

ARTICLE

Religious Belief and Choices Regarding the Human Corpse

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Abstract

Whilst religions invariably regard the human body as being worthy of respect, they differ as to the extent to which they tolerate acts which interfere with it and its burial. Since the retrieval of organs post-mortem for transplantation, and the conducting of autopsies to ascertain the cause of death inevitably involve radical intrusion into the corpse, there is potential for these activities to conflict with religious beliefs. This article examines the attitudes of Christian, Muslim and Jewish faiths to the cadaver, and the extent to which these faith systems object to cadaveric organ donation and to the traditional post-mortem examination. The current legal regime in relation to these medical activities is examined, with an assessment being made of the extent to which religious concerns can be satisfactorily accommodated within the scope of the current law.

I. Introduction

Religion has not and does not regard the human body with equanimity or as being trivial. For much of our history the development of medicine has been affected by religious and cultural taboos in relation to the human corpse. In classical Greece, the Hippocratic writers' knowledge of the internal working was very dependent on what could be learnt from dissecting animals or treating wounds, because there was a strong taboo against dissection, which was prohibited.¹ Human dissection appears to have been practised by

* DOI 10.7590/221354014X14042206276112

A previous version of this article was given as a paper at an AHRC workshop on 'Issues of Faith and Belief at the End of Life', held at the University of Leicester on April 23, 2013. The usual caveats apply.

¹ R. Porter, *The Greatest Benefit to Mankind: A Medical History of Humanity from Antiquity to the Present* (London: Fontana Press, 1997) 56.

Greek physicians such as Herophilus of Chalcedon² and Erasistratus of Ceos,³ but that was conducted in Alexandria after Alexander the Great's conquest of the Persian Empire, because the Egyptians did not have such a taboo in relation to the mutilation of the human corpse (after all, they removed organs from dead bodies during the process of mummification), and it has been suggested that Greek physicians were taking advantage of the Greek colonial domination of Alexandria to experiment on those that they regarded as their inferiors, especially condemned criminals.⁴ A similar taboo against dissection existed during the time of the Roman Empire, with Galen⁵ performing dissections on animals and applying features of animal anatomy learned from such dissections to humans, which led him into errors which had a significant impact upon physiology for hundreds of years.⁶ In Britain, from the Sixteenth Century onwards dissections were conducted upon the bodies of criminals who had been executed for murder, and were regarded as being in the nature of a further punishment, since they destroyed the body and denied the executed person a Christian burial,⁷ but the prevailing view amongst Christians appears to have been that tampering with the corpse in such a fashion amounted to desecration which might impede the bodily resurrection of the deceased at the Last Judgment.⁸ In the Seventeenth Century, a celebrated Dutch surgical work by Jobi Janzoon van Meek'ren⁹ described the case of a Russian nobleman who had a severe skull injury that was allegedly repaired using a rabbit bone graft. According to van Meek'ren's account, the church threatened to excommunicate the patient because of this implant, so he asked for it to be removed.¹⁰

² c.330-260 BCE.

³ c.330-255 BCE.

⁴ R. Porter, above n. 1, at 66-68; V. Nutton, 'Medicine in the Greek World, 800-50BC', in L.I. Conrad et al., *The Western Medical Tradition 800BC to AD 1800* (Cambridge: Cambridge University Press, 1995) 11-38, at 33-35.

⁵ CE 129-c.216.

⁶ R. Porter, above n. 1, at 75; V. Nutton, 'Roman Medicine', 250BC to AD 200, in L.I. Conrad et al., above, n. 4, 39-70, at 66. For example, based upon the dissection of apes or pigs, Galen described the human liver in such a manner as to make appear that it had four or five lobes. It was not until the work (*De humani corporis fabrica*) of the anatomist Andreas Vesalius in the sixteenth century that the human liver was accurately described: W. Bynum, *The History of Medicine: A Very Short Introduction* (Oxford: OUP, 2008) 29-30.

⁷ An Act for better preventing the horrid Crime of Murder (25 Geo.2, c.37) provided that executed murderers were either to be dissected or gibbeted (hanged in chains). The judge had power to remit these additional penalties: J.F. Stephen, *A History of the Criminal Law of England* (London: Macmillan, 1883), vol. I, 477. See D. Gareth Jones, *Speaking for the Dead: Cadavers in Biology and Medicine* (Aldershot: Ashgate, 2000) 44.

⁸ L.I. Conrad, 'The Arab-Islamic Medical Tradition', in: L.I. Conrad et al., *The Western Medical Tradition 800BC to AD 1800* (Cambridge: Cambridge University Press, 1995) 93, at 131.

⁹ J. Janzoon van Meek'ren, *Heel-en Geneeskonstige Aanmerkkingen* (Amsterdam, 1668). The account described was, however, second or third hand, and may have been apocryphal.

¹⁰ D. Hamilton, *A History of Organ Transplantation: Ancient Legends to Modern Practice*, Pittsburgh: University of Pittsburgh Press, 2012) 26.

In this article, I explore the attitude of a number of religious belief systems (Catholic, Church of England, Jehovah's Witnesses, Judaism and Islam) towards the dead human body, and, in particular, the medical practices of cadaveric organ donation and post-mortems (also known as autopsies or necropsies), examining the law in relation to these practices and considering the extent to which tensions may arise between religious belief and medical practice, and whether and how such tensions may be alleviated.

2. Religious attitudes to cadaveric donation and post mortem examination of the body

In general, most religions see cadaveric donation as being either acceptable or a matter of personal choice.¹¹ However, cadaveric donation, post-mortem examination of the human body and subsequent retention of body parts raise problems for religions that regard either non-interference with the corpse or the maintenance of bodily integrity post-mortem as being important. They may also be problematic for religions that place importance upon speedy burial of the dead.

(i) *The Catholic Church and the Church of England*

Generally, Christian faiths endorse organ transplantation, seeing organ donation as being a Christian act of selflessness. The Catechism of the Catholic Church states that:

*'Organ transplants are in conformity with the moral law if the physical and psychological dangers and risks to the donor are proportionate to the good sought for the recipient. Organ donation after death is a noble and meritorious act and is to be encouraged as a expression of generous solidarity. It is not morally acceptable if the donor or his proxy has not given explicit consent. Moreover, it is not morally admissible to bring about the disabling mutilation or death of a human being, even in order to delay the death of other persons.'*¹²

Pope John Paul II publicly supported organ donation, stating in an address to the Society of Organ Sharing, in Rome, that:

'Transplantation presupposes a prior, explicit, free and conscious decision on the part of the donor, or generally the closest relatives...We should rejoice

¹¹ Some faith groups find the concept of 'brain death' unacceptable. For further discussion in relation to this issue, see K.A. Choong, 'Organ Procurement: A Case for Pluralism on the Definition of Death' (2013) 1 *Journal of Medical Law and Ethics* 5-21. In this article I focus solely upon religious views in relation to the use of the human body for medical purposes after death.

