

Justice and the Coercive Taking of Cadaveric Organs

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One of the central questions in discussions of distributive justice is that of the interest of the badly off, or the worst off, in the financial assets of the well off. By contrast, theorists of distributive justice are remarkably silent on the important and complicated issue of access to the organs of the dead. In this article, I aim to show that if one thinks that the poor's interest in leading a minimally flourishing life, and *a fortiori* in remaining alive, is important enough to confer on them a right to some of the material resources of the well off, by way of taxation and, in particular, by way of restrictions on bequests and inheritance, one must think that that very same interest is important enough to confer on the sick a right to the organs of the now-dead healthy. I make a case to that effect, and I explore disanalogies between the posthumous transfer of resources and the posthumous transfer of organs. Finally, I rebut two objections to my proposal.

One of the central questions in discussions of distributive justice is that of the interest of the badly off, or the worst-off, in the financial assets of the well off. By contrast, theorists of distributive justice are remarkably silent on the important and complicated issue of access to the organs of the dead. And yet, thousands of people throughout the world die every year, and many more lead a less than flourishing life, whilst waiting for a transplant.¹ To be sure, cloning, xenotransplantation (to wit, the use of non-human organs in transplant operations) and the elaboration of sophisticated prostheses give us some reason to think that, in the not too distant future, patients who need new organs will not be dependent on the willingness of suppliers and of their relatives. However, the technical and ethical problems posed by those various procedures are far from being solved, and the question of who can dispose of the organs of the dead is thus crucial.

Bioethicists do pay some attention to this issue. But when discussing how organs should be obtained for donation purposes, they argue either that someone's expressed wishes with respect to the posthumous disposal of her organs should be respected, or that the wishes of her next-of-kin should prevail, should her wishes not be known, or even irrespective of her wishes.² Neither they, nor the overwhelming majority of political philosophers committed to distributive justice argue that patients who need an organ should have a say.

In this article, I aim to show that if one thinks that the poor's interest in leading a

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¹ Sources: for Britain, United Kingdom Transplant Support Service Authority (<http://www.uktransplant.org.uk>); for the United States, United Network for Organ Sharing (<http://www.unos.org>).

² For useful reviews of those arguments, see, e.g., Paula Boddington, 'Organ Donation After Death – Should I Decide, or Should My Family?' *Journal of Applied Philosophy*, 15 (1998), 69–81; James Muyskens, 'An Alternative Policy for Obtaining Cadaver Organs for Transplantation', *Philosophy and Public Affairs*, 8 (1978), 88–99.

minimally flourishing life, and *a fortiori* in remaining alive, is important enough to confer on them a right to some of the material resources of the well off, by way of taxation and, in particular, by way of restrictions on bequests and inheritance, one must think that that very same interest is important enough to confer on the sick a right to the organs of the now-dead healthy.³ I make a case to that effect in the next section. In the section after that, I explore disanalogies between the posthumous transfer of resources and the posthumous transfer of organs. In the final section, I rebut two objections to my proposal.

Before I start, let me, first, state what this article assumes at the outset, and, secondly, delineate its scope. It takes for granted, in true liberal fashion, the idea of fundamental equality, whereby individuals have equal moral status, irrespective of their social standing, and should treat one another, accordingly, with respect. It also assumes, uncontroversially, that we all have a fundamental interest in leading a minimally flourishing life, and (perhaps controversially) that in order to lead a minimally flourishing life, we must be autonomous and achieve well-being. To be minimally autonomous means to be capable of framing, revising and implementing a conception of the good with which we can identify, which in turn means to have the personal capacities – physical and mental – to choose between different and worthwhile opportunities and to implement our choices, as well as to have the time and the energy to take up those opportunities. To achieve well-being means not to suffer constant physical pain for long periods of time, being well fed, being warm, etc. Moreover, the article assumes, with many advocates of distributive justice, that justice requires that individuals who are not responsible for the fact that they lack the material resources they need in order to lead a minimally flourishing life be given such resources, provided that the well off would not themselves lead a less than minimally flourishing life as a result of having to give them what they need.⁴ In short, or so the article assumes, justice requires that needs be met up to a point (more on which in the next section). It does not require that equality (of resources, or welfare, or access to advantage) obtain. Its aim, thus, is to defend the view that on those assumptions, the sick have a right to the organs of the dead, and to assess some objections to that view.

In defending that view, I restrict the scope of the article in several respects. The debate on postmortem organ transplants revolves around three questions: when we can declare that someone is dead; how we should procure much needed organs; who should get those

³ A few clarificatory points. First, not all of those who pay taxes are actually well off. For the sake of stylistic convenience, I shall use the term ‘well off’ to mean ‘those who have sufficient resources that they can be expected to help the poor by way of taxation’. Secondly, by ‘organs’ I mean internal organs and corneas. Thirdly, throughout this article, I adopt the interest theory of rights, whereby to have a right means that an interest one has is important enough to hold some other person(s) under a duty. (The *locus classicus* for the interest theory of rights is Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), p. 166.) Fourthly, I do not, here, take a stance on the legitimacy of routinely taking organs from the dead for research purposes. Arguing for it would require another paper.

⁴ This restriction on redistribution is lexically prior to the duty to help. Thus, if Peter has a 110 per cent PMFL (prospects for a minimally flourishing life), whilst Paul has a 20 per cent PMFL, justice would only require that Peter transfer 10 per cent to Paul. I am grateful to Hillel Steiner for helpful clarification of this issue.

The view that individuals have welfare rights to what they need to lead a minimally flourishing or autonomous life is articulated (with variations that need not detain us here) in, e.g., Elizabeth Anderson, ‘What is the Point of Equality?’ *Ethics*, 109 (1999), 287–337; Cécile Fabre, *Social Rights Under the Constitution: Government and the Decent Life* (Oxford: Oxford University Press, 2000), chap. 1; Harry Frankfurt, ‘Equality as a Moral Idea’, *Ethics*, 98 (1987), 21–43; Alan Gewirth, *The Community of Rights* (Chicago: Chicago University Press, 1996); David Harris, *Justifying State Welfare* (Oxford: Blackwell, 1987); Lesley Jacobs, *Rights and Deprivation* (Oxford: Oxford University Press, 1993); Martha Nussbaum, *Women and Human Development – The Capabilities Approach* (Cambridge and New York: Cambridge University Press, 2000).

organs. Here, I focus on the second question. To be sure, a *full* treatment of postmortem organ transplants should address the first and, most importantly, the third. But we do not need to decide who, of the young and the old, of those with a good chance of recovery and those with a not so good chance, should get available organs, in order to decide how organs should be procured. Accordingly, I use the phrase ‘the sick’ as shorthand for ‘whoever is eligible for transplants’, assuming agreement on eligibility criteria. Focusing on the question of procurement and ignoring the issue of allocation should not prove too controversial: by the same token, whilst a theory of distributive justice, when applied to income and wealth, needs to decide how to allocate those resources amongst those in need, an argument for the view that those who are eligible for help have a right against the well off to such help does not hinge on the way we answer allocative questions.

