

The Development of Human Rights Norms as a Reaction to Genocide

(Paper presented to the International Association of Genocide Scholars Conference, Phnom Penh, Cambodia July 18, 2019)

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Extremes

Charles Dickens in *A Tale of Two Cities* began his novel, written in 1859 and set in Paris and London at the time of the French Revolution, with these words: "It was the best of times; it was the worst of times". He was not writing that the period was an age of extremes; it was rather an age of superlatives.

I would say that every single day, literally, and not just as a description of the way we speak, is both the best of times and the worst of times. Every day is both better and worse than the day before.

There are to be sure, when we balance good against bad, some eras that are better or worse than others. Both the best and worst of times is not an accurate description of what has happened or is happening at any particular time. But it is a fair description of the potential we face.

At any given moment, the harm we can wreak and the good we can bestow is greater than it was the moment before. The reason for this is the interplay between the never ending improvement in technology and the stability of human nature. Technology is both morally neutral and always developing. Human nature does not change, but the ability to do good and inflict harm increases as technology develops.

The result is that, when we consider genocide, it becomes easier from one day to the next, because of the development of technology, to inflict genocide as well as to prevent it. As a species, we are both increasing protection from mass killings and careening towards self-

destruction.

What distinguished the Holocaust from previous attacks against the Jews was not the antisemitism; it was the technology. Antisemitism existed since the beginning of history. Before the mid-twentieth century what limited the scope of genocide against the Jews was the means to carry it out.

However, by the mid-20th century, that had changed. What distinguished earlier antisemitism from antisemitism under the Nazis was not the will to kill the Jews, but rather the ability to do so.

Germany had radio by which hate propaganda could be disseminated, tanks and machine guns, trains and trucks, poison gas and crematoria. Germany had a sophisticated and, at the time modern, bureaucracy with elaborate record keeping and reporting chains.

Germany at the time of the Holocaust was at the apex of human scientific and cultural civilization. Its scientific knowledge and skills made Nazi Germany more deadly than any other previous civilization had been. The heights of civilization that Germany had reached did not immunize it from the Holocaust; rather it made the Holocaust easier to perpetrate.

As capacity for human rights violations increases, so does the ability to prevent it. The history of human rights is a history of reaction to human rights violations. The British Magna Carta of 1215, Habeas Corpus Act of 1679, and Bill of Rights of 1689, the French Declaration of Rights of Man and the Citizen of 1789, and the American Bill of Rights of 1791 all had historical precedents, human rights violations which these instruments stood against.

Most important of all in this reactive development was the Holocaust itself. While the concept of human rights in general and genocide in particular existed before the Holocaust, their

popular penetration and global sweep, the notion of individuals as subjects with rights as against states are all directly linked to the Holocaust.

The Charter of the International Military Tribunal at Nuremberg of 1945, the Universal Declaration of Human Rights of 1948, the Genocide Convention of 1948, the Geneva Conventions on the Law of War of 1948 and the Convention on the Status of Refugees of 1951 were all negotiated, drafted and endorsed in direct response to the Holocaust. The more modern instruments, in turn, built on these earlier instruments. The same is true of the modern international criminal tribunals each of which built on the Nuremberg precedent.

The trouble with this reactive history is that instruments and mechanisms are always playing catch up. The standards and mechanisms in place serve to prevent and remedy the previous violations, but necessarily not the next one. There is, of course, some repetition between one mass killing and the next. The standards and mechanisms put in place are far from useless as forms of prevention and remedy. The trouble is that the prevention and remedy are not complete.

The problem is not just one of enforcement. It is also one of conception. The standards and mechanisms are helpful for old forms of violations. But they are less helpful for new forms of violation.

How do we even know to combat a human rights violation? One answer is that we need to know it exists. Yet, new forms of violation are difficult, if not impossible to anticipate. They are sometimes even hard to recognize once they occur. It is a lot easier to recognize a repetition of the old, than to recognize what we are looking at when we are looking at something completely new.

