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RESPONSES AND DIALOGUE

Organ Conscription and Greater Needs

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The Organ Shortage

Since its inception, the institution of postmortem organ transplantation has faced the problem of organ shortage: Every year, the demand for donor organs vastly exceeds supply, resulting in the deaths of approximately 8,000 individuals in the United States alone.[1] This is in large part due to the fact that the United States, for the most part, operates under an "opt-in" policy in which people are given the opportunity to voluntarily opt-in to organ donation by registering as organ donors.[2] In the United States, a person's organs will not be removed for transplantation purposes unless she has registered as a donor or her family gives their consent for organ removal.[3] Jointly, these policies generate a situation where we do not retrieve as many organs as we could.

Other countries, such as Spain and Belgium, have responded to the organ shortage by adopting opt-out policies based on presumed consent. These policies are intended to increase the supply of usable organs by presuming that people have consented to organ donation unless they officially register an objection to donation. However, despite the adoption of presumed consent policies, organ shortage has persisted in Spain and Belgium, as well as in other countries that have adopted presumed consent policies.[4,5,6]

In response to the failure of both opt-in and opt-out policies to increase the number of donated organs, there has been a small trend in the history of bioethics that has advocated for the adoption of a policy of organ conscription as a way to successfully alleviate much of the organ shortage.[7,8,9,10,11,12] There are two kinds of conscription policies. According to a "soft" conscription policy, usable organs are taken automatically at the time of a person's death, unless the person has previously registered a serious objection to donation.[13] By contrast, under a "hard" conscription policy, when a person dies and her organs are usable for transplantation, her organs would be taken automatically and with no exceptions. It is plausible that, all else being equal, a hard conscription policy would be better than a soft conscription policy at increasing the pool of transplantable organs. This is because a hard policy would not in any way be dependent on people's preferences or choices.

In his corpus of work on the subject of organ transplantation and conscription, John Harris has presented what is perhaps the most powerful and convincing argument in favor of a hard organ conscription policy: *the Greater Need Argument.*[14,15] Roughly put, the Greater Need Argument says that we ought to conscript organs because doing so satisfies the more important interests, which are the interests of living people who need organs. As it turns out, the responses that have been leveled against the Greater Need Argument have been unsatisfactory; consequently, this paper presents and defends a novel objection to Harris's argument. After explaining the Greater Need Argument, I will consider a recent reply to it given by Wilkinson[16] and argue that Wilkinson's response is promising but ultimately fails to convincingly rebut the argument. For the rest of the paper, I will develop a new refutation of the Greater Need Argument and respond to some important objections.

The Greater Need Argument for Organ Conscription

Harris's Greater Need Argument takes off from the supposition that the debate surrounding organ conscription boils down to weighing two different sets of interests: the interest that the deceased have

regarding what happens to their organs, and the interest that patients who need new organs have in continued life and the avoidance of death. But, Harris claims, "While such interests [of dead donors] deserve some respect, they are, I would submit, relatively weak when compared with the interests of living persons who exist to be harmed in person by the neglect of those interests."[17] In other words, Harris claims that the interests of the dead are outweighed by the interests of living patients who need new organs to continue living. Harris supports this key premise of the argument by two related considerations. First, when considering what each group stands to lose, we see that living patients stand to lose much more than the dead: "The cadaver donor stands to lose very little, but not nothing… She is dead and past being harmed, except in the relatively trivial sense in which people possess interests that persist beyond their death and which can in some sense be harmed."[18] By contrast, living patients who need new organs stand to suffer perhaps the greatest harm of all: death. Second, the kind of interests that are relevant to morality are what Harris calls "person-affecting" interests, which are interests whose thwarting or respecting can be bad or good for the person whose interests they are.[19] That is, person-affecting interests are those interests that affect a person's well-being negatively or positively. However, since the deceased are, by definition, dead, they no longer exist. Therefore, even if the deceased have surviving interests, the thwarting or respecting of those interests cannot make the deceased better or worse off. By contrast, the thwarting or respecting of living people's interests *can* make them better or worse off because living people exist and can be harmed and benefitted. These considerations support the claim that whatever interests the deceased do have, they are outweighed by the interests that living people have in continuing to live and avoiding death. Call this the Living Interests Claim. Given the Living Interests Claim, one could state the Greater Need Argument in the following way:

(P1) Patients on transplantation waiting lists have a great interest in avoiding death and remaining alive.

(P2) The interest that people have in what happens to their organs after death is outweighed by the interest that living patients have in avoiding death and remaining alive.

