

ARTICLES

HUMAN BODIES, INHUMAN USES: PUBLIC REACTIONS AND LEGISLATIVE RESPONSES TO THE SCANDALS OF BODYSNATCHING

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INTRODUCTION

*Doon the close and up the stair
But an' ben wi' Burke an' Hare
Burke's the butcher
Hare's the thief
Knox the man who buys the beef!*¹

Burke and Hare rank amongst the most well known of Britain's serial killers due to the abhorrent nature of their crimes: murder and profiting from the sale of their victims' bodies. And yet, despite their fame, Burke and Hare were certainly not the only resurrectionists² who committed murder, nor does the evidence indicate that murder was their only means of procuring bodies for sale. However the public outrage that ensued was such as to ensure that their names were branded into the public consciousness to the exclusion of other resurrectionist misdemeanours.³ While they are often credited with prompting the legislative changes regarding the use of corpses for the teaching of anatomy,⁴ it will be seen that debate had been continuing for some time on this matter. Legislative change had been contemplated before these crimes came to light, but the new crime of "Burking",⁵ together with the resulting public panic, increased the pressure to amend the law.

The disgust with which the public regarded these crimes, and the growing public realisation of the precise nature of anatomists' practices, is not something consigned to

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¹ Adam Lyal, *Witchery Tales, The darker side of old Edinburgh* (Moubray House Press, Edinburgh, 1988). An extract from a popular song after the Burke and Hare scandal which probably has its origins in the verses commonly published in the penny broadsheets.

² "Resurrectionists" or "resurrection men" being the term given to those engaging in the removal of recently buried corpses from the graveyard for the purpose of sale to anatomists and lecturers of anatomy. Frequently the resurrectionists would in fact be medical students themselves.

³ Note, here the term "misdemeanours" is not being used in its legal sense.

⁴ Ball, J. M., *Sack-'em Up Men*, (Oliver & Boyd, 1928) p. 72.

⁵ See for example the comments of Mr. O'Connell in the debates in the Commons on the Anatomy Bill in February 1832; "... it was much better to risk the chance of some indecencies being committed with respect to dead subjects than to risk the chance of the living being converted into dead subjects by the atrocious practice of Burking." Hansard 1832 Vol. 10 col. 378.

history. Medical science continues to develop, anatomists continue to need bodies, and bodysnatching, albeit of body parts as opposed to whole corpses, still occurs. The main distinction between the periods is that today's resurrectionists are exclusively the medical men themselves, for example, the pathologist at the Royal Liverpool Infirmary, and the practitioners at Bristol Royal Infirmary. Unlike their 19th century peers, today's resurrectionists do not need to resort to murder. The moral outrage surrounding these "new" resurrectionists is equally strong as that provoked by Burke and Hare in the 19th century, if not more so, since today we have a developed "rights-based" culture and a clear expectation of consensual medical practices.

The similarities between the moral panics arising from the bodysnatching scandals in both 19th and 20th century Britain will be explored and examined, together with the medical justifications. The legislative consequences will also be considered, since both eras have produced suggestions for reform.

THE 19TH CENTURY

The story of Burke and Hare's unorthodox methods of obtaining bodies for the anatomy lecture halls of Edinburgh broke at the beginning of November 1828. The *Evening Courant* published its account of the affair on 3 November, with broadsides⁶ quickly following it up thus:

An account of a most Extraordinary circumstance that took place on Friday night . . . , in a House in the West Port, Edinburgh, where an Old Woman of the name of Campbell is supposed to have been Murdered, and her Body Sold to a Medical Doctor.⁷

Thereafter the press became bored with the affair with little by way of coverage until the actual trial of William Burke and his mistress, Helen M'Dougal, for murder, with William Hare acting as King's Witness. The *Glasgow Courier* reported:

In the absence of any political news of any importance we have devoted a considerable portion of our paper of today in giving a full report of the trial before the High Court of Justiciary, of Burke and Hare.⁸

The Edinburgh *Evening Courant* ran the report of the trial on 25 December 1828, providing its readers with a full account of the legal argument and the summing up to the jury.⁹ The *Caledonian Mercury* provided two full pages of report on the same day.¹⁰

The trial, by the standards of the day, was lengthy, lasting "above 24 hours" with "55 witnesses called",¹¹ and resulted in a guilty verdict for Burke and one of not proven for M'Dougal. Burke was sentenced to death with his execution date set for 28 January 1829. The remainder of the "participants" in the crime were set free. When the time came for Burke's public execution he had confessed to at least 16 murders,¹² although in reality it is likely that the number was somewhat less. Burke's execution

⁶ Broadsides consisted of a one-page "news" sheet, the accuracy of the news often being in doubt. These broadsides are often referred to as broadsheets, half or quartersides, reflecting the actual size of the paper used. They invariably cost one penny, although the same publishers would often reprint the information, with additional new material in more expensive pamphlets.

