# Justice and the Compulsory Taking of Live Body parts

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This paper argues that, if one thinks that the needy have a right to the material resources they need in order to lead decent lives, one must be committed, in some cases, to conferring on the sick a right that the healthy give them some of the body parts they need to lead such a life. I then assess two objections against that view, to wit: to confer on the sick a right to the live body parts of the healthy (a) violates the bodily integrity of the latter; and (b) constitutes too much of an interference in their life. I conclude that although the sick sometimes have a right to some of the body parts of the healthy, the latter still retain a considerable degree of autonomy.

## I. INTRODUCTION

Consider the following two scenarios:

1. Ann has been taken ill to hospital. If she does not get medicine, for which, through no fault of her own, she cannot afford to pay, she will lead a less than decent life.

2. Bob has been taken ill to hospital. If he does not get a blood transfusion, which he needs through no fault of his own, he will lead a less than decent life.

Cases such as Ann's are discussed in great detail in the literature on distributive justice: cases such as Bob's, hardly ever. Many theorists of distributive justice hold that the needy have a right, as a matter of justice, that better off individuals give them the material resources they need in order to lead a decent life. Such a right, crucially for our purposes here, is standardly thought to include a right to health care. Accordingly, those theorists would claim that Ann has a right to the medicine she needs. However, the overwhelming majority of them would deny that Bob has a right, as a matter of justice, that the healthy give him the body parts he needs in order to live a decent life, or in order to survive. They would not deny, of course, that donating is morally commendable; in fact, they might even allow that not donating is morally wrong, when the sacrifice incurred by the donor is small and the benefits enjoyed by the recipients considerable. But even in such cases, they would maintain, the recipients do not have a *right* against potential donors that they donate. As Ronald Dworkin puts it, we should draw around the body 'a prophylactic line that comes close to

 

making [it] inviolate, that is, making body parts not part of social resources at all'.[1]

Yet, body parts are scarce, with devastating consequences for thousands of people, whose quality of life, indeed whose life *tout court*, depends on getting blood, bone-marrow, or an organ.[2] To be sure, it may be that if we were to take organs from dead bodies as a matter of course, patients' needs for livers, kidneys, corneas, etc., would be met. Moreover, various medical techniques such as cloning and xenotransplantation may, once perfected, go a long way towards meeting transplant needs. However, blood and bone-marrow must be transplanted live, and in some cases the only eligible suppliers of, say, kidneys and livers might well be live individuals. Besides, the ethical and technical problems raised by cloning and xenotransplantation are far from being solved. In the meantime, thousands of people live a less than decent life, or die, waiting for a transplant. To them, the scarcity of live human body parts is a salient issue; to theorists of justice, it should become one.

In this paper, I defend the following two claims: (1) If one thinks that the needy have a moral right, as a matter of justice, to the material resources they need in order to lead decent lives, then one must be committed to conferring on the sick a moral right that the healthy supply them the body parts they need in order to lead such a life; (2) One can confer such a right on the sick without compromising the autonomy of the healthy to an unacceptable extent.[3] I make my case for both claims in section II. In section III, I rebut two objections to my argument, to wit: To confer on the sick a right to the live body parts

[1] R. Dworkin, 'Comment on Narveson: In Defence of Equality', *Social Philosophy and Policy*, i (1983), 39. Although the question of the compulsory taking of live body parts has not exercised theorists of distributive justice, it has exercised some moral philosophers. Thus, whereas J. Harris argues that it would be permissible, from a utilitarian point of view, to take a live person's organs, thereby killing her, in order to save the life of two persons, J. J. Thomson claims that it is not permissible to do so, except in one case: If someone maims some other individuals in the hope that they will die, and is thereby responsible for the fact that they need organs as a matter of life and death, it is not unjust to take his organs so as to save his victims' life, thereby killing him. In this paper, I focus on issues of distributive, as opposed to retributive, justice, and I therefore do not address this particular case. (See J. Harris. 'The Survival Lottery', *Philosophy*, l (1975); J. J. Thomson, *Rights, Restitution, and Risk*, Cambridge, Mass., 1986, ch. 6).

[2] For the latest statistics in the UK, see http://www.uktransplants.org.uk. For relevant statistics in the US on organ transplants and blood donations, see http://www.unos.org, http://www.rhsa.org, and http://www.census.org. All the figures in this paper come from, or are calculated on the basis of, those sources.

[3] Throughout this paper, 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. (See J. Raz, *The Morality of Freedom*, Oxford, 1986.) Sometimes, I shall say that *X* has a moral duty to help *Y*: For the purpose of this paper, this should always be taken to imply that *Y* has a right against *X* that he help him.

of the healthy (a) violates the bodily integrity of the latter, and (b) constitutes too much of an interference in their life.

Before I start, let me outline the assumptions on which the paper rests, identify the issues which it sets aside, and issue a *caveat*. The paper assumes four things. First, it assumes, for the sake of argument, that the needy have a right, as a matter of justice, that the better off give them the material resources they need in order to lead a decent life (to wit, minimum income, housing, education, and health care). Whether the needy forfeit their right if they are responsible for lacking those resources is one of the trickiest issues in theories of justice. I will not take a stand on it. Rather, I will take it for granted – as many advocates of coercive taxation for the purpose of redistribution do – that the needy clearly have a right to be helped if they are not responsible for their predicament.

Second, I assume that individuals' needs for material resources are already met, so that, for example, no one lacks, through no fault of their own, access to housing, minimum income, or the kind of health care which does not necessitate body parts. My concern, thus, is to assess whether, from the point of view of an ideal theory of justice, a society where the needy have rights to some of the resources of the materially better off, but not to the bodily resources of the healthy, is a just society.

Third, the paper supposes that consequentialism, in its extreme form, is false. It is false, that is, that one must *always* act so as to bring about the greater good: After all, we do have projects and attachments of our own, to which it is our prerogative to devote some of our resources, even though others would benefit, if we gave them those resources, to a greater degree than we would in withholding them.[4] As stated, this hybrid view does not specify how much priority agents can give to their own projects and interests. I contend, and this is my fourth assumption, that agents can confer greater weight on their own prospects for a decent life than on other people's similar prospects. But if they already lead a decent life, and if helping the needy would not deprive them of their prospects for such a life, then they are under a duty to help. Thus, this paper rests on a moderate view of morality, which some would reject on the grounds that there is a *pro tanto* reason to promote the good, even at the cost of our personal projects and attachments. I cannot hope to show, within the scope of this paper,

[4] For classic statements of that view, see T. Nagel, *Equality and Partiality*, Oxford, 1991; S. Scheffler, *The Rejection of Consequentialism*, Oxford, 1982, and *Human Morality*, Oxford, 1992; B. Williams, 'Persons, Characters, and Morality', in his *Moral Luck*, Cambridge, 1981. For objections to that view, see S. Kagan, *The Limits of Morality*, Oxford, 1989.

that the moderate view of morality is correct. But I do hope to show that if one subscribes to it, one can accept that the sick have a right against the healthy that the latter give them some of their body parts, without jeopardizing one's commitment to individual autonomy – in short, that one can deny that the body should be made inviolate, and yet remain a liberal.

