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.

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 Italy and 5800 in the UK. 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. 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. 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.

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 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.

One of most infamous is the case of Alder Hey Hospital, 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). 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.

Public inquiry into organ retention resulted in a number of public reports, the first of which was the Bristol Interim Inquiry. 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
Human Organs Transplant Act 1989, which currently represent the relevant legislation. Scotland proposes to introduce separate legislation (M Brazier, The Human Tissue Bill, unpublished). 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.

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 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. 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, a composite of doctrines that had very significant influence on
Greek thought and consequently on the Latin world. Orphism understood the human being as composed of soul and body. The soul is a *demon* (δαμνόν), 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 δρώαν, 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 Jr 31) 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), whereas the Human Tissue Act 1961 only required that the
Is the body a republic?

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 respect 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.” Are they necessarily the best interpreters of the
decreed’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”.) 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”,
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 argu-
ments to maintain that the bodies of the deceased belong to
their relatives.

There are two main arguments against the idea that the
decayed’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”,
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.

** “As in my breast, and now on the cross, I call you ‘My
love’” **

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)” 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. 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. 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
(belonging 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 over-
whelming 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 wellbeing”

“Let us cry louder for those who won’t return”.

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 super-
stitious 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, an 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.

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 psycho-
logical 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.” 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. 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. Some parents
said: “If those organs had been used I would have been
pleased but they hadn’t and it has devastated us”. 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. 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”.

The reluctance to talk about death affects post-mortem
choices in many ways. It affects individuals, who, under-
standably, 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.

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REFERENCES

1 Harris J, Giordano S. Tropi e seconandole, gli interessi delle persone. Il Sole 24 Ore 16 May 1999 (newspaper publication).
8 See reference 6: 51.
9 See reference 6: 44.
37 Human Tissue Bill section 20: 2 [7(b)]; 3 [6(c)]. See reference 20.
46 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 “archetypes”, 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.
48 See reference 44: 690FF.
50 See reference 44: 690–93.
51 See reference 7: 552–4.
Is the body a republic?

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