¹² At 2296: www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a5.htm (last accessed April 2014). It is also stated that: 'The free gift of Organs after death is legitimate and can be meritorious', at 2301.

that medicine, in its service of life has found in organ transplantation a new way of serving the human family.¹³

Pope Benedict XVI also publicly supports organ donation, announcing that he carried an organ donor card at all times as an act of love.¹⁴

Autopsies have been accepted by the Catholic Church since the 15th century: a post-mortem was conducted on the body of Pope Alexander V in 1410,¹⁵ and on that of Ignatius Loyola in 1556.¹⁶ The Popes Sixtus IV and Clement VII sanctioned autopsies at Bologna and Padua for educational purposes.¹⁷ Whilst the Catholic Catechism emphasises that 'The bodies of the dead must be treated with respect and charity, in faith and hope of the Resurrection',¹⁸ it also states that: 'Autopsies can be morally permitted for legal inquests or scientific research'.¹⁹

So far as the Church of England is concerned, in 2007 it declared organ donation a Christian duty but emphasised that there were different views as to whether an opt-in/opt-out system was appropriate.²⁰ In 2012 the Mission and Public Affairs Council of the Church of England, in its response to the National Health Service Blood and Transplant's consultation on its post 2013 strategy on organ donation, affirmed this approach, stating that:

'The Church of England affirms that giving one's self and one's possessions voluntarily for the well being of others and without compulsion is a Christian duty of which organ donation is a striking example.'²¹

¹³ June 20, 1991. He also praised organ donation in the encyclical letter *Evangelium Vitae*, March 23, 1995: www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995-evangelium-vitae_en.html (last accessed April 2014).

¹⁴ Although the Vatican announced that his body parts could not be used for organ donation on his death, because his body belongs to the Catholic Church: N. Squires, 'The Pope is an organ donor but his body parts cannot be donated', *The Telegraph*, February 4, 2011.

¹⁵ G. Jones, above n. 7, at 40; L.S. King & M.C. Meehan, 'A History of the Autopsy: A Review' (1973) 73 *American Journal of Pathology* 514, at 521.

¹⁶ L.S. King & M.C. Meehan, above n. 13. Cf. K.M. Thadani, 'The Myth of a Catholic Religious Objection to Autopsy: The misinterpretation of *De Sepulturis* during the Renaissance' (2012) 12 *National Catholic Bioethics Quarterly* 37.

¹⁷ *Ibid.*; G. Jones, above n. 15. Sixtus IV was Pope between 1471 and 1484, and Clement VII between 1523 and 1534.

¹⁸ At 2300, www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a5.htm (last accessed April 2014).

¹⁹ At 2301.

²⁰ Church of England Mission and Public Affairs Division, *Response to the House of Lords EU Social Policy and Consumer Affairs Sub-committee Call for Evidence: Inquiry into the EU Commission's Communication on Organ Donation and Transplantation: Policy Actions at EU Level* (2007), paras. 3 and 6.

²¹ *Response of the Mission and Public Affairs Council of the Church of England to the National Health Service Blood and Transplant Consultation on Organ Donation Post 2013 Strategy* www.churchofengland.org/media/1564401/organdonationpost2013resp.pdf (last accessed April 2014).

Generally autopsies are regarded as being acceptable, as a means of improving medical knowledge and thereby possibly helping the well-being of others.²²

(ii) *Jehovah's Witnesses*

The position of Jehovah's Witnesses (JWs) in relation to organ donation is not entirely straightforward and is complicated by the position which the religion takes in relation to blood transfusions. It is well known that JWs do not accept blood transfusions. By this they mean whole blood or its primary components in any form. The reasons for this are religious:

'The Bible commands that we not ingest blood. So we should not accept whole blood or its primary components in any form, whether offered as food or as a transfusion.'²³

The reason given for this is that God commands believers to abstain from 'ingesting' blood because it represents life. JWs say that they avoid 'eating' blood out of respect for God, because he commands it, and out of respect for him as the giver of life.²⁴ A revised policy, issued in 2000, continues to prohibit JWs from accepting any of the 'primary' components of blood: red cells, white cells, platelets and plasma, but states that it is a matter of personal conscience as to whether fractions of the primary blood components (for example: haemoglobin, albumin, erythropoietin, clotting factors) are accepted, because the Bible does not specifically deal with these products derived from blood.²⁵

Religious guidance from the 1960s forbade JWs from having organ transplants:

'When men of science conclude that this normal process will no longer work and they suggest removing the organ and replacing it directly with an organ from another human, this is simply a shortcut. Those who submit to such operations are thus living off the flesh of another human. That is cannibalistic. However, in allowing man to eat animal flesh Jehovah God did not grant per-

²² W. Finkbeiner, A. Connolly, P.C. Ursell & R.L. Davis, *Autopsy Pathology: A Manual and Atlas* (Philadelphia: Elsevier Health Services, 2009), 21.

²³ JW.Org website: www.jw.org/en/bible-teachings/questions/bible-about-blood-transfusion/ (last accessed April 2014). In particular: Genesis 9:4: 'Only flesh with its life – its blood – you must not eat.'; Leviticus 17:14: 'For the life of every sort of flesh is its blood, because the life is in it'. Consequently, I said to the Israelites: 'You must not eat the blood of any sort of flesh because the life of every sort of flesh is its blood. Anyone eating it will be cut off.'; Deuteronomy 12:23: 'Just be firmly resolved not to eat the blood, because the blood is the life, and you must not eat the life with the flesh'; Acts 15:20: '...but to write them to abstain from things polluted by idols, from sexual immorality, from what is strangled, and from blood.' And Acts 15:29: '...to keep abstaining from things sacrificed to idols, from blood, from what is strangled, and from sexual immorality. If you carefully keep yourselves from these things, you will prosper. Good health to you!'

²⁴ www.jw.org/en/jehovahs-witnesses/faq/jehovahs-witnesses-why-no-blood-transfusions/.

²⁵ *Ibid.* cf. Associated Jehovah's Witnesses for Reform on Blood (AJWRB): <http://watchtower-blood.org/> (last accessed April 2014).

mission for humans to try to perpetuate their lives by cannibalistically taking into their bodies human flesh, whether chewed or in the form of whole organs or body parts taken from others.²⁶

However, this was revised in the 1980s, with the decision being regarded as one of personal choice, although the prohibition against blood transfusion remains:²⁷

‘While the Bible specifically forbids consuming blood, there is no Biblical command pointedly forbidding the taking in of other human tissue. For this reason, each individual faced with making a decision on this matter should carefully and prayerfully weigh matters and then decide conscientiously what he or she could or could not do before GOD. It is a matter for personal decision.’