Moreover, my argument to the effect that the sick have a right to the organs of the dead is located in ideal theory. That is, I assume that individuals fully comply with their obligations of justice. This is important in two respects. First, in so far as individuals fulfil their obligations to one another, the needy actually do have access to the resources they need in order to lead a minimally flourishing life. Secondly, doctors will not actively try to hasten someone’s death and will not decide to withhold treatment from a very ill patient for the sake of procuring organs. Concerns that doctors might be tempted to do so should organs be routinely taken from the bodies of the dead are real, and would have to be addressed if a proposal such as defended here were to be implemented. My point, however, is not to offer a policy blueprint; it is to lay down principles of justice for the procurement of organs. Whether we should forgo implementing justice in the face of professionals’ failure to respect potential organ procurers’ rights not to be killed and to be given medical treatment is a question that I do not address here.

Finally, I take as my starting point a rights-based theory of distributive justice, which focuses on the needs of the recipients of resources. I do not mean thereby to rule out the possibility of arguing for the confiscation of cadaveric organs on other grounds. For example, some might think, on one hand, that appealing to those needs is not necessary. They might say that it is in our own interest, collectively, systematically to confiscate organs at death, since we might need one at some point. On that view, just as we undertake to help one another by way of tax transfers, we should undertake to help one another by way of posthumous organ transfers. Or they might want to say that confiscating organs would raise the number of transplant operations, which would in turn enable us to spend on other goods the resources we would have had to devote to, say, life-long dialysis treatments, treatments for life-long heart conditions, etc. Others, on the other hand, might think that appealing to rights is not necessary: thus, they might point out that some religions encourage, indeed, in some cases prescribe organ donation as one way to exercise the virtues of compassion and charity towards needy members of one’s community.

Although I shall at times allude to (some of) those arguments as a foil to my own strategy, I shall not address them directly here. Rather, in appealing to the rights of the needy to defend my proposal, I aim to show that those who are committed to the view that individuals’ fundamental needs must be met cannot restrict their argument to material needs: they must take on board the need for organs. I also aim to show that if they not only are committed to meeting needs, but also take rights as a fundamental category of moral and political philosophy, they would be mistaken in thinking that individuals have a posthumous right to withhold their organs from the sick. They would be mistaken in thinking so, or so I argue here, precisely in virtue of their commitment to rights-based principles of distributive justice.

One final point before I begin. Some might be tempted to think that if a commitment to coercive taxation for the purposes of meeting needs implies a commitment to the confiscation of body parts, then we should renounce it. My intention is not to buttress that view. My point is that the fact that an ethics of redistribution has implications for the taking of body parts should not be taken as an objection to the former; rather, it should be embraced, without qualm, as its natural inference.

WHO SHOULD DECIDE?

As I shall now argue, the very considerations which lead proponents of coercive taxation to confer on the poor a right to the material resources of the well off, and in particular of the dead, should lead them to confer on the sick a right to the organs of the dead. To be clear: to claim that someone has a right to a particular good is not simply to say that it is desirable that that person should get that good; it means that her interest in having it overrides other considerations when the allocation of the good is at issue. In particular, it implies that other parties, who may in fact have current use of the good in question, do not have a choice in the matter: the good *must* be made available to that person.

Now, in order to show that someone has a right that others provide her with a given good, one must show, first, that the good is such that it makes sense to say that she can have a right to it, and, secondly, that she does indeed have a right to it. Accordingly, my case for conferring on the sick rights to the organs of the dead has two steps.

Let us take the first step. The provision of a good can be protected by a right, as a matter of justice, if it meets two conditions, which are singly necessary and together sufficient. First, the good must be such that to be under a duty to transfer it to someone else does not violate its nature. Suppose that you fall in love, unrequitedly, with your neighbour and become clinically depressed as a result, so much so that you can find your way back to mental health only if she reciprocates that love. As it stands, you arguably are not leading a minimally flourishing life. Yet, were we to claim that you have a right against her that she give you her love, we would fail to understand that love, just like friendship, must be freely given in order to count as such. To hold her under a duty to love you would therefore be incoherent. Secondly, the good in question must be such that to be under a duty to transfer it to someone else does not violate one's personhood. For in so far as justice is a property of acts committed by persons, it could not require that someone transfer a good to someone else and thereby cease to be a person, on pain of defeating itself.

Cadaveric organs meet both conditions. They meet the first condition, for unlike love, whose nature is such that it can only be given voluntarily, they remain organs whether they are transferred voluntarily or not. They also meet the second condition, in that one can be held under a duty to give one of one's organs posthumously, without ceasing to be a person, for the obvious reason that, once dead, one is no longer a person.

Of course, to think of organs as goods, as resources, might sound odd. After all, to point out the obvious, we – or at least most of us – feel more intimately connected to the parts that make up our body than to the objects we use or to the wealth we have. The way we perceive ourselves and form an awareness of our own identity is tightly linked to the realization, formed very early on in our psychological development, that our body is separate from the world which surrounds us. These elementary points take us into the murky waters of the mind–body problem – waters which I cannot hope fully to explore here. So let me take for granted a rather standard view of the relationship between person and body. On that view, self-consciousness and rational agency are necessary, but not

sufficient, conditions for personhood: one must also have, and continually perceive oneself as having, a body which acts as a filter between oneself and the external world. Now, if that conception of personhood is correct, it follows that once we are dead, once, that is, we no longer have the capacity for rational agency, our organs no longer make up the body of a person since there is no longer a person to speak of. However intimate a connection we may have with our body when we are alive, it is false that we have that connection once we are dead. Accordingly, as a would-be organ supplier, I can envision my body being divested of its essential organs without threat to my person.

For the reasons I have just canvassed, cadaveric organs are the kind of goods of which it makes sense to say that the sick can have a right to them. I now have to show that they do indeed have such a right. My argument is as follows. An advocate of distributive justice who believes in the moral importance of ensuring that people lead a minimally flourishing life is claiming the following: ‘Some people do not lead a minimally flourishing life, for they lack material resources. In cases where they lack such resources through no fault of their own, for example through being born in a certain family or social class, they have a right to the material resources of which the well off have a surplus; more specifically, they have a right to a decent income, housing and health care, by way of taxes on that surplus.’ That argument rests on three considerations: (1) the fact that some resources are needed to render a life minimally flourishing, the provision of which ought to be protected by a right; (2) how one came not to lead a minimally flourishing life; (3) how to fund the help the needy should receive. In what follows, I argue that all three considerations can justify conferring on the sick a right to the organs of the now-dead healthy.