Note that the confiscation of body parts raises a number of issues which I shall not address here. For a start, by body parts, I shall mean internal organs such as kidneys, corneas, liver lobes and pancreas, tissues such as bone-marrow, and blood. I shall not consider limb transplants, whose failure rate is quite high, and which in any case do not restore relevant bodily functions as well as prostheses do.[5] Moreover, I shall not consider whether it is ethically acceptable to take body parts from under-age children, animals, individuals in a persistent vegetative state, aborted foetuses, and mentally disabled individuals; nor shall I assess whether it is legitimate to create embryos or to have children for the purpose of supplying body parts. Nor shall I consider whether individuals are under a duty to make their gametes available to the infertile or to subject themselves to medical experiments. Nor, finally, shall I deal with the difficult question of how to allocate body parts amongst the sick.[6] My concern, in sum, is to show that, assuming agreement on eligibility criteria for medical treatment, the sick have a right, as a matter of justice, to (some of) the body parts of healthy adults.

And now the *caveat*. I do not at any point in this paper explicitly or implicitly defend the view that the state should, here and now, strive to enforce those rights. In fact, I do not believe that it should. There are, broadly, two kinds of considerations that might dictate against the enforcement of a moral right. Enforcement might compromise some other moral value to an unacceptable extent, in which case the state does not have the moral power to enforce the right; or enforcing the right might be too difficult, for example in the face of public opposition,

[5] On the technical and ethical difficulties raised by limb transplants, see D. Dickenson and G. Widdershoven, 'Ethical Issues in Limb Transplants', *Bioethics*, xv (2001).

[6] In particular, I do not take a stand on the following questions: Is someone eligible for a transplant if her life, from that point onwards, would be less than decent without the needed organ? Is someone eligible for transplant if she will have had a decent life *overall*, even though she will not have lead one from the moment she needs the transplant? Those questions also arise when the allocation of material resources is at issue: It also matters there whether the decisive factor, when determining someone's eligibility for help, is the overall quality of her life over time or the mere existence of her need at time $t$. Advocates of coercive taxation for the purpose of helping the needy do not pay much attention to this issue, and tend to assume that someone has a right to help at $t$ if she is needy at $t$ (and provided that no one else is needier than she is, that there are enough resources to help her, etc.).

in which case the state has the moral power to enforce the right, but ought not to exercise it. In arguing that, at the bar of justice, the sick have a right, under some circumstances, to the body parts of the healthy, I am arguing that the state has the moral power to enforce that right. However, it is clear that public opinion would be so opposed to such a move that it would entirely pointless for the state to make it. Still, in the light of our commitment to conferring on the needy a moral right to the material resources of the better off, delineating the sick's moral right to the body parts of the healthy is an important task.

## II. ARGUING FOR THE COMPULSORY TAKING OF BODY PARTS

I pointed out at the outset that very few philosophers address the question of the demands of justice with respect to our body. Eric Rakowski is one of the few who do. In his view, justice requires that people have equal amounts of mental, material, and physical resources and be compensated for unchosen addictions. It sanctions voluntary arrangements whereby adults enter pools of suppliers and receivers of organs, as well as the compulsory taking of organs from minors – who are not capable of making the decision to enter such a pool. Rakowski claims that enough people would enter such schemes to meet the need for organs.[7] It is unclear to me whether he is correct. In any given year, in the US, roughly 1.2% of the population need a blood transfusion; in 2000, 0.02% were on waiting lists for organ transplants. These figures suggest that the likelihood of ever needing blood, let alone an organ, is very small, and it is therefore entirely conceivable that someone may decide to take a calculated risk, and not to enter a pool of donors and receivers. As Rakowski himself concedes, a situation may well arise, then, where the only eligible supplier for a given patient turns out to be someone who has elected not to enter such a pool and who is therefore under no obligation to make his organs available to the patient. In such a situation, equality of (physical resources) would not obtain.

Rakowski's proposal is rather modest, since individuals must consent to be considered as suppliers in order to be held under a duty to make their organs available. By contrast, in arguing for the compulsory taking of body parts, I am arguing that it is unjust to deny one's organs to those who need them, even if one does not consent to be considered as a supplier, where what is at stake is the possibility for them to lead a decent life, let alone to survive. To put it differently:

[7] E. Rakowski, *Equal Justice*, Oxford, 1991, ch. 8. For a similar view, see R. Audi, 'The Morality and Utility of Organ Transplantation', *Utilitas*, viii (1996), 148 f.

The sick, or so I argue, have a moral right against the healthy that the latter give them (some of) their body parts. In order to make that claim, I need to show, first, that body parts are the kind of things of which it makes sense to say that one can have a right to them, and, second, that the sick *do* have a right to them.

Many people would resist the thought that it makes sense to think of a body part as something that can be distributed to others as a matter of right. After all, not all the things we need in order to lead a decent life are appropriate subjects for rights. I contend a good can be subject of a right if it meets two conditions which are singly necessary and together sufficient: (a) it must be such that it can be mandatorily transferred to someone else and remain the kind of good it is; (b) it must be such that to be under a duty to transfer it to someone else does not undermine our personhood.

Body parts obviously meet the first and second conditions, for they remain body parts when transferred, whether they are transferred voluntarily or not. (Contrast with friendship, which cannot remain such if it is not given voluntarily.) They also meet the second condition, on which it is worth elaborating. In so far as one can characterize as just or unjust only acts that are committed by persons, justice cannot require, on pain of defeating itself, that we transfer a given good to others if in doing so we would no longer be a person.[8] Now, let us assume, plausibly, that sentience, self-consciousness, the capacity for moral and rational agency, and having a body are necessary and sufficient conditions for being a person. Justice simply cannot require of us that we divest ourselves of those parts of our body the loss of which destroys us as a person. More specifically, it cannot require of us that we divest ourselves of our brain, our heart, our lungs, and the whole of our liver. However, it *can* – which is not to say (yet) that it does – require of us that we transfer our kidneys, corneas, blood, bone-marrow, and part of our liver and pancreas, since we would still be a person even if we were under a duty to transfer them to the sick. (It is worth noting, incidentally, that the fact that losing our heart, lungs, or liver would destroy us as a person is contingent on the current state of medical technology. Suppose someone needs a heart, that I am a compatible donor, and that my heart (unlike the patient's) could be replaced by a machine. If I had to transfer my heart to that patient, under such conditions, I would not cease to be a person. (One can

[8] Of course, if I undertake to serve in the army, I may be under a duty to sacrifice myself for the sake of others. But this does not imply that justice requires of me that I make that sacrifice: It requires of me that I abide by the terms of the contract which I sign. My point is that justice cannot require of us that we sacrifice our personhood without our consent.

imagine similar scenarios involving the lungs and the whole liver, but not the brain.)

