all bodies (dead or alive and human), or for none. Those with the least respect for live humans?the [17]Nazis [18], Mao [19], Stalin [20]?tended to bury bodies in mass graves, suggesting they also had little respect for dead bodies. But I don't think this is necessarily the general trend. Respect for the dead has been falling for thousands of years, from when ancestor worship [21] was one of the most prevalent elements of religion, when great superstitions surrounded death and burial, whereas respect for the living is only rising, with the belief we are all basically equal [22] or endowed with the same rights [23] or should all count the same [24] now near-universal. Even if these trends are not linked, it suggests that declaring open season on organs in cadavers does not imply humans will lose all restraint over their actions with real living humans and involuntarily extract their organs. Norms are quite flexible, and we should switch to a more sensible norm, where humans are treated with all the respect they deserve, but where we don't waste life-saving organs due to our reverence of ex-humans.

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