

# Why I feel queasy about the proposed law that assumes our consent to organ donation

**U**NTIL I read the front page of Saturday's Mail, I had no idea that Geoffrey Robinson was still one of the nation's legislators.

This is the multi-millionaire businessman who gave Tony Blair and family free holidays in his Tuscan palazzo, was more than once reprimanded by the Commons Standards and Privileges Committee, and finally quit as Paymaster General (what an appropriate title) when it emerged that he'd given a secret loan of £373,000 to his fellow cabinet minister Peter Mandelson — who also had to resign.

That was 20 years ago and most of us will not have thought about Mr Robinson since ... until he popped up again on the front page of Saturday's Mail.

This time there is no taint of scandal, at least in the financial sense. The 79-year-old Labour member for Coventry North West has tabled a Private Member's Bill which will overturn the entire basis of organ donation in England.

Under Robinson's proposal, every adult in the country would be presumed to have offered his or her organs for transplant, unless they had specifically opted out.

Remarkably — or, at least, I think it is remarkable — on Friday, his bill was given an unopposed Second Reading by MPs. It seems most likely to become the law of the land.

## Emotional

A succession of MPs made emotional speeches in favour of Robinson's Bill — and Mrs May had earlier named it Max's Law, after a ten-year-old heart transplant recipient whose mother, Emma Johnson, had campaigned for an 'opt-out' system.

Useless to point out, I suppose, that Max got his new heart in August last year under the existing system.

And no MP made the case put eloquently by the then Health Secretary John Reid when a similar measure came before the Commons in 2004: 'This decision over one's own body is for the conscience — the conscience of individual citizens in this country.'

'It is not for Parliament to impose on individuals a requisition of their bodies after death for the use of the State.'

Astonishingly, the Conservative Party leadership is now more in favour of an effective nationalisation of our bodies than the former communist Reid had been when Labour was in charge.

Doubtless Mrs May and her colleagues think this is the way the public's mood is going — and they may be right.

It is a simple argument to put. Hundreds of people die each year through lack of a suitable organ donor. So let's boost the number of available hearts, lungs, kidneys and livers by 'presuming' the right to remove them from those whose brain-dead forms are themselves kept breathing only through machines. After all, what use are the organs to them?

Yet this purely utilitarian approach entirely misses the moral power — and point — of the existing system.

A donation is just that: a gift. And this is



the most beautiful one it is possible to provide — a point that was made with breathtaking emotional power yesterday by Nadine Marshall.

Appearing on BBC1's The Big Questions, Nadine told how organs from her 18-year-old son, Conner, had been used to save the lives of three people.

Conner had been the victim of a murderous assault; but, unusually, for one so young, he had taken out an Organ Donor card and told his mother that he was serious about it.

With tears in her eyes, but smiling, Nadine told the presenter Nicky Campbell: 'I am immensely proud that Conner made that decision.'

And this is the point: it was a gift that he volunteered. Indeed, what is not volunteered is not a gift.

Two other women intimately affected by this issue also told Campbell that they did not approve of presumed consent.

One was the 44-year-old cookery writer Sally Bee, who has been diagnosed with a rare condition and will require a new heart. Another was Ellie Lacey, 31, who last year received a liver transplant. She had been 48 hours from death and had, as she related, resigned herself to it.

Also tearful, she looked across to Nadine and declared that she was completely unable to express the extent of her gratitude to the person who, like Conner, had given her the gift of life. ('There are no words that can describe it.')

## Opposed

But, she emphasised, it had to be a gift. The donor had to want to give, just as much as she wanted to receive.

Don't assume the medical profession is united behind 'presumed consent': it is deeply divided. When the PM indicated her support for such a radical change last October, the NHS National Clinical Director for Transplantation from 2008 to 2011, Professor Chris Rudge, declared that he would opt out if that happened.

'No one knows better than me the problems of thousands of people waiting for a transplant,' he said. '[But] I am horribly opposed to a change in the law. Changing the system may take away people's faith and trust in organ donation.'

And his wife, Mary, a former nurse, said that under a rule of presumed consent, she would refuse to give permission for her husband's organs to be donated.

'That, for a family that has been rooted in transplantation for 40 years, is just terrible,' she said.

What Professor and Mrs Rudge know is that there is no clear evidence that 'presumed consent' would even improve chances for those awaiting organs.

In Wales, where health policy is a devolved matter, the law was changed to 'presumed consent' in 2015. But a study published in December showed that Wales had not increased its numbers of donations since the legislation was implemented.

Indeed, there was a drop in organ transplants from 214 to 187. And in Brazil, a new policy of 'presumed consent' had to be scrapped after public revulsion caused a drop in organs being made available.

If this problem is to be addressed (though the transplant waiting list has been steadily declining in recent years), it should be at the point where life-and-death decisions are made: when someone's life has ended tragically young.

## Bedrock

In other words, hospitals should devote more to counselling the bereaved relatives when asked to assent to the ultimate gift at a time of extreme grief. Currently, relatives block one in seven transplants in cases where the dead family member was on the national organ donor register.

But I fear we are inexorably moving towards a state which arrogantly overrides family and increasingly intrudes on territory which it never did before — and didn't for good reason.

For example, in the wake of a proposal in the Icelandic parliament to ban infant male circumcision, a similar measure is being mooted here. It purports to be on human rights grounds but is motivated by an aggressive secularism (as Jewish and Muslim families circumcise their male children as part of a religious rite).

The fact that three-quarters of all male babies are circumcised on hygiene grounds in the U.S., the most litigious and health-conscious country on Earth, strongly suggests that this is the opposite of a public health problem (uncircumcised men are 22 times more likely to be afflicted with penile cancer than those circumcised).

But imagine if this were to be banned. As the barrister Matthew Scott warns: 'Loving parents would be forced either to abandon a sacred part of their religion or to emigrate. Traditional Jewish life would become impossible. It would be a civilised, well-meaning and quite possibly a human-rights-compliant pogrom.'

This illustrates just why the State should tread with immense care in matters best left to families — which, after all, are the bedrock of society.

To enforce Whitehall-directed compulsion in areas of the greatest sensitivity to families is a recipe for discontent and dislocation between society and the State. That can only be dangerous and destructive.

So I hope when Geoffrey Robinson's bill to enforce presumed consent for organ donation returns to the Commons for its third reading, there will be enough MPs with the moral courage to reject it.