

**JANUARY 2012**

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**ORGAN  
DONATION**

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**DEBATING MATTERS  
TOPIC  
GUIDES**

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**MOTION:**

**“WE SHOULD  
INTRODUCE  
A SYSTEM OF  
PRESUMED  
CONSENT FOR  
ORGAN DONATION”**

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## KEY TERMS

Brain stem death test

Consent

Human Tissue Act

N.I.C.E Organ Donation draft guidelines

Opt-in and opt-out

Personal autonomy

# INTRODUCTION

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# NOTES

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When the first successful kidney transplant took place in Boston in 1954 and the first human heart in South Africa in 1967, they were hailed as triumphs for modern medicine. Nowadays transplants are relatively common procedures: according to the British Heart Foundation [Ref: [BHF](#)], more than 5,850 heart transplants have been conducted in the UK, and patients can go on to live very active lives, some even running Ultra-marathons [Ref: [Heart Transplant](#)]. The latest NHS figures list 3,740 organ transplants as being carried out in 2010/11 [Ref: [UK Transplant](#)]. However, there are a further 10,000 people waiting for a transplant, and a lack of donors means that a percentage of these patients will die while on the waiting list. This situation has prompted successive governments to look at the system through which organs are donated – currently a voluntary ‘opt-in’ system, where the donor identifies him or herself by carrying a Donor Card [Ref: [Sun](#)]. Since 2000 the British Medical Association (BMA) has called for the introduction of an ‘opt-out’ or ‘presumed consent’ system for organ donation, where individuals would have to actively ‘opt-out’ if they do not wish to be considered donors upon death. But critics of presumed consent argue that such a step would effectively make all our vital organs national property. Is it our moral duty to donate organs to save the lives of others or is this an example of government trying to take personal decisions for us?



### The organ donation debate in context

In many European countries, including Austria, Belgium, Spain and France the 'opt out' law prevails where a person is presumed to have given consent unless they have formally recorded their objection to being a donor. However, it remains customary for the question of donorship to be discussed with relatives, even if it is not required by law. In the UK, the Human Tissue Act 2004 makes donation lawful only when a person has given consent prior to their death [Ref: [National Archives](#)] and relatives have no right to veto this decision as the patient's wishes are considered paramount [Ref: [HTA](#)]. Supporters of presumed consent point to the far higher donation rates achieved in countries that operate some form of opt-out system. Spain has 33.8 organ donors for every million people of its population – three times the UK rate of 12.9 per million. One reason for this differential is that in the UK roughly only 19 per cent of the population have signed up to the donor register, despite surveys showing up to 90 per cent support donation [Ref: [UK Transplant](#)]. However, Sweden, which has an opt-out system, also has a low donor rate (15 donors/million). The British Medical Association points out that presuming consent is more likely to respect the wishes of the deceased person, and would relieve relatives of the burden of decision making in the absence of clearly stated wishes from the deceased [Ref: [BMA](#)]. Yet patient representatives Patient Concern argue that organ donation is a generous gift, not an obligation [Ref: [Patient Concern](#)]. Rather than alter rules around consent, they insist that the government should introduce new systems to boost organ transplants – including more transplant co-ordinators, more intensive care beds, more organ retrieval teams, and more public awareness.

### What about personal autonomy and respect for individual beliefs?

A Public Research Report carried out in September 2008 for the Organ Donation Taskforce found that the main objections to an 'opt out' system of presumed consent related to concerns around the infringements of human rights and civil liberties [Ref: [National Archives](#)]. A sizeable minority thought that a system of presumed consent could undermine individual choice, and would hand decision-making about our own bodies over from the individual to the state. Journalist Mick Hume, writing in The Times when former Prime Minister Gordon Brown backed an 'Opt-out' system, underlined the importance of personal autonomy, arguing that whilst 'the dead body is no longer a person' neither 'should it automatically be assumed to be a national asset'. Hume further notes the proposal has the potential to undermine trust in the medical profession, whereas a high profile campaign to persuade patients this is the humane thing to do could win widespread public support. But others disagree. Polly Toynbee, the Guardian columnist, counters that opposition to presumed consent is based on superstition and scaremongering led by 'a few vociferous people's misguided and primitive instincts about the sanctity and integrity of corpses'.

### Financial incentive or betrayal of altruism?

For some the notion of providing financial incentives for organ donation has uncomfortable associations with the emerging black market in the sale of organs across the developing world. But others observe that the market in 'transplant tourism' is fuelled by a shortage of donors in the West: encouraging greater participation at home would at least counter some of

this problem [Ref: [Wales Online](#)]. Israel has recently introduced legislation that offers a non-financial incentive to consent, namely preferential access to transplantation for individuals who join the Organ Donor Registry (ODR) [Ref: [BBC News](#)]. The Ethics Committee of the American Society of Transplant Surgeons concluded that direct cash payment to families violated the ideal of altruism upon which donation should be based; however, payment of funeral expenses or a donation to a chosen charity was deemed acceptable and compatible with the concept of donation as a gift [Ref: [ASTS](#)]. The Nuffield Council on Bioethics has suggested that the government should pilot a scheme to examine whether there is public support for the idea of meeting funeral expenses, and whether it would increase the number of people signing up to the organ donor register [Ref: [Nuffield Council on Bioethics](#)].



### RECOMMENDS:

• 'Frankenstein' (PG), 1931

• 'All About My Mother' (15), 1999

• [Find out more](#) about our partnership with the education charity FILMCLUB, how you can bring the power of films into your school debates, and this autumn's recommendations from the FILMCLUB team for Debating Matters!