To start with the first consideration, it seems obvious that unless one has access to housing and income, as well as access to health care when one is ill, one will not be minimally autonomous, and one will not achieve well-being; consequently, one will not lead a minimally flourishing life. It is important to note, here, that advocates of distributive justice do not claim that every individual has a right to all the resources he needs to lead a minimally flourishing life, no matter what. With respect to health care, the point bears stressing. As a matter of fact, welfare states do not guarantee free medical treatment to whomever needs it, no matter how serious their condition. Indeed, quite often, medical resources are geared to treating *more* needy individuals, and not the neediest. In other words, welfare states guarantee that medical needs will be met, but only up to a certain level. Similarly, advocates of needs-based distributive justice claim that each patient has a *prima facie* right to the resources necessary for his medical treatment, a right, that is, which ought to be respected, barring weighty considerations to the contrary such as the fact that resources are very scarce, that it might be better, at the bar of justice, to treat many more, but less urgent needs, etc. More specifically, each patient has a *prima facie* right to the material resources required by the transplant operation he needs, unless other individuals have a weightier claim.⁵

Now, someone whose kidneys are failing and who needs to undergo a dialysis several times a week does not lead a minimally flourishing life any more than someone who has

⁵ I am grateful to Albert Weale for insisting that I elaborate on this point. Incidentally, it pays to note that a reciprocal approach to justice, whereby we undertake to help one another meet our needs, up to a certain level, is compatible with the claim I make here. That is, justice so understood may well require that we undertake to devote *some* material resources to meeting the needs of transplant patients, although not all of them as and when they arise (precisely because resources are scarce, or because we might have to give some priority to the less urgent needs of a greater number of individuals, etc.). If so, then justice so understood would require of us that in some cases at least we undertake to transfer our body parts, posthumously, to those who need them.

hardly any money and whose whole existence is geared towards satisfying his most basic needs does. Someone whose heart and lungs, or liver, are failing and who will die unless he gets a transplant has equally bleak prospects as someone who will die of starvation unless he gets food. Someone who is totally blind as a result of cornea failure lacks a fundamental resource and consequently can take up far fewer opportunities than someone who is not: for example, she cannot take up a whole range of aesthetic projects, nor can she relate to her loved ones in ways she may want to.

Notice that I am not saying that we always need all our organs in order to be autonomous and to achieve well-being. Indeed, some blind people, or some patients on dialysis, would argue that they do pursue a conception of the good life with which they can identify. Analogously, some individuals actually do not need the material resources most of us do in order to lead a minimally flourishing life. However, just as we should regard as reasonable a very poor person's claim that her life is not minimally flourishing as a result of her extreme poverty, we should regard as reasonable a claim made by blind person, or a person without functioning kidneys, that her life is less than minimally flourishing as a result of her condition. The fact that some disabled people are used to their disability does not undermine the point that it is reasonable for people who suffer from that condition to regard it as a disability, rather than as an inconvenience.

To be sure, it does not follow from the fact that someone has a disability that he has a *prima facie* right to get treated for it. Some theorists of distributive justice claim that those who are responsible for their neediness do *not* have a claim to help at the bar of justice. Others, by contrast, argue that the needy should get help whether or not they are responsible for their predicament. This is a hotly debated issue, on which I need not take a stand for the purpose of this article. It suffices for that purpose – and this is the second consideration – that those who are not responsible for not leading a minimally flourishing life have a *prima facie* right to be helped. If that is correct, then it offers a reason for conferring on the sick a *prima facie* right to the organs of the dead, since the distribution of organs is often a matter of brute luck. Indeed, people are often not responsible for developing lung cancer, for kidney or liver failure, for being blind, for suffering from a very weak heart, in short, for needing organs. By the same token, given that people are often not responsible for needing a transplant, they should not be left to suffer.⁶

Finally, to advert to the third element of the theories of distributive justice under study here, it is claimed that the needy's right to material resources is a right held against the well off that the latter divest themselves of part of their own surplus of resources, by way of taxation. When unpacking more precisely what 'taxation' means, in that context, advocates of distributive justice do not regard income tax as the only way for the needy to have access to the well off's resources. Taxes on inheritance have an important role to play to that effect. Note, incidentally, that there are two conceptions of such taxes in the relevant literature. The majority of advocates of distributive justice argue that inheritance should be subject to a special tax. Others, by contrast, reject estate duties, and claim (a) that inheritance should be included in the tax base of the heir, and (b) that bequests should not give rise to tax deduction, pre-death, for the donor. Both conceptions hold that there is no reason to exempt inheritance from taxation, on the twofold grounds that to leave

⁶ Note that I only argue for a *prima facie* right to the organs of the dead: the facts that someone needs an organ and is not responsible for his condition may not suffice to confer on him a right to it. Other considerations, such as his prospects for recovery, can be brought to bear on a decision to give him, or as the case may be, deny him, the organ.

donors free to bequeath their wealth as they wish has a negative impact on the prospects of the needy, and that there is something unfair in granting the heir full, unrestricted access to wealth simply in virtue of his connection to the deceased.⁷

Whichever conception of financial restrictions on inheritance is the correct one, the important point here is that many advocates of distributive justice deem it just that the needy should have access to some of the material resources left by the dead.⁸ Accordingly, they argue that heirs should pay estate duties on what they inherit or are bequeathed, even if they would lose family heirlooms of sentimental value as a result of not being able to pay the duties. But by the same token, they must deem it just that the sick – who are a subset of the needy – should have access to the organs left by the dead, absent other sources of organs such as cloning or xenotransplantation. For consider. Just as to leave individuals free to bequeath their wealth to their friends and relatives contributes to preventing the needy from getting the material resources they lack, to leave individuals free to ask their next-of-kin to have their body buried or cremated intact is to deny the sick access to the bodily resources they need. Just as to allow individuals to inherit wealth without restrictions amounts to subjecting the needy to the bad brute luck of not being related to the deceased, to allow individuals to withhold the organs of their next-of-kin from the sick amounts to denying the latter access to the organs of the deceased and thereby to subjecting them to the bad brute luck of not being related to him.⁹

To recapitulate, I posit the following: we all have an interest in having a minimally flourishing life; that interest is important enough to be protected by a right to the surplus of material resources left by the well off and which we need in order to lead such a life, by way of taxation and in particular of financial restrictions on inheritance; we also need bodily resources to lead such a life and, in many cases, lack them through no fault of our own. If these points are correct, they are good grounds to confer on the ‘medically poor’