(P3) We ought to act in a way that fulfills the more significant interests.

(P4) If organ conscription would fulfill the more significant interests (compared to the alternatives), then we ought to conscript.

(P5) Conscription would fulfill the more important interests (compared to the alternatives).

Therefore, we ought to conscript organs.[20]

The most important premise of the Greater Need Argument is (P2). Accordingly, I will argue that (P2) is false. Before turning to my argument, however, it is worth discussing a well-known response to the Greater Need Argument and how it fails to satisfactorily refute the argument.

Wilkinson's Response to the Greater Need Argument

In his book, *Ethics and the Acquisition of Organs*, T.M. Wilkinson considers and rejects the Greater Need Argument by appealing to what he calls the right of personal sovereignty. The right of personal sovereignty says that "people should be able to make choices over what happens to and how they use their bodies."[21] According to Wilkinson, the right of personal sovereignty includes the right to control what happens to one's body after death because it is one's body and in confronting the Greater Need Argument, he argues that the right of personal sovereignty that people have over their bodies after death is a powerful reason to oppose conscription.[22] Wilkinson's argument depends on the assumption that people can be harmed by events that occur after they die, and if it is true that people can be harmed by events that occur after they die, then people's right of bodily sovereignty can be violated by events that occur after they die. Thus, Wilkinson argues that conscription violates people's posthumous right of bodily sovereignty. Since, as Wilkinson admits, the right to personal sovereignty is not an absolute right, it can in principle be outweighed in certain circumstances by other morally relevant considerations. In

the case of conscription, it may turn out that the interests of living patients outweigh the right of personal sovereignty. We might wonder, then, what arguments Wilkinson puts forward to show that the right of personal sovereignty does outweigh the interest that living patients have in avoiding death and remaining alive. It seems to me that he offers two different considerations.

First, he casts doubt on two arguments that might be used by a defender of the Greater Need Argument in establishing the truth of the Living Interests Claim, that is, the claim that the living interest in avoiding death and remaining alive outweighs whatever posthumous interests regarding their bodies that people may have.[23] However, since these are not direct arguments against the Living Interests Claim, they at most show that the Living Interests Claim needs better defense, and not that the claim itself is false. Wilkinson's second consideration is a more direct argument for the view that the right of personal sovereignty does outweigh the interest that living patients have in remaining alive and avoiding death. Wilkinson highlights the fact that we often do not treat saving lives as a moral concern that must always outweigh other competing goods, interests, or rights. For instance, no country spends all that it can in order to save people's lives and many people engage in risky behavior that could end their lives. If saving lives always outweighed competing goods, interests, or values, then countries should do anything and everything to save the lives of its citizens, and people should not put their lives in jeopardy to enjoy relatively trivial pursuits such as sky-diving or rock climbing. However, it is not the case that countries do everything they can to save people's lives, nor do its citizens generally think that this should be done. In addition, people who engage in risky behaviors do not think that the risk of death is an overriding reason to not engage in the behavior. These are just some cases in which prolonging life does not and should not win out when it conflicts with other goods, interests, or rights. As Wilkinson puts it: "If we are willing to trade lives for what money can buy, we ought to be willing to trade lives for the sake of respecting rights of bodily control. We cannot say, then, that saving lives is so important it simply must have priority over rights."[24] In other words, since other goods and interests sometimes outweigh the prolonging of people's lives, we should also be open to the possibility that people's posthumous bodily rights over their organs do so as well.

While I think there is much to appreciate about Wilkinson's argumentative strategy here, it fails to give us an adequate refutation of the Living Interests Claim, and hence, it does not successfully rebut the Greater Need Argument. For starters, there are important limits to what Wilkinson's examples actually show. Countries and governments do not spend all that they can on saving lives because resources are scarce and an over-expenditure of those resources in one area can significantly thwart living people's important interests in another area. Thus, Wilkinson's example shows that, in one particular case, we do not think that the interest in remaining alive and avoiding death should be prioritized. But it does not follow that this must also be true of the posthumous right of bodily sovereignty. People may have an interest in what happens to their organs, but we need a special reason to think that, in this particular case, the posthumous right of bodily sovereignty outweighs the living interest in remaining alive and avoiding death.