Some people would deny that body parts meet the second condition, on the grounds that they are so constitutive of the person we are that in separating ourselves from them, freely or not, we would be transferring a part of ourselves. And indeed a number of philosophers object to putting body parts on a par with material resources, on the grounds that individuals should not treat their body as separate from their person. Thus, Fried avers that 'certain attributes – for instance one's bodily organs ... – are so closely related to a conception of oneself that to make them available for trading-off in a scheme of morality would be, as it were, to gain the world and lose one's soul'.[9] Similarly, the reason why Dworkin wishes to exclude body parts from social resources is that they belong not to someone's circumstances, but rather are part of his person.[10] This view – that we should not consider our body as separate from ourselves – has a distinguished pedigree in moral philosophy. Kant, for example, wrote that 'man is not his own property and cannot do with his body as he will. The body is part of the self; in its *togetherness* with the self it constitutes the person.'[11] It is easy to see how this point could be thought to apply to the mandatory transfer of body parts: In holding individuals under a duty to transfer their body parts, one is regarding the body as a resource, and not as a constitutive part of the person. In so doing, many would add, one is offending against the dignity of the human body, and in turn of the person.

However, the view that in divesting ourselves of our body parts, we are splitting apart an entity – the person – which should not be split is rather unconvincing. When we give some of our blood or of our bone-marrow, or one of our kidneys, we are severing a part of our body from the rest of our body, and yet we do not become a different person as a result. In fact, we do not even turn our body into a different body. To claim that we are split into two, instead of (correctly) seeing that our body loses one of its parts, is to confer on our organs, tissues and blood a status which they simply do not have.

Moreover, if the reason why we should not be held under a duty to transfer our body parts is that the body in its entirety is constitutive of the person, it follows that we should not voluntarily give our blood to the Red Cross or our kidney to a relative who needs a transplant.

[9] C. Fried, *An Anatomy of Values*, Cambridge, 1970, p. 205.

[10] Dworkin, 'Comment on Narveson', 39. For a devastating rebuttal of Fried's and Dworkin's views, see Rakowski, pp. 183 f.

[11] I. Kant, *Lectures on Ethics*, trans. L. Infield, Indianapolis and Cambridge, 1963, p. 166.

But it is highly implausible to claim that blood and organ donors fail to treat themselves as persons: The objection under study, if it proves anything, proves far too much.

Note that my remarks against the view that we should not treat our body parts as goods from which we can divest ourselves are not meant to deny that the continuous occupancy of our body is a necessary condition for being a person: They are only meant to claim that, except for the brain, the whole liver, the heart and both lungs, the continuous occupancy of *all* the parts that make our body is not. Nor are they meant to imply that we ought to relate to our kidneys, corneas, blood, and bone-marrow exactly as we relate to other resources which we are in a position to transfer to those who need them, such as wealth: Indeed nothing I have said so far implies that we ought to be able to detach ourselves from our body parts just as we ought to be able to detach ourselves from the money which we have deposited at the bank and on which we have to pay taxes, or from a plot of land which we have bought and from which we are expropriated. Rather, I meant to suggest only that we ought not to be so attached to them as to consider them essential to being a person *tout court*. Whilst having to give some money clearly is not quite the same thing as having to give a kidney, it is hard to see why having to give the latter undermines our moral status as persons.

In short, apart from the brain, the heart, the lungs, and the liver as a whole, all body parts are the kind of goods of which it makes sense to say that the sick *can* have a right to them. I now need to show that they *do* have such a right. The gist of my case is this: The very considerations which lead some people to claim that the needy have a right to some of the material resources of the well-off commits them to the view that the sick have a right to some of the body parts of the healthy.

An advocate of distributive justice who believes in the moral importance of ensuring that individuals lead a decent life is claiming the following: 'Some individuals do not lead a decent 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 prima-facie right that those who have the material resources to lead a decent life help them, by way of taxation. More specifically, they have prima-facie rights to minimum income, housing, education, and healthcare.'[12]

[12] The view that individuals have welfare rights to what they need to lead a decent or autonomous life is articulated (with variations that need not detain us here) in, e.g., E. Anderson, 'What is the Point of Equality', *Ethics*, cix (1999); C. Fabre, *Social Rights Under the Constitution: Government and the Decent Life*, Oxford, 2000, ch. 1; H. Frankfurt, 'Equality as a Moral Idea', *Ethics*, xcviii (1987); A. Gewirth, *The Com-*

That argument rests on three considerations: (a) what counts, or does not count, as a decent life; (b) the fact that some resources are needed to render a life decent, which are proper subjects for duties of justice; (c) how one came not to lead a decent life.

In order to lead a decent life, or so I submit, one must be minimally autonomous and achieve well-being. To achieve well-being means being free from constant physical pain for long periods of time, being well fed, being warm, etc. To be minimally autonomous means to be capable of framing, revising, and implementing a conception of the good with which one 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. Note that autonomy, as I define it, is a matter of degree: The greater our physical and mental capacities, the greater the range of options we can choose from and the more access we have to those options, the more autonomous we are. My concern is to try to capture an 'autonomy-threshold' below which we are not minimally autonomous. Where precisely to set the threshold is one of the hardest tasks philosophers can set themselves, and I cannot enter the fray here. It suffices, for my present purpose, that there is a sense in which arguments for the coercively directed distribution of material resources invoke the view that there is a threshold of deprivation, abstractly described above, below which we cannot let individuals fall without their consent.

Now, it is quite clear that we must have access to body parts in order to lead a decent life, let alone to survive. Someone who suffers from leukaemia may very well die if she does not receive a bone-marrow transplant. Someone who suffers from liver cancer will die if she does not get a new liver. Someone who badly needs a hip replacement and whose operation is postponed because of a shortage of blood supplies will continue to suffer and will lack the mobility necessary for her to get on with her life. A haemophiliac who needs a blood transfusion when he has to undergo even minor operations such as a tooth extraction on pain of facing very serious medical complications will

*munity of Rights*, Chicago, 1996; D. Harris, *Justifying State Welfare*, Oxford, 1987; L. Jacobs, *Rights and Deprivation*, Oxford, 1993; M. Nussbaum, *Women and Human Development – The Capabilities Approach*, Cambridge, 2000. It is important to note here that those advocates of distributive justice do not claim that we each have a right to whatever resources we need to lead a decent life. Rather, their point is that we each have a prima facie right to such resources, a right, that is, which ought to be respected, barring weighty considerations to the contrary such as the fact that other, needier individuals might have a more urgent claim to help.

see his autonomy impaired if he does not get the blood. And so on.[13] Furthermore, the distribution of body parts is largely a matter of brute luck, since people are rarely responsible for e.g. developing cancer and needing bone-marrow, for having to undergo an operation and needing a blood transfusion, for kidney failure, for being blind, etc.