To accommodate the JW prohibition on blood being ingested, the blood would have to be flushed from the organ or tissues prior to transplantation and, since it is not possible to remove absolutely all of the blood cells from solid organs, the recipient would need to be advised of this.²⁸ There is no biblical prohibition on the donation of organs and tissue: that is a matter of individual choice.²⁹

Post-mortem examinations appear not to be encouraged, and where consent is required for a post-mortem to take place, it appears to be a matter of individual conscience.³⁰ However, since the religion places emphasis on respect for the

²⁶ *The Watchtower*. 1967, November 15, 702.

²⁷ *The Watchtower*. 15th March 1980, 31.

²⁸ In 1984 the Watchtower warned that JWs should make sure that bone marrow transplants did not contain blood: *The Watchtower*, May 15, 1984, 31. There are numerous reported cases of organ transplantation involving JW recipients. See e.g. D.B. Kaufman et al., ‘A single center experience of renal transplantation in thirteen Jehovah’s Witnesses’ (1988) 45 *Transplants* 1045; A. Greenberg et al., ‘HLA Antibody incompatible Kidney Transplantation between Jehovah’s Witnesses- A Case Report’ (2013) 45, *Transplantation Proceedings* 2069; A.F. Corno et al., ‘Heart Transplant in a Jehovah’s Witness’ (1986) 5, *J Heart Transplant* 175-177; D.E. Lammermeier et al., ‘Cardiac Transplantation in a Jehovah’s Witness’ (1988) 15, *Tex Heart Inst J* 189; A.F. Corno, ‘Lung Transplantation in a Jehovah’s Witness’ (1999) 18, *J Heart Lung Transplant* 796; F.C. Madieno et al., ‘Lung Transplantation in a Jehovah’s Witness patient’ (2013) 145(6), *Journal of Thoracic & Cardiovascular Surgery* 363; N. Jabbour, ‘Recombinant Human Coagulation factor VIIa in Jehovah’s Witness patient undergoing Liver Transplantation’ (2005) 71(5), *The American Surgeon* 175-179; G.P. Jeffrey, et al., ‘Liver Transplantation in Jehovah’s Witness Patients in Australasia’ (2007) 187(3), *M.J.A.* 188; O. Detry et al., ‘Liver transplantation in Jehovah’s Witnesses’ (2005) 18, *Transplant International* 929.

²⁹ See e.g. M. Oliver et al., ‘Organ Donation, Transplantation and Religion’ (2011) 26, *Nephrol. Dial. Transplant* 437, at 439. There are reported instances of liver lobe donations by living JW donors: N. Jabbour et al., ‘To Do or Not to do Living Donor Hepatectomy in Jehovah’s Witnesses: Single Institution Experience of the first 13 Resections’ (2005) 5, *American Journal of Transplantation* 1141.

³⁰ E.R. DuBose (ed.), revised by M.J. Penton, *The Jehovah’s Witness Tradition: Religious Beliefs and Healthcare Decisions*, Park Ridge Center for the Study of Health, Faith and Ethics (2002), www.che.org/members/ethics/docs/1266/Jehovahs%20Witness.pdf (last accessed April 2014).

human body, Jews may object to a post-mortem dissection.³¹ The *Watchtower* has indicated that, where a post-mortem is required by law, Jews should be 'in subjection to the superior authorities'.³²

(iii) *Judaism*

The attitude of Judaism towards cadaveric organ donation is complex and views vary within the faith.³³ The individual nature of decisions in respect of organ donation or post-mortem is recognised: decisions are made on a case by case basis.³⁴ Respect for the human body is a basic principle ('*kavod ha'met*'), with great importance being placed on avoiding unnecessary interference with the corpse and with the burial of the whole body as soon as possible after death (usually within 24 hours).³⁵ Jewish law also forbids the desecration of a corpse ('*nivul ha'met*').³⁶ These attitudes would appear to preclude cadaveric organ donation. However, a central belief of the faith is that life is a blessing and a gift from God and the obligation to preserve life ('*pikuach nefesh*') is an overriding principle in Jewish law.³⁷ 'One who saves a single it is as if he has saved an entire world'.³⁸ Following this mandate, organ donation to preserve life is permissible in Jewish law. In 2011 the Chief Rabbi, together with the Dayanim of the London Beth Din stated that:

'With regard to donation after death, in principle (notwithstanding the various Halachic rules concerning the sanctity of a dead body and the normal requirement that all parts of the body be buried) Halacha permits such donation provided that the organ is required for an immediate transplant.'³⁹

³¹ See e.g. The case of David Webb, considered by the Isaacs Inquiry: DoH, *The Isaacs Report, The Investigation of Events that Followed the Death of Cyril Mark Isaacs* (2003), Section 4, pt. 27.

³² *Watchtower*, April 1, 1987; E.R. DuBose, above n. 28.

³³ See A.L. Mackler, 'Respecting Bodies and Saving Lives: Jewish perspectives on organ donation and transplantation' (2001) 10, *C.Q.L.E.* 420, at 420. cf. J. Gottlieb, 'A Review of Jewish Opinions Regarding Postmortem Examinations' (1927) 196, *Boston Med. Surg. J.* 726.

³⁴ See e.g. The Jewish Medical Association UK, *General Jewish Principles*, <http://jewishmedicalassociationuk.org/ethics/transplantation/general-jewish-principles> (last accessed April 2014); NHSBT, *Organ Donation and Religious Beliefs: A Guide to Organ Donation and Jewish Beliefs* (2012), www.organdonation.nhs.uk/newsroom/fact_sheets/religious_leaflets/judaism_and_organ_donation/judaism_and_organ_donation.pdf (last accessed April 2014).

³⁵ See e.g. A.L. Mackler, above n. 35, at 422; E.N. Dorff, 'End-of-Life: Jewish Perspectives' (2005) 366, *The Lancet* 862, at 863; M. Oliver, above n. 29, at 439. The importance of burial of the whole body to Orthodox Jews can be seen from the conduct of certain religious Jews in Israel, who, after a terrorist bombing meticulously recover scraps of body tissue from the site for burial: A.L. Mackler, at 422; Aish.com website, www.aish.com/ci/sam/48936217.html (last accessed April 2014).

³⁶ M. Oliver, above n. 29, at 439.

³⁷ A.L. Mackler, 'Respecting Bodies and Saving Lives: Jewish perspectives on Organ Donation and Transplantation' (2001) 10 *C.Q.L.E.* 420, at 421.

