

Reply to Wilkinson

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Abstract In his review of my book *Whose Body is It Anyway*, Wilkinson criticises the view (which I defend) that confiscating live body parts for the sake of the needy is (under some circumstances) a requirement of justice. Wilkinson makes the following three points: (a) the confiscation thesis is problematic on its own terms; (b) there is a way to justify coercive resource transfers without being committed to it; (c) the thesis rests on a highly questionable approach to the status of the body. Wilkinson's paper is challenging, and some of his points are well taken. On the whole, however, it does not constitute an insurmountable challenge for my thesis.

Keywords Justice · Rights · Autonomy · Sufficiency · Organ confiscation · Rape

Martin Wilkinson's absorbing review of my book *Whose Body is It Anyway?* (Wilkinson 2007) focuses on two of the controversial theses I defend therein, to wit: (a) if the materially needy have a right against the well-off that the latter transfer some of their income to them, then the medically needy have a right against the healthy that the latter transfer some of their body parts to them; (b) under certain conditions, organ sales are permissible and ought to be legalised.

I will not touch on Wilkinson's critique of the second thesis (which he addresses alongside James Taylor's recent book *Stakes and Kidneys*.¹) Rather, I will endeavour to deal with his critique of the confiscation thesis, to which, in fact, most of his piece is devoted.

¹ Taylor (2005).

Wilkinson challenges my confiscation thesis on the following grounds:

- A. It is problematic on its own terms.
- B. There is a way to justify coercive resource transfers without being committed to it.
- C. It rests on a highly questionable approach to the status of the body.

A. On the first count, Wilkinson charges me for failing to: (1) specify what exactly the right to health care requires; (2) pay due attention to the fact that people sometimes are responsible for their medical predicament; and (3) take proper account of the costs for the healthy of transferring their body parts to the sick. Now, I agree that I do not say whether, for example, the right to healthcare requires that public funds be spent on very expensive drugs whose effect is to raise patients' survival prospects only minimally (p. 329). However, it seems to me that I need not take a stand on this (extraordinarily difficult) issue, for the confiscation thesis to go through. For my aim in the book is not to delineate precise principles for the allocation of resources (bodily or otherwise) amongst those who need them under conditions of scarcity. Rather, it is to show that, *if* the right to health care includes a right to receive a transplant should one need it, then not only does the latter right imply a *prima facie* duty to fund the costs of the transplant (subject to the aforementioned allocative considerations); it must also imply a duty on the part of some healthy individual to provide the needed body part.

And this—or so I argue—without bringing to bear on the conferral of that right considerations such as patient's responsibility for their own (poor) health. Wilkinson takes issue with this point as well. As he puts it, 'organs would be given to people with no claim of justice at the expense of the people whose bodies they came from.' (p. 330). Indeed. But the same can be said of the provision of medical treatment in general: to use Wilkinson's own example, in funding treatment for type II diabetes, one is taking resources away from the well-off to help patients who, on the whole, are responsible (or so Wilkinson avers) for their condition. It is not clear whether Wilkinson is prepared to accept that such treatment therefore should not be publicly funded. I, for one, would not, for reasons adduced in the book (Fabre 2006, pp. 36–38).

Wilkinson is on stronger grounds, I believe, when noting that I do not take sufficient account of the costs, for the healthy, of transferring their body parts to the sick. He points out that the risks attendant on removal surgery (for kidneys and liver) are in fact higher than I acknowledge. This clearly, is a failing on my part. And if the risks are as he states (and I have no reason to think otherwise) then I would be inclined to conclude that the healthy ought not to be under a duty to transfer those body parts.

Which leaves me with the not so radical (in Wilkinson's view) proposal that individuals nevertheless are under a duty to transfer their blood and bone marrow. At this juncture, Wilkinson suggests that donation and/or sale do meet medical needs, and that confiscation is unnecessary. That donation is enough might be true in the case of blood, though I am less confident than he is in the case of bone

marrow.² As for sales, even if it is true that allowing individuals to sell those body parts would meet existing needs, I do not think that this should be preferable to confiscation. As Wilkinson rightly points out, my argument is not clear on this point. However, as I note in Chapter 6, there is a difference between holding individuals under a duty to donate and compensating them for the attendant costs (which is what I endorse), and allowing them to sell. In the latter case, unlike the former, one is allowing them to make a profit from the transfer—a profit, moreover, which would be funded by the state, since the needy, *ex hypothesi*, have a *prima facie* right to receive treatment. At the bar of justice, I do not see how one can justify allowing the healthy so to burden public resources—in those cases at least where the medically needy do have a claim to be helped. Furthermore, even if I am wrong on that point—even if, that is, allowing people to sell their body parts is morally preferable to holding them under a duty to donate, the question of the duty to donate does remain salient in those cases where not enough willing sellers would present themselves.