⁷ For the claim that inheritance should be subject to a specific tax, see, e.g., Bruce Ackerman and Anne Alstott, *The Stakeholder Society* (New Haven, Conn.: Yale University Press, 1999); David Haslett, ‘Is Inheritance Justified?’ *Philosophy and Public Affairs*, 15 (1986), 122–55; Mark L. Ascher, ‘Curtailing Inherited Wealth’, *Michigan Law Review*, 86 (1990), 69–151; Julian Le Grand, ‘Markets, Welfare and Equality’, in Julian Le Grand and Saul Estrin, eds, *Market Socialism* (Oxford: Oxford University Press, 1989); Julian Le Grand and David Nissan, *A Capital Idea: Start-Up Grants for Young People* (London: Fabian Society, 2000); Michael B. Levy, ‘Liberal Equality and Inherited Wealth’, *Political Theory*, 11 (1983), 545–64. For the view that inheritance should not be subject to a specific tax, see Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford: Oxford University Press, 2002), chap. 7. In the remainder of this article, I use the phrase ‘having a right to inherit’ to mean that someone has a right to inherit an estate, or, so to speak, the care of a dead body, irrespective of the wishes of the deceased. The right to inherit so defined is thus different from the right to receive bequests, which is conferred on the heir in virtue of the wishes of the deceased. I use the word ‘inheritance’ to denote both ways of transferring rights over estates and bodies. Note, finally, that I am committed neither to the claim that taxing inheritance is the only way in which we can bring about economic justice nor to the claim that taxing inheritance should only serve to achieve that end.

⁸ The political philosophical literature on inheritance taxes clearly focuses on their beneficiaries, that is, on those who are worse off, or needy, simply because they were born in a poor family. By contrast, in our public culture, such taxes are understood as a way to prevent the already well off from acquiring even more advantages. Indeed, their revenues are channelled to the state’s overall budget, not to welfare programmes. But the reason why it is legitimate to prevent the well off from becoming even richer is precisely that others suffer the bad luck of being born in poverty; accordingly, there are good reasons to earmark inheritance taxes towards helping the needy, along the lines suggested by Ackerman and Alstott in *The Stakeholder Society*.

⁹ Incidentally, the analogy I draw here between the posthumous disposal of wealth and that of body parts applies, *mutatis mutandis*, to theories of justice which regard transfers, not as a duty the wealthy have to the poor, but as an insurance system whereby we all undertake to help meet one another’s needs. On that view, estate duties are one way to fulfil that contract; by analogy, or so I would claim, so is the coercive transfer of body parts.

a right to the organs of the ‘medically rich’, to wit, of those who, being dead, no longer need their organs.

In the next section, I shall explore some disanalogies between the posthumous transfer of resources and the posthumous transfer of rights. Before I do, however, a couple of loose ends need tying. First, one might think that it would be unfair to confiscate the organs of a poor, dead individual, against his *antemortem* wishes, so as to help a wealthier transplant patient. For the former, after all, died materially worse off than the latter. Were his organs to be confiscated, not only would he be materially worse off than the transplant patient, which is unjust; he would also suffer the additional injury of not having his *antemortem* wishes respected. I do not think that unfairness would arise in this case. For at the outset of this article, I assumed that justice does not require that material equality obtain. Accordingly, the fact that the deceased donor was materially worse off in his lifetime than the patient is not unjust, provided that he had the material resources to which he was entitled at the bar of justice. And indeed, he did have them, since, as I also assumed earlier, individuals do fulfil their obligations towards one another, and therefore do promote the needy’s welfare rights to those resources. In so far, then, as it is not unjust for the deceased not to have had as much by way of resources as the transplant patient, it is not unfair that he should be asked to help him posthumously against his wishes (pending a response, which I offer in the following sections, to objections to the contrary).

Secondly, my argument for the confiscation of cadaveric organs is *not* an argument for the view that the state has a right to appropriate the organs of the deceased for the greater good of society. The point cannot be stressed strongly enough. Opponents of the confiscation of cadaveric organs usually assume that one can only defend it by invoking the rights of the community and the state over individuals and their body, and often remind us that such was the attitude of totalitarian regimes.¹⁰ As should be clear by now, this fear is unjustified: for one can mount an individualistic defence of the confiscation of cadaveric organs – one which claims that an individual in need of an organ has a right against an eligible procurer that the latter relinquish that organ posthumously, and that the state, in mandating medical staff to take that organ and transplant it, would act on behalf of that sick individual.

QUESTIONING THE ANALOGY

My defence of the coercive taking of cadaveric organs rests on an analogy between the posthumous transfers of rights over an estate and the posthumous transfer of rights over a dead body. However, someone might be tempted to question the analogy, as follows. Arguments for restricting inheritance are usually driven by a concern for the plight of those who happen to be born in a poor family. Individuals who happen to be born in a rich family do not have a right to inherit the whole of their parents’ estate, or so it is often argued, precisely so as to ensure that those who were not so lucky do not fall below the poverty threshold through no fault of their own: financial restrictions on inheritance, thus, are meant to compensate those individuals for their parents’ failure to provide for them, whatever the reasons for such failure. *If* that is so, however (or so might some people be tempted

¹⁰ See, e.g. Robert M. Veatch, *Transplantation Ethics* (Washington, D.C.: Georgetown University Press, 2000), 144–46. For the view that the organs of the dead should be considered as state property, see John Harris, *Clones, Genes, and Immortality* (Oxford: Oxford University Press, 1992), p. 125; and Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994), p. 273.

to object), my assimilation of the transfer of material wealth with the transfer of organs rests on a number of *non sequiturs*. First, financial restrictions on inheritance are meant to restrict *intergenerational* transfers from the preceding generation to the succeeding one which would otherwise result in unacceptable *intragenerational* inequality of prospects for a minimally flourishing life between members of the second generation. The confiscation of organs, by contrast, would operate in a rather different way: in so far as eligible dead suppliers of organs tend to be younger than recipients, it could not be meant always to regulate an intergenerational transfer from parent to child, and thereby to ensure that members of the second generation have prospects for a minimally flourishing life.

Secondly, even when the deceased is older than the average eligible supplier and when her next-of-kin *is* her child, it seems odd to claim that her dead body is *transferred* to her child in the same way her estate is since her child cannot really be said to acquire the right to use her body *as a resource*, whereas she would acquire such a right over her estate.

Thirdly, restrictions on bequests and inheritance apply to all testators and all heirs; by contrast, restrictions on the ways in which we or our relatives can dispose of our body once we are dead only apply to those whose blood type, tissue type and organs match patients' demands: the burden of not being able to bequeath and inherit wealth falls on all testators and heirs, but the burden of not being able to dispose of one's or one's relative's body falls on some people only, and for reasons which are outside their control.

Now, my argument for the confiscation of cadaveric organs is not guilty of the first *non sequitur*. For although most philosophical works on inheritance conceive of it exclusively as a transfer of property from parent to child, such transfers may and do in fact occur between spouses, friends, from child to parents, etc., in short, outside family relationships, between members of the same generation, and from the younger to the older generation. Moreover, when wealth is passed on from someone to her child, this may not only create inequalities between her child and her child's contemporaries: it may also create *intergenerational* inequalities between her child and *her* own contemporaries. On that more complex view of inheritance, the proceeds of financial restrictions on inheritance should be distributed to all those who do not have enough resources to lead a minimally flourishing life. Accordingly, the posthumous transfer of rights over dead bodies from the deceased to their next-of-kin is analogous, in that particular respect, to the posthumous transfer of rights over estates from the deceased to their heir.