³⁸ Pirke D'Rav Eliezer, Ch. 48.

³⁹ Chief Rabbi, *Organ Donation Statement*, January 1, 2011.

However, the body and any organs removed must be treated with due respect and not unnecessarily mutilated, and the body and any organs removed but not used must be buried.⁴⁰

The respect which the Jewish faith accords to the human corpse means that post-mortems are regarded as an invasion of the body, which should not be conducted unnecessarily or as a matter of routine. Views differ as to when a post-mortem is justified: they may be authorised to safeguard the lives or health of others, or if they are required by law. The body should not be left unattended, and the family may require a Rabbi, or another representative from their synagogue to be present at the autopsy. Where a post-mortem is conducted, the body must be treated with reverence, and the body and all of its parts returned once the examination has been concluded, so that a Jewish burial may take place.⁴¹

(iv) *Islam*

The Muslim faith places great emphasis on respecting the human body and forbids any violation of it, but altruism is an important principle in Islam, and the *Qur'an* places a high value on the saving of human life:⁴² 'who so saves the life of one, it shall be as if he had saved the life of all mankind'.⁴³ The principle argument in favour of donation is that the principle of necessity overrules the prohibition on interfering with the body.⁴⁴

In 1996 the United Kingdom Muslim Law (Shariah) Council handed down a religious ruling stating that they supported organ transplantation 'as a means of alleviating pain or saving life on the basis of the rules of Shariah'.⁴⁵ The Council resolved that 'it is permissible to remove the organ of a dead person to be used to save the life of a sick person',⁴⁶ that Muslims may carry donor cards, and that, in the absence of a donor card, it was sufficient for consent to be obtained from the next of kin. The 'proper authorities' may act in lieu of relatives if the latter are not known.⁴⁷ This ruling provides non-binding guidance for

⁴⁰ *Ibid.* See also: *The Jewish Medical Association*, above n. 34.

⁴¹ See e.g. E.N. Dorff, above n. 35, at 863; L.R. Boglioli & M.L. Taff, 'Religious Objection to Autopsy: An Ethical Dilemma for Medical Examiners' (1998) 11, *American Journal of Forensic Medicine and Pathology* 1.

⁴² M. Oliver, above n. 29, at 438; N. Sarhill et al., 'The Terminally Ill Muslim: Death and Dying from the Muslim Perspective' (2001) 18, *American Journal of Hospice and Palliative Care* 251, at 253.

⁴³ *Qur'an*, Chapter 5, v. 32.

⁴⁴ A. Sharif, 'Organ Donation and Islam: Challenges and Opportunities' (2012) 95 *Transplantation* 442, at 443.

⁴⁵ The Muslim Law (Shariah) Council, 'The Muslim Law (Shariah) Council and Organ Transplants' (1996) 4, *Accident and Emergency Nursing* 73, at 73.

⁴⁶ *Ibid.*, at 74.

⁴⁷ *Ibid.*

Muslims in the UK.⁴⁸ Similar rulings approving deceased donation have been handed down in Saudi Arabia, Iran, Egypt, and Pakistan.⁴⁹ However, in spite of these rulings it appears that there is not clear agreement within the faith as to whether organ donation complies with Islam, and Indo-Asian Muslim scholars appear to be less approving of organ donation than their Arab Muslim counterparts,⁵⁰ and in predominately Muslim countries the transplants that do take place involve mostly live donations.⁵¹ Many scholars still do not accept that organ donation is permitted: they consider that 'organ donation compromises the special honour accorded to man, and this cannot be allowed whatever the cost'.⁵² Muslims may seek the opinion of a scholar before reaching a decision.⁵³

Islam requires that the body be buried as soon as possible after death. Post-mortems may therefore be objected to, not merely because they violate the body, but because they inevitably cause some delay to burial. In addition, based upon the Prophet Muhammed's statement that 'to break the bone of a dead person is like breaking the bone of a living person', there are concerns that it may be possible for the dead to feel pain.⁵⁴ However, in spite of such objections, post-mortem interference with the body may be excused, either on the basis of the principle of 'necessity' considered above (for example, if crime is suspected), or upon the principle of public benefit ('*maslaha*'), which permits the violation 'in order to enable science and justice, and consequently the public good, to prevail'.⁵⁵

3. Cadaveric organ donation: the legal regimes

The current system of statutory regulation of organ donation, under the Human Tissue Act 2004 (HTAct), is a consent based system. For an organ to be retrieved from a deceased donor, appropriate consent is required,⁵⁶ either from the patient, or his (or her) representative, if he (or she) is an adult

⁴⁸ A. Sharif, above, n. 44.

⁴⁹ *Ibid.*, at 442.

⁵⁰ M. Oliver, above n. 29, at 438.

⁵¹ *Ibid.*; Cf. Ü.S. Şehirli, E. Saka & Ö. Sarikaya, 'Attitudes of Turkish Anatomists Toward Cadaver Donation' (2004) 17, *Clinical Anatomy* 677.

⁵² Mufti Mohammed Zubair Butt, 'Muslim Council of Britain, NHSBT', *Organ Donation and Religious Beliefs: A Guide to Organ Donation and Muslim Beliefs* (2012).

⁵³ *Ibid.*

⁵⁴ A. Sheikh, 'Death and Dying – A Muslim Perspective' (1998) 91, *Journal of the Royal Society of Medicine* 138, at 139; M. Mohammed & M.A. Kharoshah, 'Autopsy in Islam and Current Practice in Arab Muslim Countries' (2014) 23, *Journal of Forensic and Legal Medicine* 80, at 81; V. Rispler-Chaim, 'The Ethics of Postmortem Examinations in Contemporary Islam' (1993) 19, *JME* 164, at 166.

⁵⁵ V. Rispler-Chaim, above n. 54, at 167; M. Mohammed & M.A. Kharoshah, above n. 54, at 81.