B. So much, then, for Wilkinson's claim that the confiscation thesis as I defend it is problematic its own terms. The second plank of his critique pertains to the premise upon which the thesis rests, namely the view that the needy have welfare rights against the comparatively wealthy that the latter transfer part of their material resources to them. There is an alternative justification for coercive taxation, Wilkinson notes, which does not commit its proponents to the confiscation of body parts. As he puts it, 'People who take resources out of the common stock owe compensation to everyone else. By contrast, people do not appropriate their own bodies and no problem of justifying appropriation of one's own body arises. There is then no obvious inconsistency in endorsing coercive taxation of material resources while rejecting coerced transfer of body parts or personal services' (p. 332). If Wilkinson is correct, then it is true that the confiscation thesis has a much narrower audience than it seems at first sight, since it only applies, in that case, to those who defend welfare rights by appealing to the moral importance of helping individuals meet their fundamental material needs. Upon closer inspection, however, his challenge is less powerful than he thinks. It is true, of course, that we do not appropriate our body from a common stock. Still, we do depend on social cooperation and thus on other people's efforts, work and deployment of material resources, for the continued growth and health of our body.³ And this, I submit, might well open the door for the view that, just as we can appropriate resources from the common stock provided we compensate others for so doing by way of resource transfer, we can continue to enjoy a considerable degree of control over our own body provided that, when others, on whose cooperation we depend for the growth and health of our body, need some of our body parts, we actually transfer some of those body parts to them.

² At the time of writing, the Anthony Nolan Trust, one of the main UK organisation devoted to bone marrow donation, estimates that there are about 7,000 patients worldwide in need of a donor: a small number perhaps, but from the point of view of justice, why should that matter? See <http://web17110.vs.netbenefit.co.uk/index.php?location=0>.

³ This point is made effectively by Nir Eyal (2009, forthcoming) in his own review of my book.

C. I lack the space fully to develop, and scrutinise, that possible defence of the confiscation of body parts. At this juncture, though, I surmise that Wilkinson would marshal against it his third critique of the confiscation thesis, and claim that they both rest on a wildly implausible view of the status of the body. Even if we need not have sole and full control of our body at all times in order to be autonomous, he claims, ‘so what? May we infringe on someone’s bodily integrity, preventing her having a minimally flourishing life at a particular time, so long as we thereby serve some worthwhile goal and do not preclude a minimally flourishing life on the whole?’ Clearly not: after all, Wilkinson asks rhetorically, ‘Could it then be permissible to rape or torture for the sake of some worthwhile goal so long as the victims have minimally flourishing lives on the whole?’ (p. 334). No, it could not, and by that token, (or so Wilkinson can be taken to imply), we ought not to permit compulsory organ removal. But this is too quick. For as I argue in the book (Fabre 2006, pp. 111–112 and 118–121) there is no conceivable grounds upon which torturing and raping someone is compatible with treating them as persons⁴: by contrast, I surmise that it is possible to hold someone under a duty to donate one kidney (subject to the concession made above regarding costs), some blood, or some bone marrow, *and* to treat them as persons at the same time. But *if* (I also concede) the trauma which people would suffer were they to be forced to donate turned out to be similar to that incurred by rape and torture victim, then they ought not to be held under the relevant duty.

I doubt that any of the above will convince Wilkinson or, indeed, anyone who endorses relatively standard views on the status of the body (which, I suppose, means pretty much anyone.) He and they, would probably say (as in fact he does at p. 333) that if I am right that a commitment to welfare rights implies a commitment to the confiscation thesis, then so much the worse for welfare rights. Perhaps. But it is worth stressing that, in the light of the extreme suffering of the needy, the costs of abandoning welfare rights (and, I still maintain, the concomitant confiscation thesis), would be very high indeed.

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⁴ For a very good account of torture along those lines (which appeared shortly after I finished the book and which I would have invoked had I been aware of it), see Sussman (2005).