

guiding principle or framework for designing organ donation registration policies. Option (3) raises the question as to whether the target article authors' initial assumption was correct: Do people indeed have the right to determine what happens to their organs after death? ■

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Organ Donor Registration Policies and the Wrongness of Forcing People to Think of Their Own Death

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MacKay and Robinson (2016) claim that some legal procedures that regulate organ donations (VAC, opt-in, opt-out) bypass people's rational capacities and thus are "potentially morally worse than MAC" (6), which only employs a very mild form of coercion. We provide a critique of their argumentation and defend the opposite thesis: MAC is potentially morally worse than the three other options.

The authors understand the concept of autonomy as "self-governance—the capacity to govern one's life on the basis of reasons" (6), which means that they identify autonomy with enkratia (the capacity to respond to reasons and to act in accordance with reasons). Certainly, this is the influential interpretation of the notion of autonomy—a similar conception is defended, for example, by John M. Fischer (2012), who believes that "the more robust notion of autonomy is inconsistent with weakness of the will"—but not the only one. Therefore, MacKay and Robinson's argument may not be valid for those who

understand autonomy in a different way, for example for those who highlight the importance of (i) identification with our own decisions or actions (e.g., Frankfurt 1987; Dworkin 1989), (ii) historical self-narrative (e.g., Christman 2009), or (iii) the social and interpersonal relations in which an agent exists (e.g., Oshana 2006). According to these conceptions, reason-responsiveness capacity is neither sufficient nor even necessary for an autonomous decision. Even for Fischer it is not sufficient—since he assumes that autonomy also requires a kind of governance by the "real self" (but in his theory it is necessary). It seems to be perfectly possible that a decision is the result of an agent's reason-responsiveness capacity, but it is still not autonomous, because of the lack of some other necessary condition, for example, the endorsement by the agent's highest order self (the lack of which may lead to nonidentification with his or her own decisions or to self-alienation), or coming to a decision in a way that fits either the agent's ongoing historical self-narrative or the interpersonal and social

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dynamics in which one finds oneself. Moreover, according to some conceptions, reason-responsiveness capacity is even not necessary for autonomy, since the higher order preferences, historical self-narrative, or social and interpersonal relations need not be based on any reasons, and can be formed on the basis of no reflection at all.

The intellectual approach to autonomy assumed by MacKay and Robinson that highlights the importance of informed consent in the case of organ donor registration policies leads to the problematic explanation of the degree of *pro tanto* wrongness of “reason-bypassing nonargumentative influence,” which—among other things—depends on (i) “the proportion of citizens who would consent to the use of this form of influence” and (ii) “the degree to which this form of influence affects people’s decision-making” (7). At first sight it may seem that MacKay and Robinson claim that the answers to these two issues could be—at least potentially—given by empirical research (i.e., in the case of (i) by surveys, and for (ii) by field studies). But their answers are highly problematic, even for one who would agree with their controversial explanation of the degree of *pro tanto* wrongness. Regarding (i) it is surprising why, in trying to establish the proportion of citizens who would consent to the use of this form of influence, they quote surveys saying that “a majority of people [both in the United States and Europe] prefer donation, but this majority is not overwhelming” (7). There is no valid implication from preferring donation (or not preferring) to consent (or a lack of consent) on the use of this form of influence: It is empirically and logically possible that even if all people preferred donation, they could still not consent to the use of the reason-bypassing nonargumentative influences on them in this matter. Regarding (ii), contrary to MacKay and Robinson, establishing the mere degree to which an influence affects people’s decision making is very difficult, if not impossible. MacKay and Robinson are surprised that they are not aware of any “study that estimates the causal impact of each policy’s use of a default, controlling for differences in policy, culture, level of economic development, religion, and other factors that might affect registration rates” (7). From our perspective it is not surprising at all, because such research would require many substantive assumptions about the reference point to which a researcher would compare different reason-bypassing nonargumentative influences. For MacKay and Robinson this reference point seems to be an omniscient, ideally coherent, and perfectly reason-responsive agent living outside any cultural, religious, political, or economic pressures, so it seems that they rely on a highly idealized and naive vision of human agency.