⁷ *Extraordinary Occurance, and Supposed Murder etc. Edinburgh 3d Nov, 1828* held in National Library of Scotland: West Port Murders, Vol. IV, Miscellaneous, L. C. 1573 (1).

⁸ Extracted in MacGregor, G., *The History of Burke and Hare and of the Resurrectionist Times* (1884) (Thomas Morison Glasgow and Hamilton Adams & Co, London, 1884) p. 114.

⁹ *Per West Port Murders*, Vol. V, Miscellaneous, L.C. 1574 (16), National Library of Scotland.

¹⁰ A collection of cuttings chiefly from Edinburgh newspapers, relating to the Burke and Hare murders (1828–1841) National Library of Scotland R.Y.III.a.6(1).

¹¹ *Per West Port Murders*, Vol. IV, Miscellaneous, L.C. 1573 (15), National Library of Scotland.

¹² See for example *The Official Confessions of William Burke* (1829, Shillies Library) in National Library of Scotland, West Port Murders, Vol. IV, L.C. 1573 (30), one of the many "True or Official Confessions" allegedly made by Burke before his execution on 28 Jan 1829.

was, by all accounts, a particularly popular event. Thousands crowded the streets of Edinburgh to witness his hanging, and when, ironically, his body was publicly dissected, competition for viewing was fierce.

While the mainstream press might have misjudged the public's thirst for knowledge, (at least until they ran out of news of the political events in Silestra which had until then dominated the press), the penny broadsides were more than happy to oblige. These popular news-sheets provide an interesting insight into the more mainstream view of the affair, aimed as they were at the less well educated of the population who would not read a more traditional newspaper. Frequently these broadsides and subsequent pamphlets took the form of verses and rhymes and they often claimed to be reporting directly from the mouths of the criminals, the victims' relations, or other "involved" parties. What is interesting, and will be explored below, is the similarity between the nature of the public outcry in the Burke and Hare situation and that evidenced through the media in the Alder Hey scandal over a century later.

THE 20TH CENTURY

The bodysnatching scandal of the modern era is equally well known, concerning as it did, the removal and retention of body parts of children dying in various NHS hospitals across England and Scotland. The main focus of the scandal was the Alder Hey Hospital in Liverpool, and to a certain extent, the Bristol Royal Infirmary. As with the Burke and Hare case, the initial public realisation of the nature of medical practices following death and *post mortem* in these institutions appeared somewhat low key. The Bristol Royal Infirmary was initially subject to inquiry because of a high mortality rate in children undergoing heart surgery. The surgeons concerned had been referred to the General Medical Council (GMC) with respect to their poor performance, and were found guilty in 1998 of professional misconduct. The complainants who had precipitated this disciplinary action also called for a Public Inquiry. An Inquiry was announced on 18 June 1998.¹³ In the GMC hearing evidence was given as to the retention of body parts by the Infirmary but media coverage was not extensive at this stage. It was primarily following the Inquiry and disclosure by Professor Robert Anderson that Alder Hey was custodian of one of the largest collection of hearts in the UK¹⁴ that the media interest arose. This intensified considerably after an Inquiry into the situation at Alder Hey was announced.¹⁵ One area of great concern in both cases was the fact that body parts, not restricted to hearts, were being retained and that many parents did not believe they had ever consented to the retention of their child's organs or body parts.¹⁶ This led to sensationalist coverage in the press that mirrored the reaction to Burke and Hare.

In addition, the relevant inquiries (as supposedly had been the case following the Burke and Hare murders) supported the call for amendment of the legislation covering

¹³ For full terms of reference of the public inquiry see Chapter 1, para. 14, *Learning from Bristol: the report of the public inquiry into children's heart surgery at the Bristol Royal Infirmary 1984–1995*, CM 5207, HMSO, London.

¹⁴ See Chapter 3, para. 1.1, *The Royal Liverpool Children's Inquiry Report* (London: HMSO, 30 January 2001).