Nor, furthermore, is my argument guilty of the second of those *non sequiturs*. To be sure, it is true (as that *non sequitur* claims) that allowing the next-of-kin to dispose of his parent's body cannot really be couched as permitting a transfer of resources to take place. However, the salient issue, in discussions of inheritance, is not so much transfers of resources; rather, it is the issue of *rights of access* to resources. Critics of unrestricted inheritance argue that the heirs of the well off are not morally entitled to have privileged access to their parent's wealth, given that others, who are not lucky enough to be born and raised in a rich family, need extra resources to meet their needs. By the same token, they are committed to the view that the next-of-kin of the deceased are not morally entitled to have privileged access to their parent's body, given that others, who are not so lucky as to be related to an eligible supplier, need the organs of the deceased in order to lead a minimally flourishing life, let alone to survive.

Finally, my argument is not vulnerable to the third *non sequitur* claim. That claim, you may recall, holds that the burden of not being able to bequeath and inherit wealth entirely as they wish falls on all testators and heirs. By contrast, the burden of not being able to dispose of one's or one's relative's body only falls on eligible suppliers or on their relatives,

and for reasons based on biological factors which are outside their control. It is unfair, or so the objection goes, to hold the eligible suppliers under a duty to relinquish their organs, simply because they suffer the misfortune of being compatible with a patient. (The same point, obviously, could be raised in relation to the next-of-kin's duty to release the organs of the deceased.) By contrast, such considerations of fairness do not arise in relation to financial restrictions on inheritance.

I do not think that the objection holds. For consider. Advocates of restricted inheritance are not solely concerned with inequalities of prospects resulting from the unequal transmission of wealth. They are also concerned with the fact that, irrespective of how others are doing, some people are needy through bad brute luck, full stop. And most often, it is their concern with neediness *per se* which leads them to condemn inequalities of prospects.¹¹ This non-comparative understanding of the poor's claim to the proceeds of financial restrictions on inheritance opens the door to a non-comparative understanding of testators and heirs' duty to help. A good reason why a tax should be levied on part of their estates, as a contribution to helping the needy, is not merely that they all happen to have an excess of resources which the needy lack; it is also that they *each* find themselves in a better position to help the needy, independently of the fact that they all are in such a position.¹² Furthermore, generally, the fact that we may find ourselves in a position to help someone for reasons beyond our control whilst others cannot help at all, or cannot help as much, does not exempt us from a moral duty to help.

Consider a familiar case: S is about to leave the beach and go home, when he suddenly realises that someone, D, is drowning. As it happens, and for reasons beyond his control, S is the only person who can save D (no one else can swim, or S is much closer to D than anyone else and can get there in time, etc.) If S were to refuse to help D on the grounds that he should not incur a cost simply because, for entirely arbitrary reasons, he is the only one in a position to help, he would be guilty of a very serious wrongdoing. Very few people, or so I submit, would deny that. I would go further, and claim that, in so far as what is at issue is a matter of controlling a scarce good – in that instance, the use of S's body – and in so far as concern for D's life underpins S's duty to help, S is not merely acting immorally, he is acting unjustly.¹³ Accordingly, I do not see why it would be unfair to hold a potential organ supplier under a duty to relinquish his organs posthumously even though he would thereby incur a cost, for reasons entirely beyond his control, which other individuals would not incur: to each according to his needs, from each according to his abilities, irrespective of other people's abilities.

Notice that I have not denied that there is a difference between holding someone under a duty to relinquish a part of his or his relative's estate, and holding him under a duty to relinquish his or his relative's organs. In the former case, he is not asked to do anything

¹¹ Thus, whilst Ackerman and Alstott claim, in *The Stakeholder Society*, that inheritance taxes should serve to bring about equality of opportunity, in fact they are mostly concerned with ensuring that every single American be able to implement a meaningful conception of a good life, irrespective of his or her social and familial background. If all Americans were able to do so, Ackerman's and Alstott's proposal for restrictions on inheritance would lose much of its force.

¹² For the distinction between comparative and non-comparative distributive principles, see Joel Feinberg, 'Noncomparative Justice', *Philosophical Review*, 83 (1974), 297–338.

¹³ I defend this claim in my 'Good Samaritanism and Justice', *Critical Review of International Social and Political Philosophy*, 5 (2004), forthcoming. Of course, as Sue Mendus pointed out to me, if one takes the view that, if we have a claim to anything, it must be a claim to the disposal of our own body, such that we are *not* under a duty to come to someone else's rescue, then one will disagree with everything I have said so far. As I have argued elsewhere, such a view is implausible. See my 'Justice and the Compulsory Taking of Live Body Parts', *Utilitas*, 15 (2003), 127–50.

which other individuals in possession of a similar good (to wit, wealth) do not also have to do. In the latter case, he is asked to help, even though other individuals are also in possession of a similar good (to wit, an organ needed by a transplant patient). And yet, this need not pose a problem of fairness. Consider expropriation. As a matter of fairness, property-owners who are expropriated ought to, and indeed do, receive compensation from the community. Similarly, organ suppliers ought to be compensated for making their or their relatives' organs available posthumously, out of a scheme funded by all taxpayers.¹⁴ Granted, it would not solve the problem entirely since for some people, one can plausibly surmise, receiving compensation would not make up for the fact that they had to relinquish their control over their, or their relative's, dead body. However, similar considerations arise in relation to compensation for expropriation: many property-owners who have to relinquish a cherished estate do not think that compensation really remedies their loss.¹⁵ Such considerations are not *always* strong enough to warrant not expropriating property-owners from their estate; similarly, they are not always strong enough to warrant exempting individuals from a duty to make their, or their relatives' cadaveric organs available to the sick. (As I shall argue in the final section, though, such considerations are sometimes relevant.)

In short, then, just as the well off do not have a right to dispose of their wealth posthumously as they wish, and just as their heirs do not have the right to inherit their estate in full, the healthy do not have the right to dispose of their dead body, posthumously, as they wish, and nor do their next-of-kin have that right. However, absent further qualification, this *in itself* does not entail that the sick have a right to the cadaveric organs of the healthy. Consider, once again, standard arguments for financial restrictions on inheritance. The fact that the well off cannot dispose of their estate as they wish, and that their heirs cannot inherit it in its entirety, does not entail that the poor have a right to the specific parts that make up the estate; they do not, for example, have a right to the house of the deceased, or to whatever paintings, jewels and market shares he may have owned. They only have a right to the monetary equivalent of a share of the estate. By the same token, could one not allow the relatives of the deceased to keep her body in its full integrity provided they pay body duties on it? On that proposal, just as the heirs of a rich person are entitled to keep her estate provided they can pay taxes on it, the relatives of the dead should be entitled to dispose of the latter's body as they wish provided they can pay body duties.