That we need body parts in order to lead a decent life and may lack them through no fault of our own does not entail, however, that the sick have a right to whatever body part they need in order to lead a decent life, or even to survive. In order to decide how much help they can legitimately ask from the healthy, one must assess the costs they would incur were the healthy not to help them, as well as the magnitude of the burden the latter would have to shoulder if called upon to help.[14] Now, in section I, I assumed that in cases where having to help those in need does render our life less than decent, we should not be held under a duty to do so; in cases where it does not, we should be under a duty to do so. In so far as being minimally autonomous is a condition for leading a decent life, it follows that we can be expected to transfer some of our body parts to those who need them only if we would become less than minimally autonomous as a result.

Identifying cases where potential suppliers would become less than minimally autonomous and cases where they would not is, perhaps, the hardest question at hand. That said, on the one hand, it is trivially obvious that to lose one's kidneys or corneas may very plausibly render one's life less than minimally autonomous. In those cases, the sick do not have a right against us that we transfer them those body parts. On the other hand, it seems clear that to donate one pint of blood, to give some bone-marrow, to lose a liver lobe, do not jeopardize one's autonomy, for those body parts are regenerative.[15] In fact, I submit

[13] This is not to deny, of course, that some individuals lead a decent life even though they lack some body parts, just as some individuals, for example religious ascetics, lead such a life with hardly any resources. But my concern is with cases where someone clearly needs a given body part in order to be minimally autonomous and to achieve well-being.

[14] I assume, you recall, that individuals' material needs are met. Thus, *ex hypothesi*, the healthy who might be called upon to donate a body part to the sick will not be financially destitute (at least not through no fault of their own). Suppose, though, that this assumption is not in place, so that a healthy person who is otherwise very poor happens to be an eligible donor. In that non-ideal scenario, should she be held under a duty to help? My hunch is that she should contribute a pint of blood to save someone's life (just as a homeless person who is otherwise a very good swimmer should help someone who is drowning). I would hesitate to say, though, that she is under a duty to give one of her kidneys.

[15] Two points. First, I am assessing here whether the *loss* of a body part constitutes too much of a sacrifice and undermines our bodily integrity to an unacceptable extent. I am not assessing whether its *removal* constitutes too much of a risk. The loss of a liver lobe does not fall foul of the objection from sacrifice, but its removal, performed as it is under general anaesthetic, might fall foul of the objection from risk, which I assess in

that losing those particular body parts constitutes much less of a restriction on the projects we want to pursue than losing, say, between 25% and 40% of one's income through taxes. Accordingly, we can be held under a moral duty to make them available to the sick, provided that we are not called upon to give so often that we would be unable to make any plans, that it would endanger our health, etc. The British National Blood Service recommends that healthy adults between the ages of 18 and 60 not donate more than three times a year, and one could take that as a benchmark. With respect to bone-marrow and liver lobes, one could, similarly, follow guidelines from health authorities.

The hardest question, though, and one to which I can offer only a tentative answer at this stage, is whether one can hold the healthy under a duty to give a kidney or a cornea to someone who lacks two kidneys or two corneas. Clearly, losing a cornea or a kidney in adulthood not only restricts the range of conceptions of the good one can frame and pursue; it may also necessitate revising one's existing conception of the good – something which, as we grow older, is increasingly difficult to do. This, incidentally, is all the truer with respect to corneas, since we have, on the whole, a greater need for full vision than for two functioning kidneys. Nevertheless, the fact that supplying a kidney or a cornea does constitute an important sacrifice does not entail that we should not be held under a duty to do so, any more than the sacrifice made by the well-off when losing part of their income so as to help the needy does. As I posited earlier, if someone already leads a decent life, and if helping the needy would not deprive him of his autonomy and thereby of his prospects for such a life, then he is under a duty to help.

Now, whether losing an eye or a kidney would prevent us from leading a minimally autonomous life in part depends on (a) the medical complications arising from the loss of those body parts, (b) the kind of life we are living, and (c) how easy it would be for us to revise our conception of the good were we to lose one of those organs. On

section III.*B*. (There is ample evidence that in patients who had a liver lobe removed, the liver fully resumes its functions four to six weeks after the operation. See A. Caplan, 'Living Dangerously: The Morality of Using Living Persons as Suppliers of Liver Lobes for Transplantation', *Cambridge Journal of Medical Ethics*, i (1992).) Second, I maintain that losing blood and bone-marrow does not constitute too much of a sacrifice; nor, for the overwhelming majority of people, does their 'extraction'. Matthew Kramer pointed out to me that people who suffer from needle phobia would experience such terror were they to have give blood or bone-marrow that their life, for some time before and after the extraction, would be less than decent. I am not sure whether this constitutes strong enough a reason to exempt them from donation. But by the same token, I am not sure whether the fact that someone would lead a less than decent life for some time as a result of having to give some material resources to the needy would constitute enough of a reason to exempt them from a duty to help.

the first count, available data suggest that the side-effects of a nephrectomy are minimal.[16] On the second and third counts, whereas having to give a cornea might have catastrophic consequences for a fifty-year-old professional painter or photographer, it may be bearable for a piano-tuner. Similarly, whereas having to give a kidney might blight the life of a world-class athlete, it may have very little effect on the life of a sedentary academic. Moreover, it might blight the athlete's life only temporarily, but not for ever: after all, many athletes who suffer a career-ending injury reconvert and do something else. I cannot, in this paper, fully deal with such comparisons. But I shall simply note that, in the light of the immense difficulties encountered by the blind and the kidney-less, we cannot afford not to take seriously the suggestion that we might be able to help them by giving them the relevant organ without incurring the costs we tend to think we would.

Second, determining how much individuals owe to others on the basis of their conception of the good and engaging in the kind of calculations described above is not a novel idea. Theorists of justice who hold the tenets of standard morality to be true and who argue that justice requires that everyone have prospects for a decent life believe that no one can be held under a duty to help the needy at the cost of his freedom of occupational choice, but that one can be held under such duty at a lesser cost. Imagine a badly paid musician who could work as a highly paid lawyer but who loves his job. It would be wrong, or so these theorists believe, to tax her in proportion to the earnings he could make as a lawyer, since one would thereby force him to give up on his preferred conception of the good and to spend his working life doing a job he hates. But it would not be wrong, or so many of them would argue, to increase his tax rate to the extent that, although he could still work as a musician, he would have to do less photography – an expensive hobby he loves – than he currently does. If such considerations can be brought to bear, albeit in a rough and ready way, on the legitimacy of taking material resources from those who can afford to help the poor, they can also be brought to bear, in as rough and ready a way, on the legitimacy of taking bodily resources from those who can afford to help the sick.