⁵⁶ HTAct, s. 1 and Schedule 1.

and has appointed one,⁵⁷ or a person in a qualifying relationship.⁵⁸ In most cases, the provisions of the Act are unlikely to cause difficulties so far as religious groups are concerned, although difficult situations may arise where surviving family members express disagreement, on religious grounds, with consent provided either by the deceased, a nominated representative, or a qualifying relative. In such cases, a hospital would be legally entitled to proceed with organ donation, but the Human Tissue Authority (HTA) has recognised that it is not required to do so, and that, after consultation with the family, '[t]here may nevertheless be cases in which donation is considered inappropriate and each case should be assessed individually.'⁵⁹

However, the position in Wales will alter when the Human Transplantation (Wales) Act 2013 (HT(W)A) comes into effect, on the 1st December 2015.⁶⁰ This Act will introduce an opt-out system for organ donation within Wales, which will apply to adults with capacity who are ordinarily resident in Wales for a period of at least 12 months before dying, and who die in Wales.⁶¹ Consent will not be assumed if a relative or friend of long standing of the deceased objects on the basis of views held by the deceased, and a reasonable person would conclude that the relative or friend knows that the most recent view of the deceased before death on consent for transplantation activities was that the deceased was opposed to consent being given.⁶² The Act imposes a duty on the Welsh ministers positively to promote transplantation and to promote a campaign for the purpose of informing the public throughout Wales about the circumstances in which consent to transplantation activities is deemed to be given in the absence of express consent, at least once every 12 months.⁶³ Following consultation upon a draft code of practice in respect of the Welsh legislation,⁶⁴ in May 2014 the Human Tissue Authority issued its amended draft *Code of Practice on the Human Transplantation (Wales) Act 2013*.⁶⁵ This states that family and friends must be given the opportunity to produce evidence that the deceased

⁵⁷ HTAct, ss. 3 and 4.

⁵⁸ HTAct, s. 3 and s. 27(4)-(8).

⁵⁹ HTA, *Code of Practice 3: Donation of Solid Organs for Transplantation* (2013), para. 99. See also: HTA, *Code of Practice 1: Consent* (2009), para. 76.

⁶⁰ See: <http://wales.gov.uk/topics/health/nhswales/majorhealth/organ/?lang=en> (last accessed April 2014).

⁶¹ HT(W)A, ss. 4-6.

⁶² HT(W)A, s. 4(4).

⁶³ HT(W)A, s. 2. A Welsh government factsheet on the Act may be accessed here: <http://wales.gov.uk/topics/health/nhswales/majorhealth/organ/guidance/factsheet/?lang=en> (last accessed May 2014).

⁶⁴ HTA, *Draft Code of Practice on Living and Deceased Organ and Tissue Donation for Transplantation – Wales* October 2013 (2013).

⁶⁵ Available at: [www.hta.gov.uk/_db/_documents/HTA_CoP_on_Human_Transplantation_\(Wales\)_Act_2013_-_Final_-_May_2014.pdf](http://www.hta.gov.uk/_db/_documents/HTA_CoP_on_Human_Transplantation_(Wales)_Act_2013_-_Final_-_May_2014.pdf) (last accessed May 2014).

did not wish to be a donor,⁶⁶ and advises that if those close to the deceased object to donation, in a case where consent has been given or may be presumed, the specialist nurse for organ donation should seek to discuss the matter sensitively with the family, but making it clear that they do not have the legal right to overrule the deceased's wishes.⁶⁷ However, the code of practice implicitly recognises that there may be cases in which, even though the consent of the deceased to donation may be presumed, a decision may be made not to use the organs for transplantation:

'The Human Transplantation (Wales) Act is permissive in the sense that it allows consent to organ donation to be deemed in certain circumstances. However, it does not mandate that organ donation goes ahead in such cases.'⁶⁸

It remains to be seen how the Act will operate in practice, and to what extent members of faith groups will 'opt-out' from organ donation. However, there have already been indications that some faith groups have religious objections to the 'deemed consent' provisions within the Act, because they detract from the principle that organ donation is a matter of individual choice. In the Response of the Mission and Public Affairs Council of the Church of England to the National Health Service Blood and Transplant Consultation on Organ Donation Post 2013 Strategy, it was observed that an 'overwhelming case would have to be made' before an opt-out system ought to be introduced 'and such a case does not, as yet, exist',⁶⁹ and the Archbishop of Wales has publicly stated that: 'donation ought to be a gift of love, of generosity. If organs can be taken unless someone has expressly registered an objection, that's not an expression of love, it's more a medical use of a body'.⁷⁰ Members of the Muslim Council of Wales and the South Wales Jewish Representative Council have also expressed similar reservations about the Act.⁷¹ The Welsh Government has indicated that

⁶⁶ At para. 78.

⁶⁷ At para. 116. There may, however, be additional practical and legal implications: the Quality and Safety of Organs Intended for Transplantation Regulations 2012 (SI 2012/1501) Schedule 1, para. 5, requires that, in the case of a deceased donor, a registered medical practitioner, or a person acting under the supervision of a registered medical practitioner, endeavours to obtain certain information from relatives of the deceased donor or other persons about the donor before a transplant takes place. If the family have objections to the donation and refuse to co-operate with the inquiries, a risk-benefit analysis to determine whether the expected benefits for the recipient of the organ outweigh the risks posed by the lack of any information must be conducted before the transplant can take place (Schedule 1, para. 7).

⁶⁸ HTA, above n. 64, para. 15. See also, para. 79.

⁶⁹ Above n. 21, para. 3.3.

⁷⁰ S. Boseley, 'Opt-out Organ Donation Scheme Given Go-ahead in Wales', *The Guardian*, July 2, 2013.

⁷¹ For example, out of the 2,891 responses to a consultation survey about the Bill, 2,395 objecting responses were identical letters signed by Muslims from Swansea, Cardiff and Newport based on a template produced by the Society for the Protection of Unborn Children. The Chairman of the South Wales Jewish Representative Council has also stated that: 'We believe that people should be able, or the family of the deceased should be able, to agree to organs being taken as a gift as a donation'. These views are not, however, universally shared, for example, Dr Abdalla

it is committed to work with faith groups to communicate the changes made by the Act, and that once the new system comes into effect, clinicians will still 'take a sympathetic approach with families and strive to help them make decisions in accordance with their faith', even if 'they have the legal right to proceed with transplantation'.⁷²

4. Post mortems

There are two legal regimes governing post-mortem examinations in England and Wales. First, there are what are known as 'hospital post-mortems', which are regulated by the Human Tissue Act 2004,⁷³ and which require consent both for the post-mortem and for the removal and retention of human tissue:⁷⁴ either of the deceased person whilst living,⁷⁵ the deceased person's nominated representative (if there is one),⁷⁶ or a person in a qualifying relationship to the deceased,⁷⁷ or, in the case of a child, the consent of a person with parental responsibility.⁷⁸ Such post-mortems may take place where, even though a medical certificate as to the cause of death has been issued,⁷⁹ the treating clinician wishes to conduct a post-mortem examination further to investigate the cause of death, or the disease from which the deceased was suffering, or the effectiveness of treatment administered.⁸⁰ The rates of hospital post-mortems have been in decline for the last fifty years, largely because of the reluctance of relatives to consent to the procedure.⁸¹ In practice, those who object to post-mortem interference with the body, whether for religious or other rea-

Yassin Mohamed, director of Cardiff's Islamic Social Services Association and a member of the Muslim Council of Wales, has publicly indicated that he has no objection to presumed consent. See BBC News, 'Organ Donation: Jewish and Muslim Presumed Consent Warning', November 5, 2012, www.bbc.co.uk/news/uk-wales-20121105 (last accessed April 2014).