However, the proposal is highly problematic, since it does not take sufficient account of the possibility that the only eligible donor for a given patient might be a dead person – call her Mary – whose relatives are unwilling to renounce their rights over the body in exchange for not paying taxes on it.¹⁶ If, then, Mary happens to be the only eligible supplier

¹⁴ There are various ways of setting up the scheme: the state could, for example, relax financial restrictions on testators and/or heir if the former do not turn out to be eligible donors; if they turn out to be eligible donors, one could deduct the compensation from taxes on inheritance, etc. I need not go into details here.

¹⁵ It is important to bear in mind that I have in mind expropriation for the sake, not of securing a public good, but of helping some needy individuals. In the former case, property-owners can be said to benefit, in some way, from being expropriated; in the latter case they cannot, which strengthens (but does not render bullet-proof) their complaint that the compensation they receive does not really make up for their loss. (For the view that expropriation can be used by the state to realize any goal on which the legislative has authority to legislate, which may include bringing about distributive justice, see Bruce Ackerman, *Private Property and the Constitution* (New Haven, Conn.: Yale University Press, 1977).)

¹⁶ A similar problem bedevils another proposal for the procurement of organs, to wit, the proposal that individuals who express the wish to be buried or cremated intact will not have their organs taken away from them posthumously, but thereby forgo any claim to receiving an organ transplant should they need one. Such a proposal

for a patient who has been on transplant waiting lists for a while and who is extremely unlikely to find a compatible supplier before his condition starts deteriorating, her relatives should not be allowed to decide what should be done with her body, nor should her wish expressed while living to be buried or cremated intact carry weight (unless, as I shall argue in the final section, for her not to be buried or cremated intact would render her or her next-of-kin's life less than minimally flourishing).

To recapitulate, none of the aforementioned *non sequitur* claims undermines my case for the confiscation of cadaveric organs. This is not meant to imply, of course, that the fact that one is in a position to contribute suffices to be held under a duty to do so. Considerations such as the cost of contributing have to be taken on board: to these I now turn.

FURTHER OBJECTIONS

My argument for the claim that, just as the poor have a right to decide what to do with the wealth of the wealthy, the sick have a right to decide what to do with the organs of the dead, presupposes that organs and material assets are not relevantly disanalogous. In the last section, I dispelled some worries about assimilating the posthumous transfer of rights over wealth and the posthumous transfer of rights over organs. In this section, I assess arguments grounded in non-conscientious and conscientious reasons to the effect that organs, unlike wealth, are such that they simply cannot be taken away from individuals without their, or their next-of-kin's, consent.

By conscientious reasons, I mean reasons informed by religious or moral views such that for their holders not to be able to live by them would render their life less than minimally flourishing. In the first section, I assumed that justice cannot require that people help others at the cost of their own prospects for a minimally flourishing life. Here, I shall develop that assumption and argue that non-conscientious objections cannot, but that conscientious objections can, justify exempting individuals from a duty to make their organs posthumously available to the sick. Note that in this section I only deal with arguments against the confiscation of cadaveric organs which do *not* assume that the status of the dead is comparable to that of the living, that the dead, for example, have feelings, influence our life, are influenced by us, etc.¹⁷ Indeed, I could not hope to do justice, within the scope of this article, to the complicated question of how to solve conflicts between competing conceptions of the ontological status of the dead.

Before I start, it is worth noting that, although I shall focus on individuals' presumed posthumous interest in their own bodily integrity, my points will also apply to the next-of-kin's interest that his deceased relative be buried, or cremated, intact.

Non-conscientious Objections

The most important objection against the compulsory postmortem taking of organs invokes the commonly held view that individuals have interests which, unlike their interests in, say, experiencing the intellectual joys of literature, the sensual delights of great food and the relief of mindless television, are crucial to the way their life is going, and can, and must, be respected posthumously unless they indicate otherwise. Interests in autonomy and

(F^{note continued})

would work well within the framework of justice as reciprocity: if I decide to opt *out* of the mutual aid contract, I forfeit my right to receive help. And this would apply both to tax and organ transfers. However, on that proposal too, a patient in need of an organ will not receive a transplant if the only eligible donor had indicated that he wanted to be buried or cremated intact.

¹⁷ For an excellent account of the challenges posed to liberalism by the view that the dead have that kind of status, see Tim Mulgan, 'The Place of the Dead in Liberal Political Philosophy', *Journal of Political Philosophy*, 7 (1999), 52–70.

bodily integrity, the objection goes, are such interests: if we are committed to respecting people's autonomy, we have to respect their bodily integrity, even posthumously; accordingly, we have to confer on them a posthumous right *not* to grant others access to their body, however much the latter might need organs.¹⁸

Now, let us assume, for the sake of argument, that we can have posthumous interests, and that we therefore can have posthumous rights.¹⁹ Let us also assume that, unless we indicate otherwise, we do have posthumous interests in our bodily integrity and autonomy. Can one argue that we have a *right* that those interests be protected against people who need organs? I do not think so. After all, we do not always have a right that our wishes concerning the care of our dead body be respected. Consider the following scenario: John states in his will that he wishes not to be buried in a coffin but, rather, directly in the soil on the bank of his favourite stream. However, he dies of a very contagious illness, so much so that if he were buried there, his body would contaminate the stream, which in turn would seriously harm the farmer who lives nearby and who relies on its water for drinking, washing and cooking purposes: under the circumstances, cremation would be the most appropriate way to dispose of his body. In the face of the harm which would be incurred by the farmer, I cannot think of any plausible argument to the effect that John's wish to be buried there should be honoured. Similarly, in the face of the harm which the medically needy would incur if we decided to withhold our organs from them, one cannot, I think, plausibly defend the view that we have a right that our bodily integrity be preserved if we so wish, *on non-conscientious grounds*.

Many might be tempted to object to the foregoing point as follows: in John's case, his wish to be buried by the stream, if deferred to, would *harm* the farmer; by contrast, someone's decision to withhold their organs from transplant patients does not harm them, but only *allows* harm to happen to them.²⁰ Whereas the farmer has a negative right against John not to be harmed by him, transplant patients only have a positive right against a potential organ supplier to be helped by him. In so far as positive rights are weaker than negative rights, the correlative obligations they impose on others are weaker. In the present context, those positive obligations to give help are overridden by potential suppliers' interests in bodily integrity and autonomy.

