

推定反對？ 器官捐贈選擇退出制度與 特定組織器官的排除(三)*

Presumed Dissent? Opt-out Organ Donation
and the Exclusion of Organs and Tissues (III)

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摘要

人們經常聲稱，器官捐贈的合法方式應為選擇退出制

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關鍵詞：視為同意 (deemed consent)、器官捐贈選擇退出 (opt-out organ donation)、器官捐贈政策 (organ donation policy)、政策排除和豁免 (policy exclusions and exemptions)、推定同意 (presumed consent)、移植倫理 (transplantation ethics)

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度，也稱為「推定同意」、「視為同意」或「視為授權」，因此，除非個人有明確拒絕，否則死後將推定或視為願意捐贈至少一部分組織或器官。但即便大致上許多制度都預設支持捐贈，但它們在幾個關鍵面向有所不同，例如，潛在捐贈者家庭成員的偏好所扮演的角色、地位與重要性；排除特定人口群體，或額外強調的保護機制；或是仍被排除在選擇退出制度的器官或組織。本文將對英格蘭、蘇格蘭及北愛爾蘭近期事後退出權的轉變進行案例研究，並參考推動整個英國造成這樣轉變的關鍵因素，本文將會嘗試提問：倘若如此，為何且如何，死後器官捐贈制度中的事後退出權應排除某些視為同意的特定器官或組織。換句話說，死後器官捐贈制度的事後退出權，是否應當對特定器官或組織的捐獻提出質疑？

It is often claimed that a legitimate approach to organ donation is an opt-out system, also known as ‘presumed consent’, ‘deemed consent’, or ‘deemed authorisation’, whereby individuals are presumed or deemed willing to donate at least some of their organs and tissues after death unless they have explicitly refused permission. While sharing a default in favour of donation, such systems differ in several key respects, such as the role and importance assigned to the family members of prospective donors and their preferences, and exclusions and safeguards which often specify the demographic groups, purposes, or organs and tissues that will remain outside the scope of the opt-out system. Using the recent shift to opt-out in England, Scotland, and Northern Ireland as case studies, and by reference to the key goals motivating this shift across the UK, this article asks whether and, if so, why, and how, opt-out systems for post-mortem organ donation should restrict the types of organs and tissues for which consent is deemed. In other words, ought opt-out systems for PMOD

presume dissent regarding the donation of certain organs and tissues?

本文上篇載於本報告第87期，98-106頁。

二、增加供應

有鑑於上述對於選擇性捐贈器官偏好的證據，以及大眾缺乏對器官移植的認識，在這基礎上排除特定器官和組織的選擇退出死後捐贈制度，可能可以更佳地反映人們對捐贈的偏好（這是轉向選擇退出制度的核心目標）。縮小選擇退出的範圍還有助於實現系統轉變的第二個核心目標：有效地增加用於移植的器官及組織的供應。因為，正如下述所探討的，根據對捐贈意願的調查而將特定組織及器官排除在視為同意的範圍之外（將其視為反對或不同意），如此可以減輕人們的擔憂，否則可能會造成原本願意捐贈的人完全退出。

雖然選擇退出制度所聲稱的主要優點之一即為可能可以提高捐贈率，但對此制度的批評者也指出，他們可能對公眾輿論產生負面影響進而削弱對器官捐贈的信任（讓人們強烈反對器官捐贈選擇退出制度）。這可會導致大量的潛在捐贈者（包含在選擇加入制度下簽署器官捐贈同意書的人）選擇退出死後器官捐贈¹。有些對於選擇退出制度值得注意的反對意見包括：這類制度並為充分尊重器官捐贈「作為禮物」的這一概念，以及其他相關的顧慮，也就是這項制度增加了從不願意的「捐贈者」身上獲取器官的可能性²。還有人擔心選擇退出制度並

- 1 For one of the earliest expressions of this concern, see RM Veatch, 'Routine Enquiry About Organ Donation—An Alternative to Presumed Consent' (1991) 325 N Engl J Med 1246, 1247-48.
- 2 J Miller, S Currie and RE O'Carroll, 'If I Donate My Organs It's a Gift, If You Take Them It's Theft' (2019) 19 BMC Public Health 1463, 1–15.