U.S. Supreme Court Justice Felix Frankfurter 1943 to a Polish diplomat in reaction to being

told by Jan Karski about the Holocaust. Frankfurter said:

"I did not say that this young man was lying. I said that I was unable to believe what he told me. There is a difference."

This incredulity was widespread, even within the victim community. Many Jews stayed in Europe and were killed even though they heard about the Holocaust as it was happening, because they could not believe what they were hearing. For example, survivor Mordechai Ronen from Dej, Romania, recounts:

"One day, four or five men came to our synagogue. They had escaped from Poland and came with stories we found impossible to believe - of Nazis rounding up Jews, looting their possessions, murdering them. People said the men were meshuggah (crazy). The only impact these stories had on my family was the cache of extra potatoes and bread that I discovered stashed away in our basement."¹

This is a common survivor story. There was a number of reasons why more was not done to counter or even avoid the Holocaust as it was happening, but one was this disbelief. The Holocaust was so unlike any mass killing which had happened before, the very event was hard to credit.

One would have thought, after the Holocaust, that we would realize that there is no bottom to the pit of wrongdoing of which humanity is capable, that we have before us an infinite abyss. Yet, each new form of perversion is met with a similar shock of disbelief.

One example is incitement to hatred through the internet, using techniques that only the internet can provide. Incitement to hatred and genocide through the internet requires responses which are not yet fully developed.

<https://www.theguardian.com/world/2015/jan/26/tales-from-auschwitz-survivor-stories>

Organ transplantation

Another example, the one I want to talk about here, is organ transplantation. The first successful transplantation for kidneys was 1954, for liver and heart 1967, and for lung 1981. The notion of mass killing through organ extraction was inconceivable at the time of the Holocaust because the technology to make it happen did not exist.

I am confident that it never occurred to those who developed organ transplant technology that it might be an instrument for the mass killing of innocents. The result was that, once the technology was developed, we were undefended against its abuse.

China, from the moment it began transplantation, used organs from prisoners. Originally the prisoner sources were those sentenced to death. However, as the technology developed, the demand for transplantation increased, the death penalty numbers diminished, the need for private sourcing of health system funding increased, and the volume of prisoners of conscience exploded, the Chinese health system moved into sourcing organs from prisoners of conscience, killed through organ extraction. Starting from 2001, the primary victims were practitioners of the spiritually based set of exercises Falun Gong. More recently, sourcing from Uyghurs has been providing large numbers.

David Kilgour and I produced a report dated June 2006, a revision dated January 2007 and a book dated August 2009 all under the name *Bloody Harvest*² concluding that Falun Gong were being killed en masse for their organs. There were many different evidentiary reasons why we came to that conclusion. But one was that this was a crime without a punishment, with a demonized, undefended victim population, where huge money could be

² Seraphim Editions

made. There was no law either in China or abroad which prevented or punished that abuse. To be sure, if you kill someone in your own country for their organs, you will be prosecuted for murder. However, many countries have territorial jurisdiction for their criminal laws, meaning that if you commit the same crime abroad you will not be prosecuted for that crime on return home. Territorial jurisdiction for criminal law in any country is based on the assumption that all other countries also have territorial jurisdiction, meaning that the perpetrator would be prosecuted in the territory where the crime was committed.

When it comes to organ transplant abuse in China, the mass killings are unprosecuted. There are two reasons for that. One is that the law stands against prosecution. China has two sets of rules for organ extraction - one enacted in 1979 for research on bodies of the dead³ and another enacted in 1984 for sourcing organs from prisoners for transplants⁴ - neither of which requires consent where bodies are unclaimed.

Bodies of prisoners of conscience typically are unclaimed because their family members do not know where they are. When prisoners of conscience are arbitrarily detained, families are typically not notified of the detentions. As well, many prisoner of conscience detainees refuse to disclose their identities to their jailers, even after torture, in order to protect their families from trouble.