¹⁵ The inquiry being announced on 3 December 1999 by Lord Hunt, Parliamentary Under Secretary of State. For full details of the term of reference see Chapter 1, para. 4.1, *The Royal Liverpool Children's Inquiry Report*, *ibid*.

¹⁶ It is interesting to note that the majority of parents involved with the Bristol Royal Infirmary Inquiry had indeed completed and signed a consent form. Indeed in the *Interim Report*, Part II, para. 43, the panel states that of the 265 *post-mortems*, 220 "were coroners' *post-mortems* for which consent and, hence, a signed consent form [was] not required. In relation to the 45 hospital *post-mortems*, the Inquiry has verified that in all but three cases parents' written consent was given; there was no suggestion in these three cases that consent was not obtained. In a further case, whilst the consent form was missing, the parent recalls giving consent". What the issue here concerned was the fact that those parents did not understand, or have explained to them, the meaning of the consent documentation that they signed.

the use of body tissue and organs for medical purposes after death. Before reflecting on the legislative consequences of these scandals, the similarities of the public outrage will be considered.

THE PUBLIC OUTRAGE

The reaction of the media, in both cases the printed press, reflects the nature of the public's perception of these scandals, and demonstrates the repugnance of society to "unlawful" and "unnatural" acts being carried out by the medical profession. There are also clear similarities in both cases in relation to the responses by the medical profession itself in justifying its actions and responding to the criticism of medical practices. These similarities will be considered below, focussing on the image created of the victims, the perceptions of the perpetrators, media response to the medical perpetrators, and the justification provided by the medical profession for its acts.

The Victims and Perpetrators

Despite the difference in numbers of victims between the two affairs, the image of them portrayed in the media is strikingly similar. In the early 19th century, where immorality was closely linked in the public mind to alcohol abuse,¹⁷ the description of Burke and Hare's first known victim was of a good, but poor woman, who was in the wrong place at the wrong time. The *Newgate Calendar* cites the evidence of one William Noble, to the effect that Mrs. Campbell had on the afternoon before her murder "begged for charity" and was "quite destitute" but was also "sober",¹⁸ suggesting that, although poor, Mrs. Campbell had a good moral character. This perception is endorsed in the broadsides, "the old woman, it is said, *with reluctance* joined in the mirth, and also partook of the liquor" (emphasis added),¹⁹ again suggesting the victim's moral character.

Their second known victim was equally perceived to be of a good moral character, albeit that he was classed as an idiot, and went by the name of "Daft Jamie".²⁰ Jamie, (James Wilson), had allegedly been lured to his death after encountering Burke in the Grassmarket when Jamie was seeking the whereabouts of his mother.²¹ The description of his character is almost eulogistic:

Jamie was for many years (before he fell a victim) never known to be absent a day, forenoon, afternoon nor evening, (or even at any other time, if he got notice that there were a sermon) from Mr. Aikman's Chapel, it was astonishing how regularly he attended that place of worship.

He was also described as a "poor, harmless good natured idiot"²² and was supposedly well known to those medical students who observed his dissection, a fact

¹⁷ See for example Balfour, C. L., *Women and The Temperance Reformation*, (London, 1849) and Harrison, B., *Drink and The Victorians: The Temperance Question in England 1815-1872*, (Faber and Faber, London, 1971).

¹⁸ The *Newgate Calendar*, extracted from www.exclassics.org/newgate/ng601.htm on 7 March 2003.

¹⁹ *Extraordinary Occurance, and Supposed Murder etc.*, *op. cit.*

²⁰ Burke and Hare were never charged with the murder of Daft Jamie, but the circumstantial evidence was such that in all likelihood the pair did kill and sell his body to Dr. Knox.

²¹ *A laconic narrative of the life and Death of James Wilson, known by the name of Daft Jamie. To which is added a few Anecdotes* (published W. Smith, 1829) held by the National Library of Scotland in West Port Murders, Vol. IV, Miscellaneous, L.C. 1573 (5).

²² Extract from press cutting, *The Edinburgh Murders (Further Particulars)* in West Port Murders, Miscellaneous, Edinburgh City Library, YRA 637.

that caused great concern due to their failure to report the murder: “[I]f any of them had been possessed of the smallest feeling, they would have given notice to the Captain of Police”.²³

Unlike many of their fellow resurrectionists, Burke and Hare claimed they had never disinterred a body to sell to the anatomists:

“You have been a resurrectionist (as it is called) I understand?”