Thus, prima facie, it is arbitrary on the one hand to claim that the better off are under a duty to help the poor by way of transfers of material resources, and on the other hand to deny that the 'medically better off' are under a duty to help the 'medically poor' to provide such help by way of transfers of body parts. If we are committed to the claim that people should lead a decent life, as a matter of justice, if, on that

[16] See A. Garwood-Gowers, *Living Donor Organ Transplantation*, Aldershot, 1999, pp. 41–5.

ground, we are committed to the view that the well off should help fund (costly) medical treatments for those who need them, and in particular procedures which requires blood transfusions or involve an organ transplants, and if it is the case that body parts can be subjects of duties of justice, then we must be committed to the claim that those who need body parts in order to lead a decent life have a right that those who are in a position to transfer body parts do so. To return to the two scenarios described at the outset of this paper, there does not seem to be any good reason to hold the well off under a duty to help Ann, who happens to need a kind of medical treatment which only requires material resources, and not to hold the healthy under a duty to help Bob, who needs a body part. Notice, incidentally, that my argument for the compulsory taking of body parts is even stronger against those who not only think that the needy have a right to the material resources of the better off, but also endorse the view that the imperilled have a right to be rescued, that is, have a right that others use their body in order to help them, for example, by throwing them a life-jacket, performing CPR on them, etc. It would be arbitrary on the one hand to endorse that view, and on the other hand to reject the view that the sick have some rights to some of the body parts of the healthy.

So far I have argued that healthy individuals are under a duty to transfer some of their body parts if other people need them in order to survive or to lead a decent life. But that in itself does not tell us who should fulfil that duty in cases where there are more eligible suppliers than needy recipients. In cases involving blood and bone-marrow, where the needed body part is divisible and can be supplied by several individuals, there are two ways of selecting who should fulfil the duty to transfer. One can either ask all eligible suppliers to do it, or one can select at random amongst eligible suppliers. In the former scenario, eligible suppliers all bear the burden of contributing, whereas in the latter scenario, eligible suppliers all have an equal chance not to bear the burden, but some suppliers will shoulder a greater burden than others. It is fair, I think, that all eligible suppliers contribute. Compare with taxation: Its advocates are not claiming that one should select at random amongst all potential taxpayers those who will have to pay a tax; instead, they are claiming that all taxpayers should pay. That said, should the costs of using all eligible suppliers prove too high, one could devise a rotation system whereby each supplier would be called upon to transfer some of their blood or bone-marrow once every $n$ years.

Cases where the needed body part is indivisible (for example, kidneys and corneas) are trickier, since the burden of having to transfer those body parts cannot fall equally on all eligible suppliers. My argument for conferring on the sick a right to the body parts of the

healthy implies that in such cases, all eligible suppliers *equally* are under a correlative duty to transfer the relevant body part to the sick. This, together with the fact that only one of them must actually fulfil their duty, in turn implies that they all have an equal claim not to have to shoulder the burden of fulfilling the duty. In such cases, it seems right to select the supplier at random, since randomness ensures that people have an equal chance of having to bear the burden of giving body parts, and that no one is selected who has a stronger claim than others not to shoulder that burden.[17]

Before I review objections against the view that the sick have a right against the healthy that they give them some of their body parts, a loose end needs tying, and an unpalatable implication of my argument needs addressing. I have argued that the healthy are under a duty to transfer their body parts to the sick but have not said anything about compensating them. Yet, in cases where the burden of donating falls on a small number of individuals, suppliers of body parts should be compensated, for (at least) two reasons. First, whether or not someone is endowed with tissues and organs which are in demand is a matter of bad brute luck. A compensation scheme, funded by all taxpayers, would distribute the burden of donating more fairly. Second, an eligible supplier who has had to relinquish a body part may incur higher life insurance premiums, lose income whilst in hospital, etc. A properly designed compensation scheme would cover such costs.

Note, incidentally, that my proposal does not amount to making the familiar point that the healthy have the right to sell their body parts. For to argue that the healthy are under a duty to make their body parts available to the sick and that they can receive compensation for doing so does not in any way suppose, *pace* proponents of the right to sell, that they have the right to get a market price for their organs and tissues. What my proposal does amount to, however, is the suggestion that the state has a moral power of eminent domain to expropriate, as it were, healthy individuals from some of their body parts, just as property-owners can be expropriated, against compensation, from their property. This is *not* to say that the community as such, or the state, has a right to the body of the healthy. Talk of nationalizing body parts, of making them part of communal resources, is misleading in the present context. For my point is that a sick individual, who, for example, needs a blood transfusion, has a right against the healthy that they give him blood. To the extent that the state should act to get the blood, it will act on behalf of that sick individual, not on behalf of the community. It nevertheless remains appropriate to claim, as I do, that the state has a moral power of eminent domain over (some of) the

[17] See, e.g., J. Broome, 'Selecting People at Random', *Ethics*, xcv (1984).

body parts of the healthy for the purpose of helping the sick, just as it is appropriate to claim that it has a moral power of eminent domain to expropriate property-owners for the sake of giving the needy the material resources they need.[18]

Now, to claim that the sick have a right to some of the body parts of the healthy and that the state has the moral power to enforce that right might be thought by some to have the following unpalatable implication.[19] Regular sexual intercourse is one of the things most human beings need in order to lead a decent life. As it happens, many people do suffer from severe sexual deprivation, as they cannot get sex by meeting potential partners in the usual ways (e.g. they are severely disabled, very ill, too old to attract sexual partners, or they are male resident aliens who do not master the language of their country of refuge and whose fellow nationals are overwhelmingly male, etc.). In most of those cases, they (or at least, the men amongst them) can resort to prostitution. But if the healthy are under a duty to make available (some of their) body parts to the sick on the grounds that the sick need those body parts in order to lead a decent life, then by the same token, it seems that individuals are under a duty to make themselves available to the sexually deprived whose life is not, for that reason, decent.