The Chinese state/ Communist party, after our report came out, enacted a law in 2007

³ "Rules Concerning the Dissection of Corpses", Article 2(1)2 and article 4 reproduced in the Human Rights Watch report Organ Procurement and Judicial Execution in China August 1994 Vol. 6, No. 9, appendix 3, posted at

https://www.hrw.org/reports/1994/china1/china_948.htm

⁴ Temporary Rules Concerning the Utilization of Corpses or Organs from the Corpses of Executed Criminals Article 3(1), Appendix 2 of the same Human Rights Watch report cited in the previous footnote.

which said consent was necessary for sourcing organs.⁵ Yet, they did not repeal or amend either of the laws which allow for sourcing of organs for transplantation without consent. The continuation of these old laws which allow for sourcing of organs for transplantation without consent is a signal to those working in the field that the law requiring consent means little or nothing and everyone can carry on as before.

The other reason in China for immunity from organ transplant abuse is that we are, after all, dealing with a Communist state without the rule of law. Because the Party controls the legal system, the laws are not enforced against the Party. The Party does not impose the laws on itself or on its state institutions. Party/state policies and actions may violate the laws. But there is no one in the system to say that this is so.

The Chinese economic and technological advances have not led, as some had hoped, for increased respect for human rights. It has rather made its Communist leadership each and every day a more effective killing machine than it was the day before.

In the result, despite the huge international human rights superstructure built up since World War II, there exists a gap in the structure which has allowed for the Chinese health and prison systems working in consort to kill prisoners of conscience en masse for their organs without risk, for the killers, of punishment. The question now becomes, how to fill this gap.

Genocide

⁵ The Regulations on Human Organ Transplantation adopted at the 171st executive meeting of the State Council on March 21, 2007 implemented as of May 1, 2007.

State Council Order No. 491

http://www.gov.cn/zwqk/2007-04/06/content_574120.htm

One answer is the law of genocide. The mass killing of Falun Gong for their organs is a form of genocide. I have co-authored a paper on this subject in the International Journal of Genocide Studies and Prevention with Torsten Trey, Maria Cheung and Richard An.⁶

The most direct way of addressing genocide is prosecuting for genocide. Prosecuting for international crimes can be done at either international or local instances. However, for this crime, the International Criminal Court is not available.

China is not a state party to the treaty of the International Criminal Court. The Security Council can refer to the Court situations which occur even in the territory of non-state parties. However, China has a veto in the Security Council.

Many states have universal jurisdiction legislation which allows for prosecution for genocide which occurs outside its territory. So, the jurisdictional obstacle at the international level is removed at the local level.

There remains nonetheless a legal obstacle. There is a lot of money being made in China from selling organs extracted by force from prisoners of conscience. Some of those involved in murder through forced extraction may be motivated by the money to be made alone, with little regard to the identity of the victims. Even if one can accept the fact of mass killings in China of prisoner conscience victims through organ extraction, do these mass killings manifest the requisite intent to establish genocide?

An independent people's tribunal mandated to investigate the facts and law of organ transplant abuse in China with prisoner of conscience victims (the China tribunal) received a legal opinion from Datuk N. Sivananthan who stated:

⁶ <https://scholarcommons.usf.edu/gsp/vol12/iss1/6/>

"an intention to forcefully harvest the organs for the sake of profit is not the same as an intention to forcefully harvest the organs to bring about the physical or biological destruction in part or in whole of a protected group. ... One may seek to argue that even if the harvesting of the organs were done for the sake of profit, the perpetrators would have knowledge that their actions would bring about the destruction in part or in whole of the group. However, this argument is reliant on a knowledge-based approach that has yet to be supported by any court rather than a purpose-based approach that has been adopted by the ICTY, ICTR and ICC. As such, it is highly unlikely that the perpetrators' knowledge of the effect of their actions without any intention to cause such an effect would be sufficient to meet the requirement of intent under the Genocide Convention."

Nonetheless, the notion that specific intent is required seems ill-founded in light of an article in the Statute of the International Criminal Court, which provides that the intent for genocide has the same as knowledge component as the intent for the other crimes over which the Court has jurisdiction.⁷ The fact that tribunals have used to date a purpose based approach is not in itself a rejection of a knowledge based approach.

