

# Organ donation is a precious act – don't let it become an expected one

FREE RADICAL  
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The year 1973 has a strong claim to being the moment when Britain's governing class stopped caring about individual choice. That was when Parliament decided to make it compulsory for motorcycle riders to wear helmets. The new rule was not designed to protect one person from another's idiocy, an acceptable justification for bans or restrictions. As one MP said at the time, a motorcyclist without a helmet "can harm only himself or herself by the decision which he or she takes". Instead, to some opposition in Parliament and despite the fact that most motorcyclists already wore helmets, it stripped from individuals the power to make the right choice.

Since then, libertarian arguments have been well and truly routed. MPs, obsessed with engineering particular outcomes, are rarely reticent about taking the ability away from people to choose to be wise or virtuous. And while bans and restrictions obviously remain popular, the most fashionable mechanism for engineering those outcomes today is the "nudge". People are too lazy to do the right thing, the thinking goes. By making it harder to be "bad" and easier to be "good", we will get the society we want.

Except it's not clear that it will work. Last week MPs voted through a new law on organ donation. From 2020, the system will no longer require the individual to opt in but

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will presume that you have given your consent to donate unless you opt out. This is classic "nudge" theory, and well-intentioned. The idea is to increase the number of donations, an outcome that the vast majority of the public would support.

But it could have the opposite effect. Last year, researchers at Queen Mary, University of London argued that the new law could in fact see the rate of organ donations fall, even if the number of people on the register rises. This is because, if an individual has not chosen to opt out, upon their death their family will still have to confirm the donation. The researchers found that more families may decide to exercise a veto if there was no evidence that their loved one had actively chosen to donate. Presumption would not be enough.

If this is indeed what happens, I desperately hope that politicians reconsider the direction they are pushing policy. The principle of active consent is a precious one. If families would stop an organ donation even in the knowledge that it might save another life, it shows that people care far more deeply about choosing to do the right thing than many MPs assume. Similarly, the question of "ownership" of our bodies cannot be ignored. The new opt-out law implies an uncomfortable shift from the individual to the state.

What this adds up to is that it could be dangerous to strip individuals of the power to opt to be virtuous. Under the current system, giving an organ is a wonderful, generous thing to do. Once it becomes an expectation, imposed through legislation, it feels substantially less so. What a tragedy if the end result is fewer organs for transplant.



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