

RESPONSES AND DIALOGUE

A Response to Zambrano

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Alexander Zambrano sets out to refute an argument that I have made on a number of occasions over many years since 1992, which he calls “Harris’s Greater Need Argument” (2002).

Zambrano claims correctly that my:

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 (535). 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’ (535). 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.

This is not quite right. I claim that life-saving, in most people’s and most society’s morality, has a higher importance than avoidance of distress which does not cause bodily harm or shorten life but is, in most cases and for most rational people, merely upsetting. I offer here no further defense of this claim than the fact that “murder” is almost universally regarded as a more serious crime than theft, though both involve the disregard of legitimate interests.

Zambrano notes, again correctly, that “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 (Harris 2003, 131).¹

Zambrano says, outlining his second consideration:

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.

Of course, this is true and we don’t need Zambrano’s argument to tell us this. We are obviously morally responsible for everything we voluntarily do! I have never and would never deny this; no rational person could. So, for the record, I continue to hold that “The cadaver donor (however reluctant) stands to lose very little, but not nothing...”

But I also accept the corollary of this, namely that, also as Zambrano rightly insists, the idea that her post-mortem interests might not be respected after her death might cause distress or upset to a live agent whenever she considers the prospect that these interests might not be respected. This also I have never denied. But I should add that I am totally unconvinced, and that this distress, such as it is, pales into insignificance when compared with the distress an individual might have at the thought of dying many

years prematurely for want of donor organs that others have selfishly denied them. And I use the term “selfishly” deliberately.

What is however totally absent from Zambrano’s paper is any trace of a refutation of “Harris’s Greater Need Argument.” Nowhere in his paper does Zambrano address the question of the relative importance of a desire for posthumous bodily integrity when set against the desire to avoid a premature death for want of donor organs that would otherwise simply go to waste, or when set against other significant human values.

The issue is, and remains: What price are we entitled to exact for the exercise of our posthumous choices? More particularly, are we entitled to posthumous bodily integrity when (1) This is unattainable and (2) it is, or so I would and have argued, a relatively trivial value compared with the sacrifices that must be exacted to maintain it?

Posthumous Bodily Integrity Is a Dangerous, Wasteful, and Self-Indulgent Myth²

The human body cannot for long remain intact after death. It is perishable and, as has been chronicled in art and literature since time immemorial, will inevitably decay, disintegrate, and turn to dust ...or worse!

Everyone knows that the idea that bodies can remain intact (whatever “intact” might mean) is an illusion. It is not a dark secret, like knowledge of exactly what happens at *post-mortem* examinations (we revisit the necessity for post-mortem examinations in a minute). Shakespeare, as ever, tells it like it is. In this conversation between Hamlet and Horatio over the grave being dug for Ophelia and contemplating the unearthed skull of Yorick, a jester, the inevitable fate of the dead is made both vivid and comic.

Hamlet: Prithee Horatio, tell/me one thing.

Horatio: What’s that my Lord?

Hamlet: Dost thou think Alexander looked o’/ this fashion I’ the earth?

Horatio: E’en so my lord

Hamlet: To what base uses may we return Horatio! Why may not imagination trace the noble dust of Alexander, till he finds it stopping a bung hole?

Horatio: Twere to consider too curiously, to consider so.

Hamlet: No, faith. Not a jot; but to follow him thither with modesty enough, and likelihood to lead it; as thus: Alexander dies, Alexander was buried; Alexander returneth into dust; the dust is earth; of earth we make loam, and why of that loam, whereto he was converted, might they not stop a beer barrel?

Imperious Caesar, dead and turned to clay
Might stop a hole to keep the wind away:
O’! that that earth, which kept the world in awe,
Should patch a wall to expel the winter’s flaw.³

No dead body remains intact; the worms (a “certain convocation of politic worms”—if one is lucky!) or the fire and eventually dust claims it. It is disintegrated, dispersed, and may end as the bung in a beer barrel or the mortar in a wall. The alternatives are not burial intact or disintegration. There is simply no alternative that does not involve disintegration. As Hamlet again makes clear talking of this process:

...Your worm is your only emperor for diet: we fat all creatures else to fat us. And we fat ourselves for maggots: your fat king and your lean beggar is but variable service; two dishes to one table: that’s the end.⁴

Given that there is no alternative, the complaint of those who object to actions that violate the physical integrity of the corpse (even when the corpse’s predecessor didn’t like the idea), is scarcely rational. Illusions are fine, but whether the State and the Courts should give judicial or official support to these

illusions is more doubtful, particularly when so to do might deprive others of the possibility of life-saving therapies or life itself.