If a purpose based approach is available, a knowledge based approach is unnecessary. As well, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda do not have an intent provision like one finds in the statute of the International Criminal Court, stating that the intent for genocide, like the intent for other crimes, includes knowledge.

Sivananthan in his opinion cites an academic article which in turn suggests that exclusion of the knowledge based approach by the International Criminal Court could be based on the

⁷ Article 30

phrase in the Court Statute "unless otherwise provided".⁸ It seems odd for Sivanathan to cite this article in light of the fact that, though the article does refer to the position that Sivanathan adopts, it argues against that position.

The full text of the relevant Court provision is this:

"Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge."⁹

The manner of phrasing suggests that what is being said is that strict requirements (intent and knowledge) must be met, unless otherwise required. The phrase "unless otherwise required" is meant to refer to a possible relaxation of requirements, not a possible enhancement of requirements. The argument about specific intent twists the phrase "unless otherwise provided" around to allow for stricter requirements, for intent, than those set out in the statute.

Be that as it may, the phrase "unless otherwise provided", so the argument goes, could refer to the origins and development of the prohibition against genocide. Yet surely, the "otherwise provided" to which that phrase refers is what is otherwise provided in the Statute of the Court or the Court Elements of Crime. The notion that the phrase "unless otherwise provided" has nothing to do with the Statute or the states parties to the Court treaty could not have been intended by those negotiating the treaty, because that sort of "otherwise" would encompass anything anyone might have said or might say at any time. There is nothing otherwise provided in the Court statute or the Court elements of crime.

⁸ <https://core.ac.uk/download/pdf/46713705.pdf>

⁹ Article 30(1)

If one goes to the origins and development of the prohibition against genocide, there are indeed views which express the need to establish a specific intent. For instance, in its 1996 commentary to the Draft Code of Crimes Against the Peace and Security of Mankind, the International Law Commission stated that

"[t]he prohibited [genocidal] act must be committed against an individual because of his membership in a particular group and as an incremental step in the overall objective of destroying the group The intention must be to destroy the group 'as such,' meaning as a separate and distinct entity, and not merely some individuals because of their membership in a particular group."¹⁰

The China Tribunal determined beyond reasonable doubt that the mass killing of prisoners of conscience for their organs had occurred and was still occurring. They also without hesitancy found this abuse to be a crime against humanity.

However, when it came to genocide, they were not so sure. They recommended that the UN General Assembly refer the interpretation of the law of genocide to the International Court of Justice by way of resolution asking for an advisory opinion.¹¹

While I favour prosecution of those responsible for mass murder of Falun Gong or Uyghurs through organ extraction for genocide, I also think it is important to clear up the uncertainty on the law of intent which has developed in the law of genocide. An advisory opinion from the International Court of Justice would do that.

¹⁰ Report of the International Law Commission on the Work of Its Forty-Eighth Session, U.N. GAOR, 51st Sess., Supp. No. 10, at 87, U.N. Doc. A/51/10 (1996) Chapter 11, the Draft Code of Crimes Against the Peace and Security of Mankind and commentary at 88.

Options

Addressing genocide does not require prosecution for genocide. There are many different ways perpetrators of genocide can be brought to justice. Prosecution for genocide is only one of those.

If we want to develop a remedy and a form of prevention for organ transplant abuse, we should not limit ourselves applying and clarifying the law of genocide. Any form of justice for genocide is better than none.

There are these other possibilities for addressing this genocide without prosecuting for genocide:

- 1) prosecuting for crimes against humanity;
- 2) enacting legislation which allows for prosecuting extraterritorial crimes relating to organ transplant abuse;
- 3) establishing a system of mandatory reporting of transplant tourism;
- 4) allow for the seizing of assets found abroad which are accumulated as the result of organ transplant abuse;
- 5) enacting Magnitsky type legislation and applying it to organ transplant abuse;
- 6) providing an exception to state immunity to allow for civil liability for this type of abuse;
- 7) imposing an immigration ban on those complicit in organ transplant abuse;
- 8) changing bioethical and medical professional standards to stand specifically against any form of complicity in or collaboration with this type of abuse abroad;
- 9) prohibiting insurance which would cover the costs of transplant tourism;
- 10) for plastinated bodies exhibits, enacting legislation which would
 - a) require verifiable documentation showing consent of the individuals whose bodies were put on display after death or their family members
 - b) require verifiable documentation showing the sourcing of the bodies, and

c) prohibit sourcing of bodies for bodies exhibits from prison or detention or police.