I do not think that my case for holding the healthy under a duty to provide some of their body parts to the sick has that implication. The act of making one of our organs available to a sick patient consists in divesting oneself of the organ; and although the medical procedure whereby the organ is removed is invasive of our body, at no point are we required to subject ourselves to directly interacting, physically, emotionally and mentally, with him, through the act of transfer itself. By contrast, sexual intercourse, by definition, does consist in making one's body itself available to someone else and in interacting, in the most intimate way possible (physically, if not emotionally), with that person. True, there are kinds of sexual acts, such as phone sex, which individuals can perform without making their body available to their partners. Yet, even in performing those non-physical sexual acts, they subject themselves to their partner's intimate thoughts, desires, fantasies, etc. To require of them that they engage in such intimate relationships without their consent would constitute too much of a

[18] For the view that holding the healthy (and indeed the dead) under a duty to transfer their body parts amounts to conferring on the community, as opposed to the sick, a right over those body parts, see R. Scott, *The Body as Property*, London, 1981, p. 91; R. Veatch, *Death, Dying, and the Biological Revolution*, New Haven, 1976. For the view that the state is morally entitled to exercise its power of eminent domain in order to bring about justice, see B. Ackerman, *Private Property and the Constitution*, New Haven, 1977.

[19] I am grateful to N. Humphrey and D. McDermott for drawing my attention to it.

violation. It would also place them in a position where they would have to have sex with someone who would not desire *them*, but who would merely want to have sex, period. Yet sex, for most people, is a rather complicated affair; it does not merely consist in the mutual use of bodies, but is tightly bound up with our sense of ourselves, our self-esteem, our perception of others. And so it is entirely reasonable for anyone to decide that they will only have sex with partners who do desire them, and who do not treat them merely as sexual partners but as whole individuals with aspirations, desires, and ends. To require of them that they let themselves be treated, without their consent, only, or primarily, as a means to someone else's sexual satisfaction would do too much damage to their self-respect to be acceptable.

In sum, the duty to make parts of one's body available to the sick and the duty to make oneself available to the sexually deprived are disanalogous in such ways that holding individuals under the former does not imply that they should be held under the latter.

## III. TWO OBJECTIONS AGAINST THE COMPULSORY TAKING OF BODY PARTS

I have argued so far that if one thinks that the needy have a right to material resources against the better off, one is committed to the view that individuals who need body parts in order to survive or lead a decent life have a right that the healthy give them those parts (except for the heart and lungs). Now, one could obviously object that my argument rests on the assumption that the fact that those resources – material or bodily – are of a different nature is irrelevant. And that, one might think, begs the question. One might claim, that is, that the fact that the needed resources are, in the case under study here, bodily resources does matter, on the grounds, for example, that to confer on the sick a right to the body parts of the healthy violates the bodily integrity of the latter and constitutes too much of an interference in their lives, in a way that conferring on the needy a right to the material resources of the well off does not. And indeed, the following words, from the pen of one Judge John P. Flaherty, vividly capture what most people think of the mandatory taking of body parts: 'Forcible extraction of living body tissue causes revulsion in the judicial mind ... You can picture the man being strapped to the table and then the extraction.'[20]

Note that the objection from bodily integrity – which I address in section III.*A* – differs from the objection from interference – which I address in section III.*B* – since one can undermine someone's bodily

[20] *McFall v. Shimp*, Allegheny Court, US, 1978.

integrity without in any way interfering with their life. For example, if I come into your room at night knowing that you are asleep and very heavily sedated, and if I take blood from you, I am not interfering with your life, since I am not preventing you from doing anything. Yet, by taking that blood, I take something from your body and thereby might be thought to diminish its integrity. Although it is conceivable to object to the confiscation of body parts on the grounds that it undermines the suppliers' bodily integrity without making reference to their interest in not being interfered with, I shall argue at the close of section III.*A* that the objection from bodily integrity derives much of its force from the view that in violating people's bodily integrity, one is interfering with their life to an unacceptable extent.

Before I begin, I should stress that I shall not tackle religious objections to my proposal, such as the objection that God forbids blood transfusions. For a start, I could not hope fully to address here the question of how to solve conflicts between secular and religious conceptions of the ontological status of the body. Moreover, as a matter of fact, most religions now regard organ donations as acceptable, and disagree on the status of potential suppliers: whereas some churches strongly encourage their members to donate out of charity, others leave it entirely up to them. Accordingly, most religious proponents of organ donation who object to my proposal are likely to do so on the grounds that it violates the bodily integrity of the healthy and constitutes too much of an interference in their life.[21]

### *A. Bodily integrity*

To argue, as I do, that under some circumstances the sick have a right against the healthy that they give them body parts amounts to claiming that the healthy do not have a right to full bodily integrity. Quite obviously, someone might object that they do, in fact, have such a right, which, if correct, would disprove my case.

Now, there are two ways in which one might construct that objection. One might argue that bodily integrity – to wit, having control over one's body – is important in its own right, just as leading a decent life is, and that one has an absolute right that nothing be done to it, or with it, without our consent (provided that we do not use it to harm others without good reasons).[22] Against that variant of the objection, which directly entails the opposite of my claim that the healthy do not have

[21] For interesting summaries of the position taken by major religions on this issue, see E. Wiest 'Introduction to Religious Perspectives', D. Kelly and Walter E. Wiest, 'Christian Perspectives', and A. Twerski, M. Gold, and W. Jacob, 'Jewish Perspectives', in *New Harvest: Transplanting Body Parts and Reaping the Benefits*, ed. D. C. Keyles, Clifton, NJ, 1991.

[22] See, e.g., R. M. Veatch, *Transplantation Ethics*, Washington, 2000, pp. 144–6.

a right to full integrity, there is very little that can be said. I should like to point out, though, that it is unclear why our interest in bodily integrity should be given importance in its own right, alongside our interest in leading a decent life.

And indeed someone might be tempted to argue, more convincingly, that bodily integrity serves other, fundamental values, and that it is therefore important enough to be protected by an absolute right. For example, someone might argue, very plausibly, that we need to have control over our body in order to lead a decent life.[23] However, so to object to the compulsory taking of body parts is also problematic, in two respects. First, it is unclear why we need to have control over the *whole* of our body in order to lead such a life. Second, in conferring on the healthy the absolute right to control what is done to their body, we would allow for a world where a number of people are left without the body parts that they need in order to lead a decent life: we would, in fact, undermine the very value from which bodily integrity gets its appeal. To promote the value of a decent life, thus, might require undermining the bodily integrity of some individuals.

Others still might be tempted to point out that in denying the healthy the absolute right to control what happens to their body, one fails to treat them as separate persons.[24] At first sight, this variant of the objection from bodily integrity has a lot of intuitive appeal. After all, from Rawls's well-known complaint that utilitarianism does not treat persons as separate to Nozick's assertion that granting them self-ownership rights is the only way so to treat them, the idea of separateness of persons is central to liberal thought. Individuals, it is asserted, each have projects and attachments which cannot all be subsumed under other people's conceptions of the good; and this stems, in part, from the fact that they each have separate bodies, are therefore separate *loci* for pain and pleasure, and are consequently aware of themselves as being different persons. To buttress the point: Siamese twins, who share the same body, or some body parts, often elicit feelings of horrified compassion (as well as unhealthy fascina-

[23] For an objection along those lines, see D. Lamb, *Organ Transplants and Ethics*, London, 1990, p. 106. For a good account of the view that bodily integrity is a condition for autonomy, see J. Feinberg, *Harm to Self*, Oxford, 1986, p. 54.