⁷² *Ibid.*

⁷³ See, for example: HTA, *Code of Practice 3: Post-mortem Examination* (2009), paras. 82-113; NHS Choices website, *Health A-Z: Post-mortem*, www.nhs.uk/conditions/post-mortem/Pages/Introduction.aspx (last accessed May 2014).

⁷⁴ HTAct, s. 1, Schedule 1.

⁷⁵ Human Tissue Act 2004 (HTAct), ss. 1, 3.

⁷⁶ HTAct, ss. 3 and 4.

⁷⁷ HTAct, s. 3 and subs 27(4)-(8).

⁷⁸ HTAct, s. 2.

⁷⁹ Births and Deaths Registration Act 1953, s. 22.

⁸⁰ HTA, *Code of Practice 3: Post-mortem examination* (2009), para. 82.

⁸¹ U. Carr, L. Bowker & R.Y. Ball, 'The Slow Death of the Clinical Post-Mortem Examination: Implications for Clinical Audit, Diagnostics and Medical Education' (2004) 4, *Clinical Medicine* 417-423; J. Roulson, E.W. Benbow & P.S. Hasleton, 'Discrepancies Between Clinical and Autopsy Diagnosis and the Value of Post Mortem Histology; A Meta-Analysis and Review' (2005) 47, *Histopathology* 551; J. Henry & M. Nicholas, 'Dead in the Water – Are we Killing the Hospital Autopsy with Poor Consent Practices?' (2012) 105, *J.R. Soc. Med.* 288.

sons, are likely to refuse consent to a hospital post-mortem, which will not then take place. However, in common with the provisions in relation to organ donation, tensions may arise where, for example, the deceased has consented to post-mortem examination, but surviving relatives have strong religious objection to the procedure taking place, or where the deceased has not consented in life to a post-mortem or nominated a representative to consent on his behalf, but there is a dispute between qualifying relatives as to whether to agree to an autopsy. In such circumstances, the Human Tissue Authority recognises that, whilst it might be legally permissible, it is not obligatory to conduct a post-mortem in such circumstances, and healthcare professionals should take careful account of disagreement between family members in making the final decision whether to proceed:

‘...consideration should be given to the possibility of this causing distress and resentment in other family members if there is disagreement.’⁸²

‘The emphasis in these difficult situations should be placed on having an open and sensitive discussion with those close to the deceased where the process is explained fully to them. Healthcare professionals should also consider the impact of going ahead with a procedure in light of strong opposition from the family, despite the legal basis for doing so.’⁸³

Far more common,⁸⁴ and far more controversial as far as those who have religious objections to interference with the human corpse are concerned since consent is not required, is the coroner’s post-mortem. In 2003 the Luce Report recognised that the existing coronial system offered ‘no reliable or systematic response to minority community wishes, traditions or religious beliefs’,⁸⁵ and under both the former and current legal regimes a post-mortem could be performed even though the family had religious objections to it taking place. Coroner’s post-mortems are now regulated by sections 14–15 of the Coroners and Justice Act 2009 (C&JA),⁸⁶ and by the Coroners (Investigations) Regulations 2013, regulations 11–17.⁸⁷ Under the Act, a coroner has a duty to investigate a

⁸² HTA, above n. 73, para. 100.

⁸³ HTA, *Code of Practice 1: Consent* (2009), para. 76.

⁸⁴ For example, in 2004, 115, 800 coroner’s post-mortems were conducted in England and Wales: Department for Constitutional Affairs, *Coroners Service Reform: Briefing Note* (2006), available at: http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/corbur/reform_coroner_system.pdf (last accessed May 2014).

⁸⁵ *Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003* (‘The Luce Report’), Cm.5831(2003), at p. 17.

⁸⁶ Part 1, sections 1–17, in force from the 25th July 2013: The Coroners and Justice Act 2009 (Commencement No. 15, Consequential and Transitory Provisions) Order 2013, SI 2013/1869, Reg.2(a). The Act repeals all but ss.4A and 13 of the Coroners Act 1988, which are amended by the Coroners and Justice Act 2009 (Consequential Provisions) Order 2013 (SI 2013/1874): C&JA, Schedule 23, Pt. 1.

⁸⁷ SI 2013/1629, in force from the 25th July 2013.

death if he is made aware that a body is within the coroner's area,⁸⁸ and the coroner has reason to suspect that the cause of death is unknown, or the deceased died a violent or unnatural death or died in custody or state detention.⁸⁹ The coroner is permitted to make 'whatever inquiries seem necessary',⁹⁰ to ascertain whether this duty to investigate arises, and this may include directing a post-mortem to take place under section 14. The coroner also has power to ask a 'suitable practitioner'⁹¹ to make a post-mortem examination of a body if the coroner is under a duty to conduct an investigation into the death of the deceased. The term 'post-mortem examination' is not defined in the Act, but includes a wide variety of examinations and investigations. It would include a full post-mortem, which is described in the Luce Report as normally involving: '...an external examination of the body followed by dissection and the removal of the main internal organs – the heart, liver, kidneys, spleen and lungs, very often also the brain – for weighing and dissection. Significant abnormalities can often be detected by visual inspection, but in some cases tissues, or more rarely whole organs, may need to be retained for further examination. Subject to that the organs removed for dissection are replaced in the body at the end of the procedure, though not necessarily in their original positions – the brain is usually put with the other organs in the abdominal cavity. The body is then closed.'⁹²

It is the very invasiveness of this procedure that many bereaved relatives from the faith groups considered above, in particular, from the Jewish and Muslim communities object to, together with the fact that the procedure inevitably causes some delay to the burial.⁹³ Questions have also been raised as to whether coroners are conducting such autopsies unnecessarily. For example, in the case of Mr. Cyril Isaacs, an Orthodox Jewish man who committed suicide

⁸⁸ C&JA, s. 1(1).

⁸⁹ C&JA, s. 1(2). Section 48(2) defines 'state detention' as being 'compulsorily detained by a public authority within the meaning of section 6 of the Human Rights Act 1998'. The Chief Coroner, HHJ Peter Thornton QC, has indicated that this includes detention in secure mental hospitals and would appear to include deprivation of liberty orders under Schedule 1A, Mental Capacity Act 2005: *The Chief Coroner's Guide to the Coroners and Justice Act 2009* (2013), para. 54.

⁹⁰ C&JA, s. 1(7)(a).