Consider Wilkinson's other example: The fact that there is a risk of death when engaging in risky behaviors does not mean that people should refrain from those risky behaviors. This shows that we sometimes think that remaining alive is not always the most significant interest when there is a conflict between it and another interest. The problem is that this example is not comparable to the case of the competition between posthumous bodily sovereignty and the living interest in remaining alive, for it does not involve comparing interests between two or more people. Rather, the example simply involves one person's competing interests: a person's interest in engaging in risky behaviors and her interest in remaining alive. A person should be free to arrange the importance of their different interests and act accordingly. Thus, if an avid sky-diver thinks that his interest in sky-diving is more important than his interest in remaining alive and avoiding death, this is his right. But this is importantly different from a case in which two different people have competing interests. Thus, we cannot with any confidence use this example to establish the falsity of the Living Interests Claim.

Second, even if Wilkinson's examples were unproblematic, they would fail to falsify the Living Interests Claim. Instead, they would show at most that, in principle, the defender of the Living Interests Claim should at least be open to the possibility that the interest in remaining alive and avoiding death *can* be outweighed by the right of bodily sovereignty, since the interest in remaining alive and avoiding death

is outweighed in other circumstances. But to claim that the living interest in remaining alive and avoiding death *can* be outweighed by the right of personal sovereignty is consistent with the truth of the Living Interests Claim. To refute the Greater Need Argument, then, what is needed is a more robust and independent argument that shows that people's posthumous bodily interest regarding their organs does in fact outweigh the interests that living people have in remaining alive and avoiding death. Indeed, this is precisely where opponents of conscription have failed, in the past, to refute the Greater Need Argument. For example, when confronted with the question of how to weigh living needs versus posthumous bodily interests, Hamer and Rivlin throw up their hands and claim, "We do not know whether an interest in posthumous bodily integrity should trump an interest in continued life."[25]

My plan for the rest of the paper is to develop what I take to be a superior response to the Greater Need Argument. While my approach is similar to Wilkinson's, it offers a more robust argument for the rejection of the Living Interests Claim, and consequently, the Greater Need Argument.

Refuting the Greater Need Argument

My case against the Greater Need Argument begins by assuming two related claims. First, that to harm a person involves thwarting one of her important interests.[26] For example, I have an interest in bodily integrity, and that interest is thwarted if someone physically assaults me or invades my body without my consent. Interests, in the way I will be using the term, refer to a person's desires, goals, and aims. Thus, a person is harmed when one of her important desires, goals, or aims is thwarted. Second, I will be assuming that what some philosophers call the experience requirement on harm is false. According to the experience requirement on harm, in order for a person to be harmed, her mental states must be negatively affected.[27] The experience requirement on harm is false primarily because it does seem to be the case that people can be harmed even when their mental states are not adversely affected. For instance, suppose a person accidently overdoses on sleeping pills while they are asleep and dies as a result. It is clear that the person was harmed by the overdose—she was killed, after all—but since her mental states were not negatively affected by the overdose, the experience requirement on harm absurdly implies that she was not harmed. In addition to the philosophical problems with the experience requirement on harm, it is worth nothing that even defenders of the Greater Need Argument reject the experience requirement. In the course of his defense of the Greater Need Argument, Harris concedes that "Person affecting considerations affect living persons whether or not they experience them in the sense of being aware of them. I am affected in person—for example, by malicious gossip; it is person affecting even if I remain unaware of it."[28] An interest is person-affecting if it increases or decreases a person's well-being. Thus, on Harris's own view, something can decrease a person's well-being even if it does not negatively affect her mental states.

Since the experience requirement on harm is false, we can say that there is an important kind of harm that occurs when a person's important interest is thwarted but her mental states are not adversely affected. These are cases of what I call *serious unfelt harm.* Consider two different examples of serious unfelt harm: (1) Physical assault on a person who is unconscious is a harm to that person, even if the person never discovers that any physical assault was committed. What the perpetrator does to the unconscious person is harmful because it thwarts their important interest, despite the fact that the person's mental states are never adversely affected; (2) Suppose Big Brother is actively recording and spying on Americans through their webcams. What Big Brother is doing is harmful because most people (we can assume) have a privacy interest in not being spied on and recorded without their consent. Big Brother's actions in this example purposely thwart our privacy interests, and thereby harm us. And this is so even if people never discover that they are in fact being spied on.

My claim in this paper is that there is a subset of cases of serious unfelt harm involving people's bodily interests. A case of *serious unfelt bodily harm* occurs when a person's significant bodily interest is thwarted but her mental states are not adversely affected. Consider, for example, the following case:

> Unfelt Bone Marrow. There are many patients in need of bone marrow from a donor. Many of these patients will likely die if they do not receive new bone marrow in time. In light of this fact, Philip's physician asks him if he would like to donate bone marrow. Philip refuses and says that he does not consent to have his bone marrow removed. While Philip is under anesthetic for an unrelated surgery, his surgeon discretely removes some of Philip's bone marrow despite knowing his refusal to donate. Furthermore, the surgeon knows that Philip will never discover what has been done, since he is very skilled at removing bone marrow without a trace. Two hours later, Philip wakes up, does not experience any adverse health effects from the bone marrow removal, and never becomes aware that his bone marrow was removed.

