Against Body Exceptionalism: A Reply to Eyal

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It is hard to do justice, in a short reply, to Eyal's excellent review. Accordingly, I will focus on what I take to be its central claim – namely that I fail to give proper consideration to the extent to which the forced extraction of (live) body parts undermines individuals' opportunities for self-respect. According to Eyal, 'body exceptionalism' (the view that body parts, unlike material resources, are not appropriate subject matter for duties of justice) can be defended on the following grounds: 'People usually see trespass into a person and into objects they associate with a person – especially into a person's body – as utterly disrespectful towards that person and her autonomy' (pp. 236–7). And later: 'Whether or not organ confiscation is truly disrespectful . . . its widespread and intractable perception as a humiliating violation counts heavily against it, because it can thwart opportunities for self-respect' (p. 238).

There are three reasons, according to Eyal, as to why organ confiscation can have that effect. First, body invasions simply are, by nature, a mark of disrespect. Second, the person who is compelled to provide a body part may well see that act itself as disrespectful of her, and may thus feel utterly humiliated by being so treated. Third, '[a]cts that many citizens so perceive could reinforce third parties' disrespectful feelings towards that person, provoking stigma and dehumanization' (p. 239)

Before I address those three points, I should concede right away that Eyal's objection is an important one which I should have examined at much greater length in the book. In particular, a careful and detailed comparison of different kinds of bodily invasion – some medical, others not, some with intent to humiliate, others not – would have been useful.

Be that as it may, I believe that my conclusion survives his rigorous scrutiny. For a start, it is not clear to me that any instance of body invasion simply is, by its nature and without need for further thought, disrespectful of the person on whom it is performed. True, we object to the imposition of a skin biopsy or a colonoscopy on suspected cancer suffers. We also (quite obviously) object to rape. Regarding the former, however, I suspect that our insistence on patient consent stems in large part from our objections to paternalistic intervention in

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general. Regarding the latter, forced intercourse is indeed violating – but it crucially differs from forced organ extraction in requiring of the other person that they subject themselves to one of the most intimate (physically and psychologically) forms of contact that there can be between two people. It is *that*, or so I argue in the book, which makes rape unacceptably humiliating.

I do not wish to deny, of course, that individuals do in general regard bodily invasions as disrespectful. Indeed, a forced colonoscopy is more disrespectful than, say, non-consensual imaging of the colon which does not require direct contact with the body: quite obviously anti-paternalism cannot account for such judgment. However (turning to the second of the three aforementioned points), as Eyal himself acknowledges (p. 240), I allow for exemptions from the duty to donate if the putative duty-holder would suffer devastating psychological harm as a result. Thus, an individual who does see coerced donation as utterly violating, and who would suffer such kind of harm, would therefore be exempt. By the same token, an individual who would not incur a psychological harm of that magnitude would be held under the relevant duty.

At this juncture, Eyal will undoubtedly object that I myself oppose 'any policy that carries the risk of devastating or even diminishing self-respect' (p. 241), and that in so far as 'organ confiscation carries at least some remote risk of denting . . . self-respect' (p. 242), I should oppose it. It is not true, however, that I take that view. My claim, in fact, is this (section 1.3 of the book): justice does not require that people be given what they need in order to pursue their preferred conception of the good. Rather, it requires that they be able to pursue a conception of the good which gives meaning to their life and with which they can identify, even if it is not what they would *most* rather do. Failure to provide them with such opportunities is to treat them disrespectfully, to an extent which violates justice. By contrast, even if failure to give them exactly what they need in order to pursue their preferred conception of the good does lead them to lack self-respect, it would not be condemned at the bar of justice. Accordingly, not any act which dents people's self-respect is so condemnable, and thus not any instance of forced extraction is unjust: only those which dent people's self-respect in the aforementioned ways are.

Eyal's third argument for body exceptionalism is that if many perceive forced extraction as disrespectful, then those who are compelled to donate are more likely to be treated disrespectfully by others. Eyal does not provide empirical evidence in support of his claim, but let us assume that he is right. Still, as I stress at the very beginning of the book, my argument is located in ideal theory. It thus assumes that individuals comply with their obligations of justice, and do not

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treat one another with the kind of disrespect which Eyal describes. Under those admittedly stylized conditions, I maintain that justice sometimes requires confiscation. However, I also concede (happily) that if Eyal's empirical point were proved correct, then it would provide a very strong reason *not* to implement my conclusion in our non-ideal world.

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