The thesis that there are conceptual and moral differences between harming someone and allowing harm to happen to them is a familiar one. So is the thesis, which is often thought to derive from it, that negative rights not to be harmed are stronger than positive rights to be helped. Note, though, that neither thesis is relevant in the present context: for my case in favour of the confiscation of cadaveric organs is targeted at the advocate of distributive justice, who believes, *ex hypothesi*, that the fact that the well off, in withholding material resources, do not harm the needy but only allow harm to happen to them does not

¹⁸ See, e. g., Veatch, *Transplantation Ethics*, chap. 9, esp. p. 160. That view, note, is compatible with the claim that autopsies can be carried out without the *antemortem* consent of the deceased if it holds that *actual* consent is not required for a mutilation to be legitimate. *Hypothetical* consent, together with the existence of a good reason for carrying out an autopsy, may suffice, for one may plausibly think that the deceased, when alive, would have agreed to be autopsied in the event of a suspicious death. Notice, moreover, that if the objection under study holds that *tacit* consent, together with a good reason for taking organs, suffices to render a mutilation legitimate, then it is compatible with opt-out schemes whereby organs are taken from the deceased unless she has explicitly expressed the wish to be buried or cremated intact.

¹⁹ For a defence of that view, see, e.g., Joel Feinberg, *Harm to Others* (Oxford: Clarendon Press, 1984); Barbara Levenbook, 'Harming the Dead, Once Again', *Ethics*, 95 (1985), 162–4.

²⁰ This objection was put to me at a seminar in Bristol.

constitute strong enough a reason not to hold the well off under a positive obligation to help the needy. In order to justify conferring on the needy a right to the material resources of the well off, blocking John's request to be buried by the stream *and* denying the sick a right to the organs of the dead, the advocate of distributive justice would have to point to some morally relevant difference between helping someone with material resources and helping someone with organs. *That* is the salient issue.

I can think of two non-conscientious arguments which such an advocate might deploy. First, she might point out that many people do experience understandable feelings of disgust and repugnance at the idea that their body will be cut up and dismembered or that their organs will be used by other people. ('I find the idea of my heart beating in someone else's chest difficult to accept!', or 'I do not like the idea of someone else breathing through my lungs!', or 'The very idea that my kidneys will clean up someone else's body is disgusting!', etc.) By contrast, or so she might claim, people do not feel disgust at the idea that their wealth will be posthumously transferred to the poor.

Now, I concede that those feelings of disgust may be very strong indeed; still, they do not constitute a good reason for acceding to someone's demand that his body be buried or cremated intact. For to claim that they do amounts to claiming that potential suppliers' interest in not experiencing strong disgust overrides the interest of the sick in living a minimally flourishing life, indeed in remaining alive. I do not see how one could justify putting so high a premium on living a squeamishness-free life in the face of such urgent needs.²¹

Secondly, the advocate of distributive justice who opposes the confiscation of body parts might be tempted to argue that one must treat the body with respect on pain of not treating individuals themselves with respect. After all, she might go on, the overwhelming majority of people feel very strongly about, for example, thugs who desecrate graves and exhume interred bodies, about soldiers and militia men who mutilate their dead enemies' body, about murderers who disfigure their victims knowing that they are already dead, etc. To be sure, she would concede, there is a crucial difference between mutilating someone's dead body as a sign of contempt, and taking their liver to save someone else's life. Yet, the fact remains that there is a strong connection between respecting someone's body and treating them with respect. And indeed, many parents whose dead children's organs were taken away by doctors in a British hospital for medical purposes, unbeknownst to them, did say, precisely, that: their children themselves had been violated.²²

By way of reply to this objection, let me say that although the mandatory taking of organs from the dead does indeed evoke, to many people, grave desecrations and posthumous mutilations, the fact that the former is motivated by a wish to save other people's lives whilst the latter is motivated by contempt for them is absolutely crucial. To stress the obvious, to take someone's liver from their body does not in any way amount to a desecration, when done for transplant purposes. And indeed, transplant teams often speak of their tremendous respect for the individuals whose organs they are using. To put the

²¹ It has been objected to me that non-conscientious objections may carry more weight than I give them here, even though they are neither moral nor religious. And indeed, there are non-moral or non-religious things the loss of which would make our life go badly. However, it strikes me that, when it comes to the posthumous disposal of their body, most opponents of confiscation press the kind of reasons which I study in the text here. These reasons, I maintain, are not strong enough in the face of the needs of transplant patients. I am grateful to Sue Mendus for pressing me on that point.

²² I am grateful to David Miller for pressing that objection. For accounts of the Alder Hey hospital scandal, to which I am referring here, see *The Guardian*, 30 January 2001.

point more generally, even if it is true that respecting someone posthumously requires respecting their body posthumously, it is false that to take away body parts from the body of the deceased, against their wishes, always amounts to disrespecting the body itself, and thereby the deceased: intentions and aims *do* matter.

The foregoing points are unlikely to succeed against those who believe that the body is sacrosanct, and that its parts should never be used, against one's consent, for the sake of helping someone else. Against that view, though, there is rather little that can be said, except that it is unclear why bodily integrity should be given such overriding importance, posthumously, in the face of other people's needs. To be absolutely clear: I do not wish for a second to deny that many people do indeed feel strongly about the use of their body after death; nor do I wish to dismiss such strong feelings out of hand. In fact, I would surmise, quite plausibly, that no existing democratically elected government wishing to implement my proposal for the confiscation of cadaveric organs would get enough public support to do so. Be that as it may, it nevertheless remains the case, or so I argue here, that *justice* requires conferring on the sick a right to the cadaveric organs of the dead, in cases where the latter, whilst alive, did live a minimally flourishing life even though they knew they might end up having to relinquish their organs after death. Assessing whether one should bring about justice or defer to the wishes of citizens, that is, solving conflicts between democracy and justice, is beyond the scope of this article.

Conscientious Objections

In the previous subsection, I rejected arguments grounded in non-conscientious reasons against the view that the sick have a right to the organs of the dead. In this subsection, I examine the claim that conscientious objectors to postmortem organ donation should be exempt from a duty to supply organs. One deploys a conscientious objection to having one's organs removed posthumously, or to one's relative's organs being removed, when one can show, convincingly, that the objection is grounded in deeply held religious or moral beliefs, such that one's life would be rendered less than minimally flourishing if one's body, or that of one's relatives, were not left intact. For example, some people think that the body must be preserved in its integrity so as to be prepared for the day when the righteous will be, literally, resurrected; that the human body belongs to God, and that it should not, therefore, be dismembered by other human beings. Conscientious objections tend to be religious but need not be so: non-religious persons may very well wish to have their body preserved after their death, and their wish may very well be absolutely central to their life, so that if it were not fulfilled, their life would be less than minimally flourishing. Such was the case, perhaps, with Jeremy Bentham.²³

It is crucial to stress that those objections must be grounded in genuinely moral and religious beliefs. Thus, a claim, expressed nowadays, such as 'I cannot lose some of my organs, such as my heart, after I am dead, because I am Jesus Christ, and must be in a condition such as to be resurrected' would not pass the test; for it is an irrational belief, held by a mentally unbalanced individual, which is not genuinely religious but which merely takes a religious shape.²⁴ Moreover, in order to pass the test, such a belief must pertain to the very act of losing organs posthumously: as a moral or religious belief, it

²³ I owe this point to G. A. Cohen.