All of these remedies are worth pursuing. The pursuit of any one is better than inaction.

Crimes against humanity

Relying on the possibility of prosecution for crimes against humanity alone is not enough. Crimes against humanity is defined in the statute of the International Criminal Court is any one of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

Many states have enacted a universal jurisdiction to prosecute crimes against humanity. Nonetheless, a specific prohibition related to the act in question is useful.

A specific prohibition creates public awareness; it gives notice of what should be done. It can make prosecutions easier by pinpointing the elements of the crime which are specific to the crime.

No matter how persuasive the China Tribunal reasoning is, there are bound to be some prosecutors who will hesitate to prosecute complicity in Chinese organ transplant abuse as a crime against humanity. A specific offence can circumvent that hesitancy.

Extra-territorial legislation

There is now an international treaty addressed specifically to organ transplant abuse, the Council of Europe Convention against Trafficking in Human Organs. The Convention can be signed by the member States of the Council of Europe, the European Union and the non-member States which enjoy observer status with the Council of Europe. It is also can be

signed by any other non-member State of the Council of Europe upon invitation by the Committee of Ministers.¹² The Convention introduces new offences - on removal of organs, on use of removed organs, on transplantation in breach of essential principles, on solicitation and offering and on preservation, transfer and receipt of removed organs.

The Convention addresses extraterritoriality but limits the obligation to legislate the application of an extraterritorial provision to nationals and habitual residents. The Convention does not prevent, but also does not require, universal jurisdiction offences.

The Convention does not require that a visiting perpetrator be prosecutable for violation of Convention standards. Whether the Convention should have created an international offence which required that visitors be prosecutable for violation of Convention standards caused division within the Council at the drafting stage, with 18 states supporting and 20 opposed. There is nothing preventing states, should they wish to do so, from legislating such an offence.

The Council of Europe approved the Convention in March 2015. To date, there are nine ratifying states - Albania, Croatia, Czech Republic, Latvia, Malta, Moldova, Montenegro, Norway and Portugal - and fifteen signatory states which have not yet ratified the Convention.¹³ One of the fifteen, Costa Rica, is not a member of the Council of Europe. Because five ratifying states is the number of states necessary for the entry into force of the Convention, the Convention has now entered into force.

All the ratifying states must have implementing legislation. So far, there is extra-territorial

¹² Article 28

legislation also in Italy, Spain, Israel and Taiwan. As well, in several states, including Canada, Australia,¹⁴ the US and Belgium, extra-territorial legislation has been proposed by individual Congressional or Parliamentary members, without yet being adopted.

Mandatory reporting

A private member's bill in the National Assembly by Valerie Boyer in France proposed a reporting obligation, reporting by health professionals to health officials of transplant tourism.¹⁵ The Australian proposed legislation included within it a reporting obligation.

In Canada proposed legislation has passed the Senate with a provision imposing a reporting obligation. The House of Commons, in adopting the Bill, amended it to remove the reporting obligation. The Bill needs to be re-enacted by the Senate in the form adopted by the House of Commons.

Magnitsky type legislation

Magnitsky legislation, which now exists in six countries, allows authorities to freeze the assets of serious human rights violators, and deny them entry. Identified offenders are named publicly under the legislation. Countries with the legislation to date are Latvia,

¹⁴ Parliament of New South Wales, Human Tissue Amendment (Trafficking in Human Organs) Bill 2015, Progress
<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=2953>

¹⁵ Bill no. 2797 Assemblée nationale treizième législature Enregistré à la Présidence de l'Assemblée nationale le 16 septembre 2010. Proposition de loi visant à lutter contre le tourisme de transplantation d'organes

Lithuania, Estonia, Canada,¹⁶ the US¹⁷ and the UK.¹⁸

The legislation is named after Serge Magnitsky, a human rights lawyer killed in a Russian prison after exposing corruption. Original Magnitsky legislation targeted corrupt Russian officials but has since been expanded globally. It encompasses all serious human rights violations and not just corruption.