I suspect there will be wide agreement that, in Unfelt Bone Marrow, the surgeon does something seriously morally wrong to Philip, despite the fact that his bone marrow could have been used to save people's lives. The wrongness of the surgeon's actions seems to stem from the fact that the surgeon did not honor Philip's bodily refusal, and in doing so, he thwarted Philip's significant bodily interest in not having his bone marrow removed. While there may be a moral reason in favor of taking Philip's bone marrow, namely, satisfying the interests of people who would benefit from his bone marrow, this reason is outweighed by the importance of protecting Philip's bodily interest.

Consider, now, a slightly different case:

> Posthumous Bone Marrow. There are many patients in need of bone marrow from a donor. Many of these patients will likely die if they do not receive new bone marrow in time. During a medical exam, Philip's physician asks him if he would like to donate bone marrow after he has died. Philip refuses and says not to remove his bone marrow after his death. A month later, Philip suffers a heart attack and dies. Despite his refusal, surgeons remove some of his bone marrow after his death.

My claim is that Unfelt Bone Marrow is morally analogous to Posthumous Bone Marrow. First, in both cases, the person's significant bodily interest in not having their bone marrow removed is thwarted in the same way. Second, in both cases, the person's significant bodily interest is thwarted, and without any adverse effects on his mental states. And third, in both cases, there is a subject of harm: Philip. Thus, in both cases, Philip is harmed by the fact that his significant bodily interest is thwarted by the actions of the surgeons. Therefore, Unfelt Bone Marrow and Posthumous Bone Marrow are morally analogous.

One might wonder how it is the case that there is a subject of harm in Posthumous Bone Marrow. After all, when Philip's bone marrow is removed, he is dead, and that seems to imply that he is not harmed by the removal of his bone marrow. That there is a subject of harm in Posthumous Bone Marrow depends on accepting what I'll call the posthumous harm view. According to the posthumous harm view, living people can have their interests thwarted by events that occur after they have died.[29,30,31,32] This is distinct from the implausible claim that a person's corpse can be harmed or that the memory of a person can be harmed. An attractive feature of the posthumous harm view, properly understood, is that it avoids Harris's objection that the interests of the deceased are not person-affecting. It does so by claiming that the subject of harm is the living person, who is the interest-bearer. To illustrate, suppose that Ben has an interest, while he is alive, in being cremated after his death, but for whatever reason his partner decides to bury him instead. According to the posthumous harm view, the event of Ben's partner burying his body thwarts his interest in having his body cremated after his death, and thereby harms him.

Two important qualifications must be made at this point. First, following George Pitcher, we must distinguish between the antemortem person and the postmortem person. The antemortem person describes the living, breathing person before his or her death. The postmortem person, by contrast, refers to the remaining corpse or body of the formerly living person.[33] The posthumous harm view is that events that occur after a person's death can harm the antemortem person. For instance, the event of Ben's partner burying him instead of cremating him harms the antemortem Ben, rather than the postmortem Ben.

The second qualification that must be made is that the sense in which a state of affairs harms a person is logical rather than causal. Thus, when it is claimed that the event of Ben's body being buried harms

antemortem Ben, we do not mean that the event *caused* Ben to be harmed, for this would require a metaphysically dubious notion of backward causation.[34] As Pitcher explains, "The sense in which an antemortem person is harmed by an unfortunate event after his death is this: the occurrence of the event makes it true that during the time before the person's death, he was harmed—harmed in that the unfortunate event was going to happen."[35] In the case of Ben and his interest in having his body be cremated, the posthumous harm view says that the occurrence of the body-burying event made it true that Ben was in a harmed state while he was alive. Thus, returning to the Posthumous Bone Marrow case, my claim is that if the posthumous harm view is true, then antemortem Philip (i.e., the living Philip) is the subject of harm in Posthumous Bone Marrow. The event of his bone marrow being removed after his death made it true that the interest he had while he was living was thwarted.[36]

Now that I have argued that Unfelt Bone Marrow is morally analogous to Posthumous Bone Marrow, and that there is a subject of harm in Posthumous Bone Marrow, I can formulate the first stage of my argument against the Greater Need Argument:

(P1) Unfelt Bone Marrow is morally analogous to Posthumous Bone Marrow.