What Price Are We Entitled to Exact for the Exercise of Our Preference for Posthumous, If Very Temporary, Bodily Integrity?

We have, I hope, now established that posthumous bodily integrity is a vain quest.

I will not here discuss embalming, “plasticination,” and other somewhat esoteric methods or prolonging the existence, if not of the life of a dead body. Zambrano does not attempt the required assessment of the price those who object to the posthumous use of their bodies are entitled to exact from the people and societies that survive them.

Zambrano says: “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.” Of course, this is trivially true, we should consider these interests and their significance; but what *weight* should be given to them, how important are these interests? I have argued “not very.” Zambrano has nowhere refuted or even engaged with this argument. Nor given his own assessment.

How does Zambrano think we should weigh the countervailing interests in establishing the cause of a suspicious death or pursuing medical research or public health?

Some examples are needed, and here they are:

- Is a society justified in burying or cremating, for example, plague or other disaster victims in emergency situations without knowing about, or disregarding their bodily disposal preferences? If not, how many deaths from infection are we required to countenance to protect Zambrano’s posthumous interests? Here most society’s do and have over centuries agreed with me.
- Are no coroner or court-ordered post-mortems to be permitted when the cause of death is uncertain or requires further explanation? Are we to denounce the acceptability of such things? In the UK alone there were 89.206 Coroner-ordered post-mortem examinations in 2015.⁵ When these are ordered, there is no provision for conscientious objection from the deceased. But suspicious deaths need to be explained. There may be a murderous agent out there. That agent may be a human, a disease, or a cause of infection or accident the discovery of any of which may prevent further deaths. Again, any society that orders a post-mortem examination of the bodies of those who have died in suspicious circumstances agrees (I would submit with good reason) with me and not with Zambrano or Wilkinson.
- What should happen to battlefield victims when it will cost lives to retrieve their bodies? Again, I suggest that those who abandon the corpses of their comrades rather than add to their number do the right thing, not just the prudential thing. I offer no further argument in support of these claims.

Finally, Zambrano claims he has established “C2,” namely:

(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).

He continues: “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.”

But he has simply stipulated this, not argued for it. Let alone “established” it I concede that (indeed I have always accepted that) other things being equal it can be wrong to posthumously remove a person’s organs when that person refused that they be so removed. I do not accept, however, that it is plausible to think that this remains true if respecting this choice costs lives or a value of importance comparable to the value of a persons’ life.

And neither does anyone who accepts the cremation or burial of dead bodies that pose a health risk or coroner-ordered post-mortem examinations. Nor indeed does anyone who accepts restrictions on the

interests of the living in their exercise of free choice ... in wearing seat belts in vehicles, in vaccinating their children, in educating their children, in having sex in public, in allowing access to books with which they profoundly disagree, and so on.

I remain happy and ready to engage with a purported refutation of “Harris’s Greater Need Argument” whenever one is produced.

Notes

1. John Harris “Organ Procurement-Dead interests Living Needs” in *Journal of medical Ethics* Vol. 29. No.3. June 2003. 130–135.
2. See Harris J. Law and regulation of retained organs: The ethical issues. *Legal Studies* 2022;22(4):527–49. With a response by Brazier M. Retained organs: Ethics and humanity. *Legal Studies* 2002;22(4):550–69. And Harris J. *Wonderwoman and Superman*. Oxford: Oxford University Press; 1992, at chap. 5.
3. Shakespeare W. *Hamlet*, Act V, Sc. I.
4. Shakespeare W. *Hamlet*, Act V, Sc. I. Line 195ff. in Prudfoot R, Thomson A, Kastan DS, eds. *The Arden Shakespeare*. Walton-On-Thames: Thomas Nelson and Sons Ltd; 1998.
5. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/607728/coroners-statistics-2015.pdf (last accessed 2 June 2022).