None of the countries with Magnitsky legislation to date has listed Chinese officials. There has been a request to that effect to the Government of Canada, to list the lead persecutors of Falun Gong.

Immigration

Anyone complicit in transplant abuse abroad should be denied visas and entry to the country. While there may be some general prohibitions which encompass this principle, right now there is nothing specific. A visa policy in place preventing entry of participants in organ transplant abuse could avoid inappropriate invitations to those abroad who have engaged in that abuse.

¹⁶ The Canadian legislation can be found at this link:

<https://laws-lois.justice.gc.ca/eng/acts/J-2.3/FullText.html>

Canada Information about those listed under the legislation can be found at this link:

https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/victims_corrupt-victimes_corrompus.aspx?lang=eng

¹⁷ The US legislation can be found at this link:

<https://www.congress.gov/114/bills/s284/BILLS-114s284rfh.pdf>

Information about those listed under the US legislation can be found at this link:

<https://www.treasury.gov/resource-center/sanctions/Programs/pages/magnitsky.aspx>

¹⁸ Information about the UK legislation can be found at this link:

<http://researchbriefings.files.parliament.uk/documents/CBP-8374/CBP-8374.pdf>

Visa or entry applicants should be asked if they participated in organ transplant abuse. The US non-immigrant visa application form asks all visa applicants: "Have you ever been directly involved in the coercive transplantation of human organs or bodily tissue?"¹⁹

This question is based on a US entry ban for those directly involved in the coercive transplantation of human organs or bodily tissue.²⁰ The Canadian proposed legislation working its way through Parliament includes an immigration ban.

It is unlikely that even the guilty would answer yes to the question posed in the US entry form. Yet, the question itself can be deterrent of entry and a marker of country standards. As well, if someone answers no dishonestly and is given a visa, the person can be removed or the visa revoked for the dishonesty without necessarily having to prove the involvement in the abuse, but merely for foreclosing inquiries about that involvement.

Bioethics

Many countries have rudimentary ethical standards standing against sourcing of organs from prisoners sentenced to death and requiring consent. However, typically whole areas need be addressed and are not. These areas include counselling of patients, provision of records to patients, prescriptions for patients or provision of pharmaceuticals to patients, referrals abroad, professional association membership requirements, admissions to training programs, collaboration with professionals abroad, publication of research, and presentation of studies.

¹⁹ Form ds-160, page 20
https://travel.state.gov/content/dam/visas/PDF-other/DS-160_Example.pdf

²⁰ 8 U.S. Code 1182f

Insurance

Israeli law prohibits reimbursement of transplantation abroad conducted in violation of the standards of the legislation.²¹ This provision ended funding through the health insurance system of transplants in China for Israeli nationals.

Bodies exhibits

Bodies exhibits are not organ transplant abuse. However, they are cognate, similar fact evidence. Many of the bodies in various exhibits come from China, and within China, from police sources. The evidence points to the sourcing in China from prisoners of conscience for both organs for transplants and bodies for exhibits.²²

There are several jurisdictions which have taken specific legal action against bodies exhibits. The State of New York in May 2008 reached a settlement with a bodies exhibitor, Premier Exhibitions, in which the exhibitor agreed, before displaying a body as part of any New York exhibit, to obtain written documentation demonstrating the source of each body and body part, the cause of death, and the decedent's consent to the use of his or her body.²³

The State of Hawaii enacted legislation in June 2009 an outright prohibition. The legislation

²¹ Section 5, Organ Transplant Act, 2008

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<https://endtransplantabuse.org/an-update-chapter-eleven-a-crime/#plastinated-bodies>