## ESSENTIAL READING

Relatives over-rule organ donor wishes of loved ones

Rebecca Smith *Telegraph* 22 December 2011

Kidney sale proposal sparks medical ethics debate

*Guardian* 3 August 2011

The potential impact of an opt out system for organ donation in the UK: an independent report

*Organ Donation Taskforce* 17 November 2008

New laws could make everyone an organ donor

Linda Geddes *New Scientist* 14 September 2008

Opt in or opt out

*UK Transplant* March 2008

## FOR

Organ donor rules must change, say doctors

Terri Judd *Independent* 29 June 2011

'Opt-out' organ donation plan offers hope to transplant patients in Wales

Tracy McVeigh *Observer* 9 May 2011

Living people matter. When you're dead, you're dead

Polly Toynbee *Guardian* 15 January 2008

One transplant kidney can save my son's life

Denis Campbell and Jo Revill *Observer* 13 January 2008

Organ donation – parliamentary briefing paper

*British Medical Association*

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## AGAINST

Why presumed-consent is not the right choice for Wales

John Fabre and Glyn Davies *Western Mail* 19 December 2011

RCN against opt-out policy on organ donation

Graham Clews *Nursing Times* 4 August 2011

Too many presumptions

Rafael Matesanz and John W Fabre *Guardian* 17 November 2008

Dead people do matter

Dominic Lawson *Independent* 18 January 2008

Presumed Consent for Organ Donation

*Parents Association*

## IN DEPTH

There is nothing sacred about dead bodies. So put them to use

Virginia Ironside *Independent* 30 December 2010

In Israel, a radical way to boost organ supply

Aron Heller *Associated Press* 14 March 2010

Legalizing the Organ Trade?

Peter Ritter *Time* 19 August 2008

Would you donate your body to Gordon Brown?

Mick Hume *spiked* 16 January 2008



## BACKGROUNDERS

Five year old boy saves five lives

Donna Bowater *Telegraph* 1 December 2011

Organ gangs force poor to sell kidneys for desperate Israelis

Michael Smith, Daryna Krasnolutska and David Glovin *Bloomberg*  
1 November 2011

Do your bit for the rich. Sell your body parts

Kevin McKenna *Guardian* 7 August 2011

Transplants save lives

*UK Transplant* August 2011

Medical Tourism

*National Travel Health Network and Centre* August 2011

Organ donation and Hindus: Mother-of-two begs to be given the  
'gift of life'

Ruth Gledhill *The Times* 8 July 2011

Shopping for an Organ Transplant? The Pitfalls of Medical  
Tourism

Dr. Katrina A. Bramstedt *Rowman & Littlefield Publishers* 3 June  
2011

Organ transplants at risk as donors become fatter and older

Chris Smyth *The Times* 11 November 2010

Health Secretary apologises for organ donation errors

Sam Lister *The Times* 12 April 2010

The enigmatic nature of altruism in organ transplantation

Marie-Chantal Fortin, Marianne Dion-Labrie, Marie-Josée Hébert  
and Hubert Doucet *BMC Research Notes* 2010

Can this success be transplanted?

Johnjoe McFadden *Guardian* 19 November 2008

'People are dying. It's human to help' says health chief

Gaby Hinsliff *Observer* 16 November 2008

Kidneys in Parliament

Evan Harris *All-Party Kidney Group* 6 July 2007

Postnote: Organ Donation

*Parliamentary office of Science & Technology* 1 October 2004

Organ transplants

*Parliamentary Office of Science and Technology* October 2004

It is immoral to require consent for cadaver organ donation

H. E. Emson *Journal of Medical Ethics* 2003

Organ and tissue transplantation in the NHS

*Department of Health*

House of Lords Inquiry into the EU Commission's Communication  
on Organ Donation and Transplantation

## ORGANISATIONS

British Medical Association (BMA)

British Transplantation Society

Ethics Committee of American Society of Transplant  
Surgeons

European Society for Organ Transplantation

Human Tissue Authority

Patient Concern

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## IN THE NEWS

Church leaders unite in opposition to presumed consent for organ donation in Wales

*Wales Online* 23 January 2012

Transplant waiting lists leaving patients 'forced to buy organs in Asia', debate told

*Wales Online* 21 January 2012

Doctors told to ask the dying for their organs

*The Times* 12 December 2011

Welsh government's 'opt out' organ donor consultation

*BBC News* 8 November 2011

Organ donor question for driving licence applicants

*Guardian* 31 December 2010

Ethicist urges tax credits to spur organ donation

*Science Daily* 3 June 2010

Opt-out organ donor system 'would increase transplants'

*Telegraph* 5 May 2010

Organ donors could be paid: consultation

*Telegraph* 20 April 2010

NHS 'organ donor error' review to take place

*BBC News* 11 April 2010

Girl saved by heart transplant calls for compulsory organ donation

*Telegraph* 28 March 2010

Israeli organ donors to get transplant priority

Adam Brimelow *BBC News* 17 December 2009

Change the law to force adults to decide on organ donation, say doctors

*Daily Mail* 2 November 2009

Transplant first a giant leap for surgery

*Guardian* 19 November 2008

Gordon Brown defies advice and threatens opt-out law to solve donor crisis

*The Times* 18 November 2008

Chief medical officer condemns organ donor decision

*Observer* 16 November 2008

Nurses support assumed organ donation policy

*Telegraph* 29 April 2008

The Sun could save your life

*Sun* 28 March 2008

Organ donor opt-out scheme 'treats body like spare parts'

*Scotsman* 21 March 2008

Doctor 'hastened death of patient for organs'

*Telegraph* 29 February 2008

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## ABOUT DEBATING MATTERS

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TEACHES A WAY  
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INTELLECTUAL  
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**TRISTRAM HUNT, HISTORIAN & BROADCASTER**