⁹¹ Defined in s.14(3) as '(a) a registered medical practitioner, or (b) in a case where a particular kind of examination is requested, a practitioner of a description designated by the Chief Coroner as suitable to make examinations of that kind'. The Chief Coroner has indicated that 'There are no plans at this stage to designate anyone other than registered medical practitioners as suitable practitioners': *The Chief Coroner's Guide to the Coroners and Justice Act 2009* (2013), para. 75.

⁹² Luce Report, above n. 85, p. 153.

⁹³ See, for example, the case of Ramzan Mohayuddin, who waited 5 days for the body of his son, Saad, to be returned, following post-mortem: S. Mahmood, 'Scalpel-free post-mortems UK launch', BBC News, www.bbc.co.uk/news/health-25086941 (last accessed May 2014).

in 1987, his widow clearly felt that the full post-mortem which was conducted was unnecessary, because of the manner of his death (his body was found hanging from the loft-hatch), and because he had a well-documented history of depressive mental illness and had previously taken three overdoses (which could have been confirmed by his general practitioner).⁹⁴ The Luce Report highlighted the fact that the autopsy rate in England and Wales is between double and triple the autopsy rate in other comparable Commonwealth countries,⁹⁵ and the Chief Coroner has stated that, in his view, the number of coroner's post-mortems conducted is too high, and that he intends to try to reduce it.⁹⁶

However, the term is sufficiently wide to include CT (computerised (or computed) tomography)⁹⁷ or MRI (magnetic resonance imaging)⁹⁸ scanning, or the examination or testing of tissue or body fluids,⁹⁹ and in recent years considerable progress has been made in the use of scanning technology to conduct 'scalpel-free' autopsies. The Manchester West Coroner, Jennifer Leeming, whose area includes Salford (which has a sizeable Jewish community) and Bolton (with a large Muslim community) has pioneered the use of MRI scanning to ascertain the cause of death, which are conducted out-of-hours by radiographers at the Rochdale Infirmary and Manchester General Hospital.¹⁰⁰ Whilst these techniques have the potential to dramatically reduce the numbers of traditional full autopsies being conducted and are regarded as being far more acceptable by the Muslim and Jewish communities, they cannot entirely replace the traditional post-mortem, since in some cases that may be the only means of ascertaining the cause of death, and the Chief Coroner has indicated that imaging 'should not be used as the sole type of post-mortem investigation where the circumstances of the death are suspicious or controversial, except where

⁹⁴ The Isaacs Report, above n. 31, pp. 31–33.

⁹⁵ Above, n. 92, pp. 18, 164.

⁹⁶ HHJ Peter Thornton QC, *The Coroner System in the 21st Century*, Howard League for Penal Reform, Parmoor Lecture, October 25, 2012, para. 41.

⁹⁷ CT scanning involves using a computerised X-ray scanner (a CT scanner) to take X-rays of 'slices' of the body and then using a computer to create cross-sectional images, which may be displayed in two or three dimensions. See, for example, A. Raffle & M. Gray, *Screening: Evidence and Practice*, Oxford: Oxford University Press, 2007.

⁹⁸ MRI scanning techniques use magnetic fields to produce images of the body: it is 'based on the analysis of the absorption and transmission of high-frequency radio-waves by the water molecules in tissues placed in a strong magnetic field,' with computer analysis being used 'to "map out" the variation in tissue signals in any plane and thus produce images of the tissue': *Oxford Concise Medical Dictionary* (Oxford: Oxford University Press, 1994), p. 387.

⁹⁹ *The Chief Coroner's Guide to the Coroners and Justice Act 2009* (2013), para. 73.

¹⁰⁰ R. Britton, 'Body Scans Instead of Post-mortems', *Manchester Evening News*, April 18, 2010; S. Mahmood, above n. 85. Manchester City Council has set up a website, which provides useful information about religious objections to post-mortems: www.manchester.gov.uk/info/626/coroners/5532/when_death_occurs/5.

the cause of death is obvious'.¹⁰¹ However, even religious groups that have objections to autopsies usually recognise that there are some cases in which it is proper for the State to conduct a post-mortem without consent, particularly where murder or other serious crime is suspected, and it is necessary to obtain evidence.¹⁰² Practical limitations, including the availability of suitable scanning equipment, and cost, prevent all coroners from offering MRI imaging in all cases,¹⁰³ and, where it is available, the family usually have to bear the cost of it.¹⁰⁴ If the family are paying for a scan, it is important that they are not conducted unnecessarily, in cases where an autopsy would be required in any event, and the Chief Coroner has indicated that, before a CT scan takes place, a pathologist should first look at the body to check whether such a scan would be appropriate.¹⁰⁵ Concerns have also been expressed about the limitations of imaging, so far as accurately establishing a cause of death is concerned. Whilst CT scans may detect injuries which are not apparent at an autopsy, post-mortem imaging 'cannot reliably diagnose some of the most common causes of death, including coronary heart disease, pulmonary thromboembolism and pneumonia',¹⁰⁶ and guidance has been issued by the Chief Coroner and the Royal College of Pathologists about the use of such technologies to determine the cause of death.¹⁰⁷

Where a post-mortem examination is requested, the coroner must notify (*inter alia*), 'the next of kin or the personal representative of the deceased or any other interested person who has notified the coroner in advance of his or her desire to be represented at the post-mortem examination',¹⁰⁸ although such notification need not be given 'where it is impracticable or where to do so would cause the post-mortem examination to be unreasonably delayed'.¹⁰⁹ Clearly in cases where a bereaved family has religious objections to a post-mortem, it is

¹⁰¹ Chief Coroner, *Guidance No.1: The Use of Post-Mortem Imaging (Adults)* (2013), para. 19.

¹⁰² Luce Report, above n. 92, p. 156.

¹⁰³ It appears that there is discrepancy between coronial areas as to the extent to which MRI scans are available: for example, an online petition, created by S. Rehman, which closes on the 7th November 2014, calls for the 'Use of MRI Scans as alternative to invasive post mortem procedures in the Birmingham and Solihull coroners district': <http://epetitions.direct.gov.uk/petitions/56634> (last accessed May 2014).

¹⁰⁴ The Saad Foundation Website: www.saadfoundation.com (last accessed May 2014). This Foundation was established in 2009 and provides help and advice to families dealing with coroner's offices. The Foundation estimates that the average cost of MRI screening is £885, and indicates that the Jewish burial board in Manchester meets the cost for its members.

¹⁰⁵ Chief Coroner, above, n. 101, para. 13.

¹⁰⁶ Royal College of Pathologists, *RCR/RC Path Statement for Standards for Medico-legal Post-mortem Cross-Sectioning Imaging in Adults* (2012), para. 2.4; C.H. Bryce, 'The Impact of Advances in Post-mortem Imaging on Forensic Practice' (2013) 1, *Journal of Forensic Science and Criminology* e103.