(P2) If (P1) is true, then it is wrong, in Posthumous Bone Marrow, to remove the subject's bone marrow, despite the fact it can be used to save lives.

(C1) Therefore, it is wrong, in Posthumous Bone Marrow, to remove the subject's bone marrow despite the fact that it can be used to save lives.

I have given three different considerations that support the truth of (P1). (P2), however, is true for the following reason: If Unfelt Bone Marrow is in fact morally analogous to Posthumous Bone Marrow, then what's true, morally speaking, about Unfelt Bone Marrow must also be true, morally speaking, about Posthumous Bone Marrow. In particular, if it is wrong to remove Philip's bone marrow in Unfelt Bone Marrow despite the fact that it can be used to save lives, then, given the moral analogy to Posthumous Bone Marrow, we are committed to the claim that it is wrong to remove Philip's bone marrow in Posthumous Bone Marrow, despite the fact that it can be used to save lives as well.

I have argued that there is a moral analogy between Unfelt Bone Marrow and Posthumous Bone Marrow. However, with respect to organ conscription, what I want to suggest is that there is a moral analogy between Posthumous Bone Marrow and what I will call *Organ refusal cases*. Organ refusal cases are cases in which a person, while they are living and competent, refuses that their organs be removed after their death. Thus, organ refusal cases essentially involve a competent living person refusing that her body be invaded in a particular way after her death, and yet her refusal is not honored. Similarly, Posthumous Bone Marrow is a case in which a competent and living person refuses that her body be invaded in a particular way after her death, and yet her refusal is not honored. Thus, barring any morally relevant differences, it is plausible that Posthumous Bone Marrow is morally analogous to Organ refusal cases. This is significant because a hard organ conscription policy will generate Organ refusal cases. This is true for the simple reason that many people will refuse to have their organs removed after their deaths, and yet a hard conscription policy will stipulate that their organs must be taken against their refusal. Thus, if a moral analogy holds between Posthumous Bone Marrow and Organ refusal cases, we can show that the key premise of the Greater Need Argument is false:

(P3) Posthumous Bone Marrow is morally analogous to Organ Refusal cases.

(P4) If (P3) is true, then it is wrong, in Organ Refusal cases, to posthumously remove a person's organs when they refused that they be removed (despite the fact that doing so can save lives).

(C2) Therefore, it is wrong, in Organ Refusal cases, to posthumously remove a person's organs when they refused that they be removed (despite the fact that doing so can save lives).

If (C2) is true, it implies that the posthumous interest in bodily refusal outweighs the interest that living patients have in avoiding death and remaining alive. In other words, the posthumous interest that people

have in not having their organs removed outweighs the interest that living patients have in avoiding death and remaining alive. Therefore, the key premise of the Greater Need Argument—that living interests outweigh posthumous bodily interests—is false. The Greater Need Argument is therefore unsound.

Objections

At this point, it is important to consider some objections to my argument against the Greater Need Argument.

First, one might dispute the moral analogy between Unfelt Bone Marrow and Posthumous Bone Marrow by claiming that the apparent moral analogy is only superficial. This is due to the fact that the reason that removing Philip's bone marrow in Unfelt Bone Marrow is wrong is absent in Posthumous Bone Marrow. According to this objection, the reason that removing Philip's bone marrow in Unfelt Bone Marrow is wrong is that there is a built-in risk that Philip will later discover that his bone marrow was removed against his will. And if he discovers that the bone marrow was removed, his well-being will likely be negatively affected. But, the objection continues, this reason is completely absent from Posthumous Bone Marrow because there is no risk that Philip, who is dead, will discover that his bone marrow was removed. Given this difference, the objector claims, we can agree that it is wrong to remove Philip's bone marrow in Unfelt Bone Marrow and consistently maintain that it is not wrong to remove Philip's Bone Marrow in Posthumous Bone Marrow.

This objection fails for two reasons. First, it is important to admit, as the current objection points out, that the wrongness of an action can often increase when a person becomes consciously aware that their important interest has been thwarted. This is because when a person discovers or becomes consciously aware that her interest has been thwarted, such a discovery typically leads to subjective suffering. However, even if the subjective suffering that an action causes can add to the wrongness of that action, the subjective suffering associated with actions that thwart people's significant interests is not the central explanation regarding why those actions are wrong. Indeed, the central reason that certain actions are wrong has nothing to do with the subjective suffering that might befall the victim if she were to learn about what has been done to her. Cases of serious unfelt harm are precisely those cases where the central reason that the action done to the victim is wrong is simply the fact that the victim's important interest was thwarted. Thus, even if there is a risk in Unfelt Bone Marrow that Philip would later discover what has been done to him, the subjective suffering that Philip would experience because of this revelation is not sufficient to establish the wrongness of the surgeon's actions. What the surgeon does is wrong, intuitively, because he failed to respect Philip's bodily interest in not having his bone marrow removed.

