

## Response to Seven Critics

**Kirby and Cantor** are right to point out that our rather abstract account provides a too cursory treatment of the claims of the grieving family and their relations with the transplant team. But we don't have to say as much as they think we do since *they* claim that families are concerned primarily to "respect the previously expressed autonomy interests of a deceased family member or to protect his bodily integrity" and to "fulfill the preference of the deceased as to respectful disposition of the cadaver." In virtue of our metaphysical arguments about the body's persistence, if not our Epicureanism, we have indirectly discharged much of our obligation to deal with the family's concerns by undermining the assumptions they rest upon.

We would add that Kirby ignores some relations as well - those of the distressed and soon to be grieving family of those who don't get a transplant. If we consider both relationships, it isn't clear that our arguments are weakened so much by abstracting away from the actual clinical setting. Imagine a modified mausoleum scenario where the families of the deceased and the threatened are present during a memorial service when the fire breaks out. It is counterintuitive to hold that the threatened man's needs shouldn't be given priority by even those who have relationships to the deceased family, such as mortuary staff or clergy.

We think **Kobler** is wrong to claim our thought experiment is disanalogous due to differences in first and third person permissions or the amounts of bodily matter taken. Intuitions don't change when a third person makes the protective body available. Nor will organ conscription be viewed more sympathetically if those performing the organ removal are always the persons needing of the transplants. And it will face greater opposition even if no more bodily matter is taken for transplant than lost in an autopsy. Recall the outcry over just cornea takings in the US.

**Kobler** and **Nelson** mention that there are usually alternatives to organ conscription, whereupon our thought experiment is set up so there isn't any. But given the foreseeable shortage, even if there is more time to find a willing donor for one patient, there will still be another whose situation is analogous to the mausoleum case.

We actually conclude that alternatives to organ conscription should be first pursued. We add that our arguments can fix problems in policies that will still bring about the occasional nonconsensual organ procurement such as the presumed consent policy that **Cantor** finds attractive. Even his well advertised version of presumed consent will still have to admit that some opponents of donation will fail to opt out. So if their interests survive their death, they will be violated. But we offer an argument that their interests don't, and then provide a second argument that even if the interests do survive, they can't be interests in autonomous control of one's body, preservation of bodily integrity, or bequeathing one's bodily property. Our metaphysical arguments can also patch up problems in **Robertson's** *preferred status* policy since sometimes the initial consent will not be genuine or those who do consent will later not officially register a change of heart.

Since **Nelson** often anticipates our responses and we find many of his caveats wise, we can be brief. Our Epicureanism isn't undermined by the admission of *non-experiential* harms since the nonexistent dead are not subjects of either experiential or non-experiential harms.

**Robertson** makes the interesting claim that our arguments run afoul of Rawlsian public reason. It may be that metaphysics can't be disentangled from bioethics and that ethical problems at the margins of life reveal themselves to be the Achilles' heel of Rawlsian public reason. Another possibility is that disposal of remains is not a matter of constitutional essentials or basic justice, hence doesn't come under the purview of public reason. Anyway, we think it reasonable to expect that there can be an overlapping consensus between many different comprehensive doctrines regarding the claim that bodies go out of existence at death. That argument drew upon non-controversial biology rather than Epicurus, and there is nothing intrinsic to dualism,hylomorphism, constitution, animalism, neo-Lockeanism or four-dimensionalism that demands live bodies persist as corpses. Moreover, we suspect an argument compatible with Rawlsian public reason can be made for organ conscription on the same grounds as that made for mandatory autopsies.

**Robertson** finds a disanalogy between the rare mandatory autopsy and organ conscription. We questioned the relevance of frequency worries in note #5 where we hypothesized that if

nonconsensual organ takings became rare or mandated autopsies frequent, the former would not likely become legitimate and the latter suspect.

We're familiar with much of the literature on organ conscription that **Hester and Schonfeld** accuse us of ignoring. But we don't discuss those works since they don't try to make Epicureanism palatable the way we did, nor argue that considerations of part assimilation mean there don't exist any dead bodies that can have their integrity violated, nor draw upon Unger-inspired accounts of distortional features about why the live saving reasons aren't recognized. Most of the conscription literature admits interests of the dead but suggest overriding them, a strategy we are trying to avoid (note 2). We don't understand their aspirational interests account. We also fail to understand why our mausoleum runs afoul of the naturalistic fallacy given that our analysis draws upon Unger's account of morally irrelevant distortional features.

We welcome **Eberl's** hylomorphic account which suggests that many Christians will not exercise a conscience clause and also that there may be an overlapping consensus between comprehensive doctrines about bodies ceasing to exist. We are also sympathetic to his *waste avoidance* argument. We are unmoved by Feldman's claims that there is no time of the harm of death for it doesn't cohere with all the harms that are timed and we think Pitcher's account that the living are now harmed by the prospect of their deaths depends upon assuming that death is bad in the future.