¹⁰⁷ Chief Coroner, above n. 101; Royal College of Pathologists, above n. 106.

¹⁰⁸ The Coroners (Investigations) Regulations 2013, Reg. 13(3)(a).

¹⁰⁹ *Ibid.*, Reg. 13(2).

important that the coroner should take into account the deceased's views (if known) about post-mortem examination, and the views of family members. However, ultimately it is his (or her) decision as to what form of examination takes place,¹¹⁰ although it is suggested that, where a coroner decides to direct a post-mortem in the face of religious objections from bereaved relatives, he would have to be satisfied that it was a proportionate interference with their Article 8 right to respect for a private and family life and Article 9 right to manifest their religious beliefs, in order to protect public health and/or to investigate a possible crime.¹¹¹ There is no statutory right of appeal against a coroner's decision to request a post-mortem.¹¹² Such a decision might be challenged by way of judicial review proceedings,¹¹³ although the coroner has a wide discretion to decide whether, in an individual case, a post-mortem should be conducted, and it appears that, providing that he acts rationally and in accordance with the general law, such a challenge will not succeed.¹¹⁴ To date, very few legal challenges to the decision of a coroner to conduct a full post-mortem have been brought by relatives, and none of these have succeeded. In *R (on the Application of Kasperowicz) v HM Coroner for Plymouth*¹¹⁵ the claimant challenged the decision of a coroner to require an autopsy to be carried out on his 88 year-old grandmother, who had died at home 25 days after being discharged from hospital, in circumstances where no doctor was willing to certify the cause of death, arguing that the procedure would be contrary to the family's Roman Catholic beliefs and the deceased's wishes expressed in life. The Administrative Court held that the coroner was entitled to conclude that a post-mortem was required

¹¹⁰ Chief Coroner, *Guidance No. 1: The Use of Post-Mortem Imaging (Adults)* (2013), para. 12.

¹¹¹ Luce Report, above n. 92, pp. 164-165; European Convention on Human Rights, Articles 8(2) and 9(2).

¹¹² Section 40 C&JA as originally enacted provided for a new system of appeal to the Chief Coroner against certain decisions made by the coroner in respect of investigations into death, including the decision to conduct a post-mortem, but it was repealed before being brought into effect by the Public Bodies ACT 2011, S. 33(1).

¹¹³ See, for example, C. Fairbairn, 'Challenging Coroner's Decisions', House of Commons Library Standard Note SN/HA/525, April 9, 2014.

¹¹⁴ See, for example, *R (on the Application of Mack) v. HM Coroner for Birmingham and Solihull* [2011] EWCA Civ 712; *R (Rudewicz) v. Secretary of State for Justice* [2012] EWCA Civ 499, [2013] QB 410 and *R (on the application of Le Page) v. HM Assistant Deputy Coroner for Inner South London* [2012] EWHC 1485 (Admin) (where it was stated, at [49] that the Coroner must investigate 'fully, fairly and fearlessly', but must be allowed to set the boundaries of their inquiry).

¹¹⁵ [2005] EWCA Civ 44. See also the case of Karim Aly, unreported: T. Whitehead, 'Murder inquiry after doctor's body found in locked hospital room', *The Telegraph*, September 26, 2011. The requirement to refer to the coroner 'sudden' deaths, contained in s. 8(1) of the Coroner's Act 1988, has been removed from the C&JA. See also: *R v HM Coroner for Northumberland, ex parte Jacobs* (1999) 53 BMLR 21, and *R v Greater Manchester North District Coroner, ex parte Worch* [1988] QB 513, cf. *Abernethy v. Deitz* [1996] 39 NSWLR 701 (Supreme Court of New South Wales), where it was held that the Coroner's power to direct a post mortem examination was held to be subject to review by the Supreme Court on the Wednesbury Principle (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* 1948 1 QB 223).

in order to enable him to determine the cause of death. Inevitably, a legal challenge to a decision by a coroner to require an autopsy will delay the burial of the body still further. Where a coroner decides that a post-mortem is required, attempts will still be made to accommodate religious concerns that burial take place as soon as possible.¹¹⁶

5. Some final thoughts

The topic of religious attitudes towards the human corpse is one of some complexity, and it is not possible to consider all aspects of the subject within one relatively brief article. Whilst one cannot generalise about religious beliefs, and there are radical differences of opinion between members of the same faith, it is apparent that whilst cadaveric organ donation has widespread acceptance within the Christian, Muslim and Jewish faiths, being seen as a charitable act performed to benefit the lives of others, and a matter of individual choice and conscience, the invasive post-mortem examination of the corpse is seen as being objectionable, particularly for Jews and Muslims, because it is regarded as being a desecration of the deceased and because it inevitably delays burial. The current Human Tissue Act regime in England and Wales in relation to organ donation and hospital post-mortems may be regarded as being generally acceptable to these faith groups because it is a consent-based system, although tensions may arise between the law and religious beliefs where bereaved relatives disagree with the views of those who have provided consent to such procedures. These tensions will inevitably have to be resolved 'on the ground' by those working in the hospitals in which the death takes place. The new presumed consent regime for organ donation, which will come into effect in Wales in 2015, is seen as problematic by some religious individuals: it remains to be seen the extent to which these difficulties will lead to faith groups 'opting out' from organ donation in Wales on a widespread basis. The most intractable conflict between the law and religious belief arises in relation to the conduct of coroner's post-mortems, which may be carried out without consent, and in spite of objections from bereaved relatives. Coroner's post-mortems serve a public interest function, to ascertain the cause of death, and even within the Muslim and Jewish religions it is recognised that there will be circumstances in which they need to be conducted in order to ascertain whether a serious crime has been committed. In other cases, whilst the law may not always be able to accommodate religious objections, the 2009 Act and the Coroners (Investigations)

¹¹⁶ See, for example, the Isaacs Report, above n. 94, p. 34, where the autopsy was scheduled so that the deceased could be buried on the same day, and before the Sabbath. The Coroners (Investigations) Regulations 2013, Reg. 11 require that the coroner conduct his investigation without delay.

Regulations 2013 require the coroner to consider the views of those closest to the deceased and may be seen as facilitating the increased use of non-invasive methods of ascertaining death, such as MRI and CT scanning. Good practice, in relation to the speedy conduct of autopsies, helps to accommodate religions which require the body to be buried swiftly. In addition, the increased use of MRI scanning in cases where an autopsy is not necessary, which is supported by religious groups and facilitated in some coronial areas, may be seen as a positive development, which will hopefully be made more widely available in the future.