Second, the subjective suffering had by a victim of harm only makes sense if the action committed against her was wrong independent of her subjective suffering. In other words, if a victim discovers that something was done to her and suffers subjectively because of it, the explanation is not that the suffering made the perpetrator's actions wrong. Rather, the explanation is in the other direction: the victim suffers subjectively precisely because the perpetrator's action thwarted one of the victim's important interests. Thus, in Unfelt Bone Marrow, it may be true that Philip would be made to suffer upon discovering that his bone marrow was removed by the surgeon. But his attitude of subjective suffering toward this revelation makes sense only if we assume that the surgeon's actions toward Philip were wrong independent of Philip's subjective suffering.

Another objection considers the limits of my argumentative strategy against the Greater Need Argument and a conscription policy more generally. According to this objection, my rejection of the Greater Need Argument depends on accepting a particular version of a conscription policy in which even people who refuse to have their organs removed will have them removed. I have dubbed this a "hard" conscription policy. However, adopting a hard policy is not the only option for the friend of organ conscription. Indeed, one might adopt a version of a conscription policy where refusals are honored but those who fail to refuse have their useable organs removed. I have called this alternative a "soft" conscription policy. According to the current objection, although my argument may succeed in refuting

a Greater Need Argument for a hard conscription policy, it fails to refute a Greater Need Argument in favor of a soft conscription policy.

In responding to this objection, it must be granted that it is correct up to a point. The success of my argument against the Greater Need Argument does depend on accepting as a background assumption that the Greater Need Argument is an argument for a hard conscription policy. But this should be expected because my goal was to refute the Greater Need Argument, and the Greater Need Argument is not an argument for a soft conscription policy. Soft conscription policies honor people's refusals to have their organs removed. This implies that, for the defender of the soft conscription policy, it is not the case that the interests of the living outweigh the posthumous bodily rights of the deceased. And this is precisely what the defender of the Greater Need Argument denies. Thus, while correct up to a point, the objection does not undermine my argument against the Greater Need Argument.

Another objection calls into question the argumentative power of using cases such as Unfelt Bone Marrow and Posthumous Bone Marrow to argue against the Greater Need Argument. There are other cases, the critic points out, that seem to support (P2) of the Greater Need Argument. Delaney and Hershenov, for instance, argue that our moral intuitions support a conscription policy. They consider the imaginary case of an applied ethics student whose fascination with death leads him to purchase a cemetery lot, where he constructs a mausoleum for himself. Shortly after graduating, the man dies:

> Before he expired, he proclaimed to those gathered around his deathbed: "No matter how much good could come from my body being at the disposal of the medical community or anyone else, it is upon my death to be immediately placed in a coffin, interred in my mausoleum and left forever undisturbed!" Soon after his burial, a strike of lightening sets the cemetery on fire. A visitor to the cemetery, aware of the deceased's deathbed declaration, can only escape the fire by taking refuge in the mausoleum and using the fresh corpse as a fire shield. The fire badly burns the corpse, but leaves the visitor unscathed.[37]

Delaney and Hershenov claim that we will likely share the judgment that the man's dead body should be used against his wishes in order to save the life of the cemetery visitor, and that this judgment represents our deepest values. Since this scenario is morally analogous to taking organs without consent (though it is more akin to taking organs against a person's dissent or refusal), it presents a challenge to the argument I have developed against the Greater Need Argument. The mausoleum case pulls us in the direction of accepting that living interests outweigh posthumous bodily interests, while my argument implies that we are committed to accepting that at least some posthumous interests outweigh living interests.

While there is a certain intuitive pull behind the mausoleum case, there are some important reasons that we should be skeptical of our initial judgments in such cases. First, the mausoleum case is "one-and-done" emergency scenario, and as Wilkinson notes in a similar context, "all sorts of niceties go by the board in emergencies."[38] By contrast, taking people's organs under a conscription policy is not a one-and-done scenario. We often think certain actions that would not otherwise be permissible or appropriate become permissible or appropriate in emergency scenarios. For instance, many people believe that governments should spend millions of dollars to rescue a person in an emergency, but that the government should not spend millions of dollars to pay for the hospital bills or medications of its citizens, even if those hospital visits and medications are life-saving. Thus, we should be at least somewhat skeptical that our intuitions in emergency cases, such as the mausoleum case, actually track what we think is permissible in cases of public policy that are by definition not "one-off."