“No. Neither Hare nor myself ever got a body from a churchyard. All we sold were murdered save the first one which was that of the woman who died a natural death in Hare’s house . . .”²⁴

Hence, if this so called confession is true, the term “resurrectionist” does not, in reality, apply. However, the purpose of their crime, the sale of a body to an anatomist, highlighted the immoral practice that had been tolerated by the law enforcers until that date:

So long as the resurrectionists confined their activities to the filching of dead bodies, their illegal acts, although exciting disgust and horror, did not approach the magnitude of crime.²⁵

Thereafter, “filching” dead bodies and selling them lost the tacit acceptance of the law enforcers.

The murderers, and also the anatomist Dr. Knox, who received and paid for the bodies, were roundly condemned for their immoral behaviour and for their “monstrous Crimes”.²⁶ Certain media interests pressed for the prosecution of Dr. Knox, the “learned butcher”,²⁷ as “a receiver, or accessory after the fact” since without the existence of the trade in bodies, “we should not hear of these bloody murders and hardened wretches”.²⁸ Indeed Dr. Knox was

[In] the eyes of many . . . a greater criminal . . . and outspoken and unthinking people went the length of declaring that these misguided men were but instruments in his hands obeying his behests.²⁹

Despite the lack of legal action against Dr. Knox, the public did take matters into their own hands and shortly after the discovery of these “events”, there occurred a “popular tumult” whereby an effigy of Dr. Knox was hanged from a tree, then burnt, and a riotous crowd assembled outside Knox’s premises in Surgeon’s Square.³⁰ Although questions were asked in parts of the media about Knox’s involvement, and this small section of the media classed him equally a perpetrator; since Knox was seen to be just as much a “butcher” as Burke and Hare, it will be seen later that the general media coverage of Dr. Knox’s role was far more circumspect.

The sentiments about the moral worth and harmless innocence of the known victims of Burke and Hare and the insensitivity of the medical profession are echoed in the Bristol Royal Infirmary and Royal Liverpool Children’s Hospital inquiries, although here much of the rhetoric is linked to the perceptions of the perpetrators. The fact that

²³ *Ibid.*

²⁴ *Life and transactions of murderer Burke and his Associates*, National Library of Scotland, R.Y. III. a. 6(26), date unknown.

²⁵ Ball, J. M., *Sack-em up men*, (Oliver & Boyd, 1928) at p. 72.

²⁶ Press cutting, newspaper unknown, 4 January 1829, National Library of Scotland, R.Y. III. a. 6(30).

²⁷ *Ibid.*

²⁸ Press cutting, newspaper and date unknown, National Library of Scotland, R.Y. III. a. 6(30).

²⁹ MacGregor, G., *op. cit.* at pp. 234 and 235.

³⁰ Edinburgh Evening Courant, “A Full and Particular account of the Riot which took place in Edinburgh on Thursday last, also of the hoax played off on a celebrated Doctor”, date unknown, National Library of Scotland R.Y. III. a. 6(10).

the “victims” were all children increased the level of outrage felt at the desecration of their bodies. While it could be argued that these children were not victims in the Burke and Hare sense, since they all suffered congenital medical difficulties and did not technically die *via* deliberate killing, the actions of the medical profession are throughout castigated as being “criminal”, hence making the term “victims” a useful one to use. In the *Report of The Royal Liverpool Children’s Inquiry* the view of the parents of one of the victims is explained thus:

They describe the hospital as having stolen their daughter’s body which was “as white as driven snow. It was reduced to skin and bone by predators and it must never happen again”.³¹

Another family “discovered their beautiful daughter’s heart had been one of those removed by Birmingham Children’s Hospital without consent”.³²

In the Royal Liverpool Children’s Inquiry a parent commented: “Medical research must not be carried out at the expense of *innocent* children”³³ (emphasis added).