Moreover, MacKay and Robinson underestimate the strength of coercion resulting from requiring people to think about their own death by forcing them to decide whether to register as organ donors or not (usually this would concern young people since this decision would be a condition for receiving identification [ID] or a driver’s license). We intend to highlight three issues related with this problem: the alleged value of having a choice, the

distortions of decision making capacities during forced choices, and the expected consequences for organ recipients.

The authors implicitly assume that having a choice is always more valuable from the perspective of a rational agent than having no choice, and that bypassing people’s rational capacities is always *pro tanto* morally wrong when a valuable choice is at stake. But this view is mistaken: Social psychologists and philosophers (from the medieval example of Buridan’s ass, through Kierkegaard, to the more contemporary Gerald Dworkin of 1982) have noticed many important costs related to the mere necessity of making a choice: acquiring and processing new information; psychological pressure stemming from the necessity of making a decision; possible regrets after making a decision; and so on. So it is quite reasonable to assume that many people would prefer not to have a choice at all on this sensitive issue, no matter what substantive views they have about organ donation (if any). Therefore, their first choice would be something like: “I’m 18 years old, I do not want to think about my dead body now, so I don’t even want to see this kind of questionnaire.” MAC defended by MacKay and Robinson would not respect this kind of preference.

Forcing someone to think of one’s own dead body may cause stress that limits the basic cognitive processes, affects problem solving or decision making capacities, and may lead to worse decisions from the personal perspective of an agent in comparison to decisions that are not forced by policymakers and are made after proper consideration. The high level of stress can cause a choice to be made without generating all of the available alternatives, or a person can search through a lot of alternatives without thinking deeply about his or her findings (Janis and Mann 1977). Recent research suggests that participants who experience stress make less beneficial and more risky decisions than unstressed participants (Starcke and Brand 2016). Moreover, thinking of one’s death is so stressful that almost everyone tries to bypass this topic or to change the subject by talking about somebody’s else death—avoidance and displacement are common strategies for avoiding discussing this topic (Nizza, Britton, and Smith 2016). It is reasonable to assume that in the case of MAC people would frequently make a decision about organ donation at the last minute, under time pressure, and that this would influence their final decisions: Under these circumstances the accuracy of a person’s judgments decreases, as well as making the processing of information more selective. For example, someone may sign up to become a donor because she or he ignored her or his religious duty for specific funeral rituals under stress (not thinking deeply about the alternatives); or, from the other way round, someone may reject donation, relying solely on the negative opinions of one’s family, but not on one’s own reflection (avoidance). In both cases the person may later experience negative emotions due to making a forced choice.

Finally, forcing someone to be aware of personal mortality can lead to making an adverse decision from the viewpoint of organ recipients, which should also be considered when analyzing the results of MAC policy. According to terror management theory (Greenberg, Solomon, and Pyszczynski 1997), thinking about death generates anxiety, which can cause prosocial behavior because people use mechanisms for trying to cope with this anxiety: cultural worldview validation and self-esteem enhancement. Prosocial behavior can help to develop both of these mechanisms. As a result, we could expect that people who think about their own death should more often agree to be organ donors. Nonetheless, recent research suggest that in the case of organ donation the salience of death causes the protection one's own self at the expense of altruistic impulse (Hirschberger, Ein-Dor, and Almakias 2008) and hence people are less willing to sign up to be donors.

To sum up, developing the previous work of our group member (Nowak 2014), we argued that forcing people to decide whether to register as organ donors or not may lead to fewer autonomous decisions, even within MacKay and Robinson's controversial understanding of autonomy.

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Issues With Tissues

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MacKay and Robinson's target article contributes to the literature on organ and tissue donation by evaluating the extent to which different types of policies—opt-in, opt-out, voluntary active choice (VAC), and mandated active choice (MAC)—respect potential donors' autonomy (MacKay and Robinson 2016). The authors argue that MAC policies, although coercive, are morally preferable to the alternatives because MAC seeks to ensure that choices

regarding donor registration actually reflect individuals' values and preferences, rather than status quo bias.

MacKay and Robinson correctly note that people may be asked something like "Do you wish to be an organ and tissue donor?" when, for example, they renew their driver's license. Tissue donation is, however, mentioned by them only in passing and not distinguished from organ donation. In this commentary, I contend that more

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