Second, given the argument made in this paper, we have a special reason not to count our initial reactions to the mausoleum case as veridical. This is because, in thought-experiments such as the mausoleum, we are implicitly assuming that the person whose body is invaded against their consent is not harmed by our actions. We implicitly believe that invading the body of such a person cannot harm her, especially because the harm would be unfelt, since the person is dead. But the lesson of this paper is that serious unfelt harm generates moral claims against us and can continue to do so even after a person has died. In other words, this paper has argued that it would be a mistake to assume that a person's bodily

interests cannot be thwarted by events that occur after her death. Thus, if one accepts that it is wrong in Unfelt Bone Marrow to remove the subject's bone marrow, despite the benefits to other living patients, and that Unfelt Bone Marrow is morally analogous to Posthumous Bone Marrow, one must accept that posthumous bodily interests can, under certain circumstances, outweigh the living interest in avoiding death and remaining alive.

Another objection argues that my argument has largely ignored a crucial difference between the kinds of interests at stake in the debate surrounding conscription. On the one hand, some people have an interest in what happens to their bodies and organs after they die. And, on the other hand, living patients want to receive new organs because they have an interest in avoiding death and remaining alive. But it is intuitively the case that the latter kind of interest is simply more important than the former. What we might call a posthumous bodily interest is, in principle, less important than the living interest in remaining alive. One argument for this might be stated as follows: if the living person's interest in remaining alive is thwarted, she would be worse off than if the other person's posthumous bodily interest was thwarted. Therefore, the living interest in remaining alive is more important than the posthumous bodily interest in keeping one's organs. Therefore, we ought to act in accordance with the more important interests, and that means we ought to conscript organs.

To respond to this objection, recall that I have argued that Unfelt Bone Marrow is morally analogous to Posthumous Bone Marrow, and that Posthumous Bone Marrow is morally analogous to Organ Refusal cases. Given the analogy between these three cases, if one is committed to the claim we should remove organs in Organ Refusal cases—since doing so will satisfy the more important interests—then one is also thereby committed to the claim that we should remove Philip's bone marrow in Unfelt Bone Marrow. But this implication—that it is morally obligatory to remove Philip's bone marrow against his refusal—is difficult to accept. It would mean that cases of serious bodily unfelt harm on the living should be committed so long as there is a somewhat reliable guarantee that such harm will never be discovered.

Of course, one might respond here by claiming that there is a morally relevant difference between Organ refusal cases and Unfelt Bone Marrow. However, since both are cases of unfelt harm done against a person's bodily interest, the only apparent difference between the cases is that in Organ refusal cases, the event that harms the person occurs after she has died. Is this a relevant difference? Does this make the harm in Unfelt Bone Marrow worse than the harm in Organ refusal cases? Notice that this objection depends on the claim that, all else being equal, a harm to a person is worse for that person if the harm occurs when the person is alive than if the harm occurs when she is dead. The problem, however, is that my argument against the Greater Need Argument need not be committed to such a claim. For on the posthumous harm view defended in this paper, the living person is the subject of harm, and she is harmed while she is alive. Thus, in both Unfelt Bone Marrow and in Organ refusal cases, the person who is harmed is harmed when she is living.

Conclusion

It is plausible that a hard conscription policy would increase our supply of organs for transplantation purposes. While this may appear to be a decisive consideration in favor of a hard conscription policy, it is simply one consideration among many that should guide our ethics and policies regarding procurement. If we retrieve organs only at the cost of harming the patients whom we retrieve organs from, then this, too, should guide our decision-making. The Greater Need Argument is persuasive precisely because it suggests that there would be significantly good consequences of conscripting organs, and there would be little to no downside of doing so. I have argued that this line of thinking is mistaken. Indeed, I have suggested that a conscription policy would thwart people's significant bodily interests, which results in serious unfelt bodily harm.

One lesson that we can glean from my overall argument against the Greater Need Argument is that we can be morally responsible for things that we do to people's bodies after they have died. This is because acting in ways that thwart people's posthumous interests can harm them, and this harm can ground moral objections to acting in certain ways toward the bodies of the dead. Further research into the ethics of using the bodies of the dead, such as in biobank research and autopsies, should consider the interests

that people have regarding what happens to their bodies after they are dead. Under certain conditions, such interests may generate significant moral claims on us.