There are numerous examples from the media coverage and the inquiry reports themselves to support this notion of criminality, and the horror and revulsion the removal of organs caused:

They are angry at the deceit, grotesqueness and obscenity of removing without their knowledge or consent their daughter’s brain, heart and lungs.³⁴

It is mutilation.³⁵

Hearts, while medically just wonderful pumps, are the organs to which we attribute love. To steal them from children is repugnant.³⁶

[The father] has slammed the actions of the doctors in the case as “barbaric”. The couple eventually won their legal battle. It is the first case in Scotland where parents have got back a child’s “stolen” organ.³⁷

Their daughter was abused and treated like a piece of meat.³⁸

This is symptomatic of pathology practice, which was barbaric . . . this is Scotland’s holocaust – our children were ripped open and their organs experimented on.³⁹

In my opinion what they did was barbaric. It is like something out of Burke and Hare.⁴⁰

As these extracts demonstrate, there are common themes - the revulsion felt due to the theft of body parts, the callousness of the medical profession and the dislike of use of body parts for medical research: themes that all arose in the Burke and Hare era. Not only was the public reaction to the news of the scandals similar, the media vilification (or lack of it) of the medical men concerned; the justification of the medical profession for its actions and the expressed knowledge of the medical profession as to the relevant legislation, all show a striking resonance.

³¹ Chapter 14, *The Royal Liverpool Children’s Inquiry Report*, *op. cit.*, at p. 421.

³² *Birmingham Post*, 9 March 2000, p. 13.

³³ *Per* note 31 at p. 423. .

³⁴ *Per* note 31 at p. 423.

³⁵ *Daily Mail*, 8 March 2000 at p. 41.

³⁶ *Birmingham Evening Mail*, 11 February 1999 at p. 2.

³⁷ *Sunday Mail* (Scotland), 12 December 1999 at p. 9.

³⁸ *Per* note 31 at p. 427.

³⁹ *Sunday Mirror*, 4 February 2001 at pp. 4 and 5.

⁴⁰ See note 37.

The Media Response to the Medical Men

Although the medical men concerned in both eras have come in for criticism through the media, the methods employed and the extent of the vilification has been very limited. While Dr. Knox was seen, in some quarters, as being as much a butcher as Burke and Hare, the general approach was to do nothing more than to allude to his involvement, especially in the lead up to the trial and its immediate aftermath. Even when reporting on the “popular tumult” of the Edinburgh public, the reference was to an “Effigy of a *certain Doctor*, who has been rendered very obnoxious to the public by recent events”⁴¹ (emphasis added). Elsewhere references are still allusory:

“To whom were the bodies so murdered sold?”

“To Dr. —. We took the bodies to his rooms in — — and then went to his house to receive the money from him.”⁴²

After a search, the body was found yesterday morning in the lecture room of a *respectable practitioner*.⁴³ (emphasis added)

Against —, the medical practitioner, who had purchased many of the bodies from Burke and his companions, the curses were loud and deep.⁴⁴

Despite this latter claim, the curses must have been voiced through means other than the press since the Edinburgh *Weekly Chronicle* was stated to have commented: “With regard to Dr. Knox too much delicacy and reserve have been maintained by . . . the press”.⁴⁵ Indeed, the reserve continued into the other means of disseminating information – the broadsides and the songsheets – which referred to his involvement thus:

Men, women, children, old and young
The sickly and the hale
Were murder'd, pack'd up, and sent off
To K—'s human sale.⁴⁶

Exactly why Knox was rarely named is not clear. Presumably everyone in Edinburgh would have known who was being referred to, so there would have been need to name him. But equally, because Knox was known to be the “respectable practitioner” of the reports, what reason was there to keep his name out of the media? Also, the coverage of Burke and Hare’s misdemeanours spread further than Edinburgh alone: publications from Glasgow and London were common, and there were also other publications outside the immediate timescale. Arguably, this caution or reserve existed because of Knox’s position: he was an eminent surgeon and anatomical lecturer of the day and deserved respect, as did many others of his situation and class. This reverence is something that still persists today, with the ready acceptance of things done and said by the medical profession.

While respect for medical practitioners continues today, the media are less likely to grant an elevated status to their actions and to refuse to “name and shame”: the only circumstance when this is likely being where there is a risk of defamation claims being

⁴¹ See note 30.

⁴² *Life and Transactions of murderer Burke and his Associates*, author and date unknown, National Library of Scotland, R.Y. III. a. 6(26).

⁴³ See note 5.

⁴⁴ Author unknown, *The Murders of the Close: A Tragedy of Real Life*, (Cowie and Strange, Paternoster Row and Fetter Lane, London, 1829) at p. 169.