[24] That objection was put to me at an Oxford seminar in May 2000. Note that it is different from Kant's claim, on which Fried and Dworkin draw, that the body in its entirety is so constitutive of the person that if parts are removed from someone's body, that individual by definition is no longer a person. The objection under study here need not deny that someone whose bodily integrity would be compromised by the mandatory transfer of body parts still would be a person (and indeed, that individual would retain her capacity for moral and rational agency, still have self-consciousness, and would still be sentient). All it says is that in requiring of someone that she transfer parts of her body to someone else, one fails to treat her as dictated by the fact that she is a person.

tion) precisely because there is something factually monstrous in human beings not having their own, distinct, body.

From these facts about what being human consists of, liberals derive the normative thesis that individuals should treat one another as separate persons, which, as vague a requirement as it is, still is taken to mean that, following Kant, they should treat one another not merely as means but also as ends. Assuming, for the sake of argument, that the normative thesis does indeed derive from the aforementioned facts, it is easy to see why the compulsory taking of body parts seems to undermine it. After all, *my* blood would run through *your* veins, *my* bone-marrow would produce *your* cells, *my* kidney or *my* liver would purify *your* body, *my* eye would be *your* window to the world, etc. Although I am at liberty to choose to give you those body parts, in requiring that I give them to you, you are treating my body, and therefore me, merely as a set of resources to be used for your own purposes, and not as a person with her own ends.

And yet this rather weak objection to the coercive taking of body parts from the living presses into service an erroneous interpretation of the Kantian requirement that we treat one another as separate persons with our own ends. For the requirement as articulated by Kant states that we should treat one another not as means only, but also as ends. This in turn implies that we can treat one another as means provided we also treat one another as ends. The objection works, therefore, only if violating the bodily integrity of the healthy amounts to treating them solely as means. However, violating someone's bodily integrity does not, in and of itself, imply that one is not regarding them as having their own projects and attachments. Suppose that I slip and fall off the ice-covered pavement, and that you could do me considerable good simply by helping me to get back on my feet, which would take you about ten seconds. To claim that you are under a duty to help me amounts to denying that you have the right to control what happens to your body, since you would have to use your arms, hands, and legs to haul me off the ground. And yet you could not plausibly object that in requiring that you help me, I am treating you solely as a means to my end, and not as a person with her own projects to pursue: after all, you would, in fact, have more than enough time and energy to do whatever it was you wanted to do before I fell. Similarly, when assessing whether requiring that the healthy transfer some of their body parts to the sick infringes the Kantian requirement that people be treated as ends and not only as means, one must gauge whether the removal and loss of their body parts would prevent them from pursuing their own projects. One must, in short, decide the extent to which so violating their bodily integrity would interfere with their life. To this I now turn.

### *B. Freedom from interference*

More convincingly, then, someone might be tempted to object to the claim that the sick have a right to the body parts of the healthy on the grounds that to hold the latter under a duty to transfer interferes in their lives to a much higher degree than holding the better off under a duty to give material resources to the needy. She might conceivably then go on to make the following three points.[25] (A) If we know that we may be called upon at any time to give some of our body parts, we always have to factor that in indecisions we make to take a trip, go for job interviews, spend time with our children, etc., and as a result it is hard for us to introduce some sort of routine in our lives. (B) If our body parts are not ours to control but can be used by someone else, and if we are under a duty to make them available to the needy, we are under a duty, by implication, to maintain them well, and not to engage in practices which might damage them or *render* them unusable, and which might thereby render us ineligible as suppliers (such as unsafe sex, smoking, dangerous sports, etc.). (C) Moreover, simply to *risk* incurring the serious, sometimes life-threatening, consequences of a surgical operation would also prevent us from making mid- and long-term plans. In short, being held under a duty to transfer body parts to the sick would place unacceptable constraints on our autonomy. None of those three kinds of cost – unpredictability, constraints on our occupational choices, and risk of disability and death – are incurred by the better off when they are called upon to help the needy by way of material resources. Accordingly, holding them under a duty to do so does not commit one to holding the healthy under a duty to transfer their body parts to the sick.

Note that neither of those three points denies what I sought to show in section II, namely that having to do without some body parts need not render our life less than minimally autonomous and thereby less than decent. Rather, each of those three points focuses on a particular feature of the moral duty to *transfer* a body part to the sick. Now, here again, to impose an absolute prohibition on the taking of body parts on the grounds that the suppliers' interest in leading a decent life would thereby be harmed does undermine the value of promoting that interest in general, since it would leave a number of people without the body parts that they need in order to lead a decent life. Our task, then, is to assess the conditions under which, if any, the healthy can legitimately withhold their body parts from the sick and thereby deny them prospects for a decent life. So let us address each strand of the objection under study.

[25] These points were put to me at seminars in London, on 18 October 2000, and in Bristol, on 25 October 2000.

(**A**) The first strand holds that being under a duty to transfer a body parts, unlike being under a duty to transfer some material resources, is unacceptably disruptive, since we cannot know when we will be called upon to contribute. However, although not knowing whether one will have to transfer body parts does, to some extent, disrupt our lives, it does not seem difficult, as a matter of policy, to minimize such disruption. In most cases involving live donors, patients waiting for a transplant do not need to undergo the operation at a few days' notice. One could therefore warn eligible suppliers several weeks in advance that they will have to spend some time at the hospital, and give them, for instance, a two-week bracket within which they could choose when to have the operation. One could also make it statutorily mandatory on employers to accommodate their employees' requests for leaves of absence if called upon to donate. To be sure, if we are called upon to donate, we may have to postpone some of the plans we will have made (just as we have to do so if we are called upon to serve on a jury). But given that patients themselves have to give up on major life plans, and not simply postpone them, it does not seem too much of a price to pay.

(**B**) Consider now the claim that under my proposal we are under a duty to remain healthy, which, or so some would argue, constitutes too much of an interference in our lives. This claim assumes that individuals, on my view, hold their body parts in trust for the benefit of the sick. Strictly speaking, however, to claim that the healthy are under a moral duty to the sick to help them does not imply that they are under a duty to remain healthy in case some people, in the future, fall sick and need their organs. After all, to claim that the better off are under a duty to give a share of their wealth to the poor does not imply that they have to work to the best of their productive abilities in case more people come to need their resources in the future, or in case those who already are poor come to need more resources than they are currently given; it only means that, on the assumption that the better off already own $x$, they must give the existing poor a share of $x$. Analogously, all I am claiming here is that those who are healthy and therefore eligible for donation and whose body parts are needed at time $t$ are under a moral duty to make them available when the operation is due to take place: The healthy, once selected for a donation *and only then*, must ensure that they will remain eligible on the day the transplant is to take place. I believe that to be under such duty does not constitute such an interference in our life as to make it less than decent.