Notes

1. Organ, Eye, and Tissue Donation Statistics; available at https://www.donatelife.net/statistics/ (last accessed 12 Dec 2017).
2. Some U.S. states, however, operate under a Mandated Choice policy. Under Mandated Choice policies, people are presented with the choice to become an organ donor or not and are required to make a decision in order to obtain a new driver's license or ID at the DMV. For discussion, see Spital A. Mandated choice: A plan to increase public commitment to organ donation. *JAMA* 1995;**273**(6):504–6.
3. This is according to the U.S. Revised Uniform Anatomical Gift Act. See Acts: Anatomical Gift Act 2006; available at http://www.uniformlaws.org/Act.aspx?title=Anatomical%20Gift%20Act%20(2006) (last accessed 10 Dec 2017).
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11. Harris J. Organ procurement: Dead interests, living needs. *Journal of Medical Ethics* 2003;**29**:130–4.
12. Silver T. The case for a postmortem organ draft and a proposed model organ draft act. *Boston University Law Review* 1988;**68**:681–728.
13. One might, for example, consider objections to organ removal that are grounded in some deep religious belief or tradition to be the kind of objection that a soft conscription policy should allow. For discussion see Hester M. Why we must leave our organs to others. *The American Journal of Bioethics* 2006;**6**(4):W23–8.
14. Wilkinson gives the argument this title. See note 10, Harris 2002, at 527–49.
15. See note 11, Harris 2003, at 130–4.
16. Wilkinson TM. *Ethics and the Acquisition of Organs*. Cambridge: Cambridge University Press; 2011.
17. See note 10, Harris 2002, at 535.
18. See note 11, Harris 2003, at 131.
19. See note 11, Harris 2003, at 131.
20. This reconstruction of the Greater Need Argument is largely derived from Wilkinson's statement of the argument, which accurately reflects the argument found in Harris's work. See note 16, Wilkinson 2011, at 110.
21. See note 16, Wilkinson 2011, at 21.
22. See note 16, Wilkinson 2011, at 113.
23. See note 16, Wilkinson 2011, at 113–15.
24. See note 16, Wilkinson 2011, at 116.
25. Hamer CL, Rivlin MM. A stronger policy of organ retrieval from cadaveric donors: Some ethical considerations. *Journal of Medical Ethics* 2003;**29**:196–200, at 199.

26. Feinberg J. *Harm to Others*. New York: Oxford University Press; 1984, at chap. 1.
27. Griffin J. *Well-Being*. Oxford: Clarendon Press; 1986, at 13.
28. See note 11, Harris 2003, at 132.
29. Pitcher G. The misfortunes of the dead. *American Philosophical Quarterly* 1984;**21**(2):183–8.
30. Feinberg, J. The rights of animals and unborn generations. In: Blackstone W, ed. *Philosophy and Environmental Crisis*. Athens: University of Georgia Press; 1974.
31. See note 17, Wilkinson 2011.
32. Boonin D. *Dead Wrong: The Ethics of Posthumous Harm* (ms); New York: Oxford University Press, 2019.
33. See note 29, Pitcher 1984, at 184.
34. The backwards causation worry can be put as follows: According to Pitcher, the event that harms Ben takes place after he is dead. At the same time, however, it is Ben, while he is alive, that is the subject of the harm brought about by his partner burying his remains. Both of these claims appear to imply that living Ben suffers harm before the event that harms him takes place. But this seems to require the possibility of backwards causation, for the cause of Ben being harmed—the event of his partner burying his body—occurs temporally after Ben is alive and allegedly in a harmed state. But, the objection goes, backward causation is impossible, and since the posthumous harm view requires it, posthumous harm is impossible as well.
35. See note 29, Pitcher 1984, at 187.
36. There might be several different objections leveled at the posthumous harm view, most notably: how is it that a person can be in a harmed state before the event that harms her actually takes place? It seems that the common-sense view of the timing of harm is that a person is not in a harmed state until the event that harms her occurs. But the posthumous harm view, as it is stated by Pitcher and Feinberg, is committed to the claim that Ben was in a harmed state when he was alive because the event of his partner burying him rather than cremating him was going to occur in the future. Call this the timing objection. Given the space allotted to me and the goals of this paper, I cannot address this objection in full detail; however, see note 32, Boonin (forthcoming); see note 16, Wilkinson 2011 for detailed responses to the timing objection.
37. See note 7, Delaney, Hershenov 2009, at 4.
38. See note 16, Wilkinson 2011, at 116.

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