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<https://ag.ny.gov/press-release/cuomo-settlement-bodies-exhibition-ends-practice-using-human-remains-suspect-origins>

states "No person shall display a dead human body for commercial purposes."²⁴

The City of Seattle in July 2010 enacted an ordinance regulating the commercial display of human remains. The ordinance required consent in the will of the deceased or by a person who has the right to control the disposition of the remains. A City official was designated to determine the adequacy of the documentation offered to establish consent.²⁵

In France, the court ordered the closing of a bodies exhibit. The judgment of the highest French court in September 2010 based this order on the findings that

- a) respect due to the human body does not stop with the death;
- b) the remains of deceased persons must be treated with respect, dignity and decency;
- c) in order to determine whether the exposed bodies were treated with respect, dignity and decency, the Court had to determine whether they had a lawful origin and, more particularly, whether the persons concerned had given their consent, during their lifetime, to the use of their corpses; and
- d) the exhibitor refused the request of the Court to examine the conditions under which the bodies were presented to the public.²⁶

²⁴ https://www.capitol.hawaii.gov/session2009/bills/GM735_.PDF

²⁵

[http://clerk.seattle.gov/search/results?s1=bodies&s9=&s7=&s6=\(%40DTIR%3E20100700%3C20100800\)+OR+\(%40DTA%3E20100700%3C20100800\)+OR+\(%40DTS%3E20100700%3C20100800\)+OR+\(%40DTSI%3E20100700%3C20100800\)+OR+\(%40DTMY%3E20100700%3C20100800\)+OR+\(%40DTF%3E20100700%3C20100800\)&s2=&s8=&Sect4=AND&l=200&Sect2=THESON&Sect3=PLURON&Sect5=LEGI2&Sect6=HITOFF&d=LEGC&p=1&u=%2Fsearch%2Fcombined%2F&r=9&f=G](http://clerk.seattle.gov/search/results?s1=bodies&s9=&s7=&s6=(%40DTIR%3E20100700%3C20100800)+OR+(%40DTA%3E20100700%3C20100800)+OR+(%40DTS%3E20100700%3C20100800)+OR+(%40DTSI%3E20100700%3C20100800)+OR+(%40DTMY%3E20100700%3C20100800)+OR+(%40DTF%3E20100700%3C20100800)&s2=&s8=&Sect4=AND&l=200&Sect2=THESON&Sect3=PLURON&Sect5=LEGI2&Sect6=HITOFF&d=LEGC&p=1&u=%2Fsearch%2Fcombined%2F&r=9&f=G)

²⁶

<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000022826393>

The Czech Republic in July 2017 enacted an amended Burial Act which addressed bodies exhibits. The amended law prohibits the exhibition of the body of a deceased person without his or her consent.²⁷ The law is similar to the French court judgement in the sense that the prohibition is linked to the concept of dignity. The Czech prohibition has an umbrella provision which states that human remains and human remains must be treated with dignity and for this reason, among others, consent is required.

Conclusion

When David Kilgour and I did our initial report in 2006, there was more or less nothing to prevent or punish transplant tourism or any other form of cross border transplant abuse. Since 2006 there have been developments here and there. Yet these developments have been far from comprehensive, far from commensurate with the need to react to the abuse.

Why is this so? The reaction to the Holocaust was so comprehensive in part because Nazi Germany was defeated and all its records made accessible. The defeat led to the release and testimony of many survivor witnesses.

The Communist perpetrators in China, in contrast, still remain in power. Their internal records are inaccessible. It is often politically or economically inconvenient to confront the Chinese authorities.

Organ harvesting in China is compartmentalized to the point that very few of the intended victims who have escaped can testify to what is happening. As well, this form of mass killing is so new and different, so unlike other mass killings that the overwhelming and uncontroverted evidence is met with disbelief.

²⁷ Section 4(1)(b), <http://www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=954&CT1=0>

The value of standards and mechanisms to stand against international transplant abuse exists regardless of the evidence of that abuse. Nonetheless, the inability or unwillingness to come to grips with the evidence has led to the situation we now see, the continuation of that abuse, without much being done to counter it.

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