(**C**) Let us assume, then, that the foregoing points are correct, and let us suppose that we are selected for a donation. If the donation necessitates an operation under general anaesthetic, we incur a risk of suffering serious complications during and after the procedure; in

fact we risk death. Surely, some would object, we cannot be under a duty to incur such risks for the sake of a transplant patient? And yet if one thinks that we are under a moral duty to help out of the water someone who is drowning, to drive to the hospital, ambulance services failing, someone who is in serious pain, etc., and if the risk of dying during or after the operation is as acceptably low as the risks one incurs whilst driving or rescuing a drowning person from quiet seas, one must accept a moral duty to transfer body parts under general anaesthetics. Clearly, in some cases, we might think that the risk for the supplier is unacceptably high, just as it might be unacceptably high for the rescuer. I do not know, actually, what the relative risks are of dying on the operating table and dying while driving or rescuing a drowning person. But my point here is that if we hold rescuers under a duty to incur a risk, when the probability of actually incurring the harm is sufficiently low, then we must hold the medically better off under a duty to incur a similar risk.

Now the opponent of compulsory taking might very well counter-claim that people in need do *not* have a right against us that we help them when the help they need is our time, or energy, indeed the use of our body, as described in the previous paragraph (swimming, driving, etc.), if there is the *slightest* risk that we may be harmed as a result. But her counter-claim would be vulnerable to the objection that, every time we drive, every time we cycle, we put, or contribute to putting, other people at risk to suit our purposes – people, in fact, who do not have much choice in the matter (after all, they *have* to go shopping, to take their children to school, etc., and thereby expose themselves to risks). More to the point of this paper, we accept being put at risk by ambulance and fire engine drivers, for the sake of ensuring that people whose prospects for a decent life are at stake get to the hospital on time, or are helped out of their burning house on time. It is unclear, then, why people in need of body parts are not allowed to put us at risk by asking us to undergo an operation, all the more so as suppliers, to reiterate, would receive compensation. At this stage, of course, someone might be tempted to object that we accept that risk because we in turn might need to be taken to the hospital very quickly. But this will not do: For by the same token, we should accept the risk attendant on general anaesthetic, knowing that we might one day need a transplant.

My opponent's counter-claim, therefore, seems to prove too much. To be sure, there is a difference between being put at risk by an ambulance-driver for the sake of someone who needs to get to the hospital and being put at risk by a surgeon for the sake of a patient in need of an organ. In the ambulance case, the patient's end is not served by putting pedestrians at risk. In the transplant case, by contrast,

putting the donor at risk is instrumental to the patient's end: The patient would not be able to stay alive, or to lead a decent life, if the donor did not incur the risk. But unless one thinks individuals should never be put at risk as a means to someone else's ends, one cannot point to that difference in order to block the compulsory taking of body parts. On what grounds, then, could one argue that individuals should never be put at risk as a means to someone else's ends? I suspect that many a proponent of that view would claim that by putting someone at risk as a means to achieve one's or someone else's ends, one is requiring that they make a considerable sacrifice, without asking their consent, and one fails, thereby, to treat them as persons with their own projects, attachments, ends to pursue, etc. Suppose that you are suffering from a very, very serious bout of influenza, and that you can get some relief only if I take a fifteen minute return cycle-ride on a busy road, to the nearest pharmacy. I would undoubtedly incur a small, but real, risk of being run over by a car. If the claim under study is correct, it follows that to hold me under a duty to go the pharmacy constitutes a failure to treat me as a person with my own ends to pursue, and therefore that I should not be held under that duty. I for one cannot think of many people who would hold that view. And indeed, it does not seem convincing at all, simply because it is hard to see how merely putting me at a *small* risk involves denying that I am such a person.

Let us nevertheless assume, for the sake of argument, that it does. Even then, the objection from risk could not be deployed against the claim that the healthy are under a duty to transfer body parts under *local* anaesthetic, since they would not incur any risk in doing so. More specifically, given the state of medical advances, this implies that they are under a duty to transfer their blood, bone-marrow, and liver cells (once it becomes possible to extract them under local anaesthetic).[26]

## IV. CONCLUSION

Not so long ago, being a liberal meant, amongst other things, upholding rights of private property and opposing coercive taxation for purposes other than their protection. Nowadays, many philosophers who call themselves liberals would claim that we must ensure that the poor have a right against the better off to the material resources they

[26] It is already possible to transplant liver cells onto patients under local anaesthetic. It is hoped that this technique, which is still on trial, can be used to relieve the plight of diabetes sufferers. See J. Meikle, 'Tests hold out the hope of cure for diabetics', *The Guardian*, 27 January 2001. For a very good account of the permissibility of risk imposition, see J. J. Thomson, 'Imposing Risks', *Rights, Restitution, and Risks*, Cambridge, MA, 1986.

need in order to lead a decent life. In this paper, I argued that if one holds that the poor have a right that the better off give them the material resources they need in order to lead a decent life, then one must hold the view that the sick have a right against the healthy that the latter give them some of their body parts. To be sure, someone faced with that argument might decide, with libertarians and against liberals committed to distributive justice, not to endorse the coercive transfer of material resources to the needy, on the grounds that its implications for bodily integrity are unacceptable. But in so doing, she would concede one of my central claims – which the overwhelming majority of liberals have resisted – namely that, at the bar of justice, material resources and body parts are relevantly analogous. In addition, she would fail to realize that, as I have shown here, if one thinks that the poor do not have a right to help against the better off if the latter would end up leading a less than minimally decent life as a result, one is committed to the view that the sick do not have a right to the body parts of the healthy if the latter would end up leading a less than minimally decent life as a result. Thus she would fail to realize that holding the healthy under a duty to transfer some of their body parts to the sick does not undermine their prospects for such a life.

At a minimum, then, the sick have a right to the blood and bone-marrow of the healthy, as well as to those body parts the removal of which, under general anaesthetic, would not cause the healthy to die, and would pose a minimal risk. To many, drawing a distinction between body parts which can, and body parts which cannot, be taken from the living might simply be impossible. Yet, although in many cases such judgements will be hard to make, in other cases, or so I have sought to show, they are not. Moreover, it is no more difficult to decide when we can take body parts from the living than how much money we can take away from taxpayers. Those who do not regard this difficulty as good enough a reason to reject the claim that the needy have a right to some of the material resources of the better off should not regard it as good enough a reason to reject the claim that the sick have a right to some of the body parts of the healthy.[27]

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