²⁴ I am not suggesting that we can take organs from such a person once he is dead. Indeed, the knowledge that he will not die in a condition such as to be resurrected might aggravate his mental illness, and this is a good reason

cannot invoke the unworthiness of potential recipients of one's organs. This rules out, for example, arguments along the lines 'It is a central principle of my ethical life that black people are impure, I simply cannot stand the thought that organs might be transferred to a black person. Thus I refuse to have my organs confiscated posthumously, lest they should end up in a black person's body.' (Incidentally, current practice, at least in Britain, rules out making the gift of an organ conditional upon its potential recipient's race.) The reason why those beliefs, which may indeed be absolutely central to their holder's life, should be ruled out, is that they violate the idea of fundamental equality, which this article takes for granted, whereby individuals have equal moral status, and should treat one another accordingly.²⁵

Thus, it is not enough, for a moral or religious belief to ground a weighty conscientious objection to the posthumous confiscation of organs, that it be central to one's life in the way suggested two paragraphs ago. But if a belief has that central importance *and* neither rests on false claims nor violates fundamental equality, then it should carry some weight. In the first section, I posited that individuals have the right to be given the material resources they need in order to lead a minimally flourishing life, provided that the better off would not lead a less than minimally flourishing life as a result of having to give them those material resources: I assumed, in keeping with standard morality, that there are certain sacrifices that one cannot expect people to make for the sake of helping others. Accordingly, just as individuals should be allowed not to do their military service on conscientious grounds, they should be allowed not to have to make their organs available posthumously, on similar grounds. Note, incidentally, that there is a difference between not doing military service and not making one's organs available. In the former case, one fails to participate in the joint production of a public good, of a good, that is, which, if it is provided to some members of a group, cannot be withheld from other members of the group, whether or not they contribute to its production. In the latter case, one fails to help someone in need. Whilst a healthy population is a public good, providing organs for transplants to a few thousands, at least in rather large countries such as Britain, let alone the United States, is not. Accordingly, failure to contribute one's organs in such cases does not constitute a failure to contribute to the production of a public good.

The difference between the two cases is relevant to the issue at hand, for the following reason. The most powerful objection against exempting conscientious objectors from military service is precisely that they are free-riding on others' willingness to provide a public good. But this objection does not apply to exemptions from the duty to make one's organs available posthumously, since securing organs to those who need it is not a public good. Thus, if that objection is false, if, that is, it is enough for objectors to be exempt from military service that they can invoke conscientious reasons for not going to the army, even though they benefit from others' contribution to national defence, it should be enough for objectors to be exempt from the duty to make their or their relatives' organs available.

At the close of the second section, I rejected the view that individuals should be allowed to pay body duties so as to buy themselves or their deceased relatives out of a duty

(F'note continued)

for exempting him from a duty to donate. Rather, I am claiming that his would not be a conscientious objection to the confiscation of cadaveric organs.

²⁵ I am assuming there that to deny an organ to someone who needs it through no fault of his own does not constitute a violation of the requirement that we should treat one another as having equal moral status. Some radical egalitarians would take the opposite view; it pays to note, incidentally, that they have not, on the whole, successfully defended it.

posthumously to transfer their organs to the sick, in all cases where the deceased is the only eligible donor for a transplant patient. I undertook there to qualify my rejection here. To recapitulate, then: if, and only if, for someone to be buried or cremated intact is a necessary condition for his leading a minimally flourishing life, she should be exempt from the duty to transfer her organs posthumously. By the same token, if and only if, for someone to bury or have his next-of-kin's body cremated intact is a necessary condition for their leading a minimally flourishing life, they should be allowed to bury or cremate the deceased intact. To be sure, as I pointed out above, cases might arise where the *only* eligible supplier for patient P is a conscientious objector, with the effect that P would die or lead a less than minimally flourishing life. But to reiterate: justice could not require that this particular procurer renounce his prospects for a minimally flourishing life in order to help P.

One final point. Working out the exact details of the policies which would best implement the proposal is beyond the scope of a philosophical paper. It is worth pointing out, however, that the proposal I have just outlined does not amount to justifying opt-out systems that prevail in Continental Europe. For in such systems, one need only express one's wish not to have one's organs removed posthumously in order to be exempt from having to donate: one need not give any reason. Under my proposal, one cannot give just any reason for being exempt from having to donate: it must be the case that to donate would render one's life less than minimally flourishing. (The same point applies to relatives.)

CONCLUSION

To conclude, I have argued that if one thinks that the interest of the needy in leading a minimally flourishing life is important enough to be protected by a right to material resources, by way of taxation in general and financial restrictions on inheritance in particular, one must be committed to the view that the sick have a right to the organs of the dead if they need them in order to lead such a life. To put it differently, the living cannot, and do not, have a right to dispose of their body as they wish posthumously; nor do their relatives have that right.

The foregoing, of course, raises the question of *antemortem* cases: if my argument works after death, does it not work during life too? Not necessarily: it clearly does not follow from the fact that we have a duty to make our organs available posthumously that we have a duty to do so whilst still living. For obvious reasons, in most cases,²⁶ having parts of one's body taken away when alive is more burdensome than having them taken away after death. Accordingly, objections to the former may well arise that do not apply in the case of the latter. Having said that, I do think – and argue elsewhere²⁷ – that those objections can be dealt with. Even if I am wrong, in so far as those objections do not apply to the confiscation of cadaveric organs, and barring rebuttal of my arguments against the objections that do apply to it, my defence of the view that the sick have a right to the organs of the dead survives. To be sure, as we saw, some individuals will be exempted from a duty to donate.

²⁶ Not in *all* cases though: it is perfectly conceivable to think that donating a liver lobe is less burdensome whilst alive than once dead. Suppose that you very strongly believe that you must be buried intact in order to be resurrected by God, and that such belief is central to your life. If a liver lobe is taken from you whilst you are alive, you liver will have (in all likelihood) regenerated itself before you die. But if a liver lobe is taken from you once you are dead, your liver will not regenerate itself. In the light of your religious beliefs, having to donate a liver lobe once you are dead will indeed blight your life, whilst having to do so whilst you are alive will not.

²⁷ See my 'Justice and the Compulsory Taking of Live Body Parts'.

However, the overwhelming majority will not; the qualifications introduced at the close of this article should not blind us to that insight. Nor, more generally, should they blind us to the far-reaching implications of our commitment to the coercively directed distribution of material resources.