⁴⁵ MacGregor, *G.*, *op. cit.*

⁴⁶ Wag, Phil., *A Timely Hint to Anatomical Practitioners, and their Associates – The Resurrectionists, A New Song* (Tune: Macpherson’s Farewell), date unknown, published W. Smith, National Library of Scotland, West Port Murders, Vol. IV, Miscellaneous, L.C. 1573 12.

brought. However, it is interesting to note the paucity of press coverage for the modern day “bodysnatchers” by reference to the actual perpetrators. As the scandals in Bristol and Alder Hey were unfolding, individual practitioners were not being targeted for criticism – the references are to “they”, “the doctors”, “the hospital” or “the pathologists” – even though in some cases the surgeons involved were known and were capable of being named. Even after the respective inquiry reports were published, there was very little individual criticism, and interestingly, the inquiries themselves were reserved in their comments. The *Bristol Royal Infirmary Inquiry Interim Report* comments thus:

27 . . . There was, however, a long-standing habit among *pathologists* (emphasis added) of taking and keeping human material, other than that required to establish the cause of death, for other purposes; for example research or education. . . it was common among *pathologists* to keep human material. . . .

57 . . . blame has a proper role where there is personal misconduct. But where, as here, it was a system which was responsible, and a system which needs to be changed, blaming any individual is not only unfair and unhelpful; it is positively counter-productive.⁴⁷

Hence, despite the ability to recognise individuals who were remiss in their practice, for example Mr. Dhasmana, who despite being advised in 1992 to seek clarification from the parents of children dying during surgery that tissue could be retained following *post mortem*, stated “lately there has been some oversight on my part to discuss the matter with parents and relatives and therefore consent was not taken by my junior staff”; or Mr. Wisheart, who despite receiving and acknowledging the advice given, “neither accepted the basis of [this advice] nor agreed to vary his conduct”,⁴⁸ the press did not “go to town”. The main aspect of press coverage was the fact that the surgeons in question were disciplined for poor surgery, not for their poor communication with parents, or for their failure to comply with guidance issued from their employers that resulted in retention of organs without the knowledge of the deceased’s parents.

The Alder Hey scenario was slightly different, in that the evidence to the Inquiry demonstrated that the actions of one pathologist alone contributed to the wholesale removal and retention of body parts, and yet here too, the response of the media was muted. In the inquiry report itself it was stated:

Within a week of taking up the Chair Professor van Velzen issued an instruction in the Unit that there was to be no disposal of human material. The technical staff soon realised that Professor van Velzen’s clinical practice in the removal and retention of organs was unlike anything they had seen before. Until now pathologists had retained sections only of the relevant organs and returned everything else to the body except heart/lungs and possibly brains in relevant cases. Professor van Velzen removed every organ in every case and retained every organ in every case.⁴⁹

As with the Bristol Royal Infirmary Inquiry, the Alder Hey process sought to minimise the “blame” that could attach to other doctors:

We heard no evidence from any doctor that parents were ever told that they would be burying the body without the brain or heart. The doctors themselves were *ignorant* of Professor van Velzen’s practice of removing all the organs for fixation, so they could not have explained this to the parents. (emphasis added)⁵⁰

⁴⁷ *Bristol Royal Infirmary Inquiry Interim Report* (London: HMSO, May 2000).

⁴⁸ *Ibid.*, at para. 40.

⁴⁹ Chapter 10, *The Report of The Royal Liverpool Children’s Inquiry*, *op. cit.*

⁵⁰ *Ibid.*

Despite this clear recognition of one sole perpetrator, van Velzen, the media were again muted in their response. *The Express* ran the story thus:

The doctor who stripped body parts from dead babies went into hiding last night as the enormity of the horror at Alder Hey hospital was exposed. Professor Dick van Velzen, 51, the man responsible for one of the biggest scandals in British medical history, was dubbed a monster for not expressing a single word of regret.

Now he is facing prosecution after a Government Report branded him a liar and a thief . . .

[The Health Secretary] was scathing of van Velzen, who had “lied to parents, lied to other doctors . . . He falsified statistics and reports.”⁵¹

Despite the inclusion of sensationalist language, the underlying tone is still somewhat respectful and belies the moral panic that was created when the scandal of body part retention first broke. *The Guardian* was even more circumspect, and simply reported the main findings in relation to van Velzen’s activities, again despite previous sensationalist reporting during the lead up to the final report.⁵² When van Velzen was suspended by the GMC, *The Guardian* described him as a “composite of Burke and Hare, with a dash of Hannibal Lecter and a smattering of Mengele thrown in” but still went on to ameliorate such criticism by commenting that

the professor, for all his flaws, is hardly a necromancer. