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Ethics, organ donation and tax: a reply to Quigley and Taylor

Kasper Lippert-Rasmussen,¹ Thomas Søbirk Petersen²

A national opt-out system of post-mortem donation of scarce organs is preferable to an opt-in system. Unfortunately, the former system is not always feasible, and so in a recent JME article we canvassed the possibility of offering people a tax break for opting-in as a way of increasing the number of organs available for donation under an opt-in regime. Muireann Quigley and James Stacey Taylor criticize our proposal. Roughly, Quigley argues that our proposal is costly and, hence, is unlikely to be implemented, while Taylor contests our response to a Titmuss-style objection to our scheme. In response to Quigley, we note that our proposal's main attraction lies in gains not reflected in the figures presented by Quigley and that the mere fact that it is costly does not imply that it is unfeasible. In response to Taylor, we offer some textual evidence in support of our interpretation of Taylor and responds to his favoured interpretation of the Titmuss-style objection that many people seem to want to donate to charities even if they can deduct their donations from their income tax. Finally, we show why our views do not commit us to endorsing a free organ-market.

There is a shortage of organs available for donation. A national opt-out system of postmortem donation is preferable to an opt-in system, in our view. Unfortunately, in some countries opt-out systems are currently unpopular, and so in a recent *Journal of Medical Ethics* article we canvassed the possibility of offering people a tax break for opting in as a way of increasing the number of organs available for donation under an opt-in regime.¹

Muireann Quigley and James Stacey Taylor criticised our proposal.^{2,3} As far as we can see the distance between it and Quigley's and Taylor's views is not huge, and of course we thank them for their thoughtful responses.

REPLY TO QUIGLEY

Quigley makes two main points. She claims, first, that if it were introduced in the UK our scheme would be likely to involve net economic loss. (The least optimistic figure she presents—based on a 50% tax rate as in the most recent UK budget rather than a 45% rate—describes a net annual cost of £166.8m. The most optimistic figure—in Quigley's view, an unrealistic one—suggests a net annual saving of £7.66m.) Second, for this reason, she claims that it is unlikely that the

scheme would 'garner the support of politicians and policymakers'.

In support of her first point, Quigley judiciously points to a number of factors: for example, that the transplantation of organs other than kidneys will not involve the cost savings secured through reduced need for dialysis. We will not dispute the details of Quigley's claims, because we never contended that our proposal would result in net savings in purely economic terms. The figures we presented, such as the £200 tax break, were meant to be largely illustrative. The financial savings involved in taking patients off dialysis were mentioned to address a potential objection, but our proposal's main attraction lies in gains not reflected in the figures presented by Quigley. With one qualification, one of Quigley's own remarks captures our view well: 'We might think that the overall benefits, in terms of lives saved and improvements in quality of life, of having more organs to transplant outweigh any increase in costs in purely economic terms'. The qualification is that we would prefer, for obvious reasons, not to talk of offsetting any increase in costs in purely economic terms. Still, such significant benefits might outweigh substantial extra costs in purely economic terms.

As a criticism of our paper Quigley's second point is a little wide of the mark, because our main aim was to describe a scheme that improves on present opt-in schemes, not one that there is political will to implement. However, her argument is not entirely beside the point

either, because we put forward our scheme as a second-best solution given the lack of political will to implement an opt-out system. Hence, if our proposal is, politically speaking, as unrealistic as an opt-out scheme, it loses attraction. However, even if, as Quigley argues, our proposal involves net costs, it does not follow that it is politically unrealistic. Economic considerations are not the only drivers of political decision making and politicians have been known in the past to introduce healthcare schemes that raise net costs. They have also introduced tax breaks (eg, for donations to charity) even though this can impose net costs on the state.

REPLY TO TAYLOR

Taylor makes three critical points: (1) that we misconstrue the Titmuss-style objection to our proposal; (2) relatedly, that our response to the Titmuss objection as we construe it fails to bear on the Titmuss-style objection rightly construed; and (3) that one of our responses implies that instead of arguing in favour of a tax break we should 'argue for the morality of using market forces to secure' an increased number of organs.

In connection with (1) Taylor says the real concern underlying the Titmuss objection is 'that offering incentives to donate organs when such donation was previously uncompensated would eliminate the possibility that persons could 'purely' donate their organs in a situation where compensation was not available'. This is problematic, according to Taylor, because it compromises the autonomy of citizens 'by removing a valuable option from their choice set' or because, depending on people's attitudes to (as it were) pure and impure donation, 'the offer of compensation would lead to fewer organs being donated'.

Presumably, when Taylor refers to 'the real concern underlying the Titmuss objection' this is the concern that will emerge in the best reading of what Titmuss wrote. However, there is not just one, but several plausible accounts of what that concern is. We quoted Titmuss' remark that governments should 'weaken market forces which put men in positions where they have little opportunity to make moral choices or to behave altruistically if they so wish'. On the reasonable assumption that the last part of this sentence reveals Titmuss' reasons for favouring gifts over market exchanges, in this passage, at least, his real concern lies closer to the objections we address than the one Taylor describes.

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However, Taylor's first challenge is not his most important. For if the complaint he describes is forceful, it does not matter hugely whether Titmuss actually made it. Taylor suggests two ways in which the complaint can be construed: as an autonomy-based or supply-based objection. We address the first of these rather directly, in that we argue that our scheme adds two valuable options to people's choice sets, that is, opting in with a tax break (for oneself or one's favourite charity) or opting in declining a tax break, and that this more than offsets the loss of the option of donating without the possibility of compensation or reward. In short, the choice set facing potential donors under our scheme is different but not less valuable overall from the point of view of autonomy than the choice set facing potential donors under a scheme without the availability of compensation.

Turning to the supply-based objection, we concede that we did not face this challenge directly in the discussion of Titmuss' objection we presented (even if we did address it in a general form in the previous section entitled 'The no effect and counterproductiveness objection'). We did speak to it indirectly, however, in that we argued that there is no reason to think that people would 'desire to donate their organs to help others only if they believed that pure donation without the possibility of compensation was the only way to aid'. Desires are informed by judgement, and in presenting our scheme we observe, for example, that many people seem to want to donate to charities even if they can deduct their donations from their income

tax. We say it is unclear why the case of organs is relevantly different.

At this point Taylor might respond that it is irrelevant whether people ought not to have this desire—the fact is that some do. But that in itself does not defeat our proposal. To defeat it one would have to show that people with this desire outnumber people with the desire to donate their organs only when offered a tax break (perhaps just to decline it). Taylor does not do that, so at most his objection shows that our article does not settle all of the issues raised by our tax scheme.

We turn to objection (3), which runs as follows. Some people will refuse to donate organs if organs have any 'price' at all. The size of the financial incentive offered to people who opt in on our scheme will not reduce the number of people who decline to opt in for this reason. However, the magnitude of the incentive presumably does matter to the people who can be nudged into donating with a financial incentive. Hence, we 'should favour allowing donors to profit from their donation, and not merely be compensated for it. Instead of advocating tax credits to increase the numbers of organs procured, then, they should argue for the morality of using market forces to secure them'. Things move quite swiftly here, we feel. The first sentence of Taylor's we quote does not quite capture our position. We did not rule out the possibility that the tax credit would do more than compensate people who opt in. As for the second sentence, it should be remembered that our limited ambition was to describe a system that would improve the present

situation in many opt-in countries. We left the question whether a market for organs would create an even better system unanswered. We doubt that our endorsement of a system of tax credits automatically commits us to accepting a market solution. As grave as the aim is, there are other important aims and values at stake, and a free market for organs may well clash with some of these. Specifically, we discuss objections to our scheme based on the values of non-exploitation, non-commodification and equality, arguing that these can be met by our proposal. For all this, the objections might apply forcefully to a similar, but marketised system (or a market for permissions to use one's organs once one is dead, if this is what Taylor has in mind).

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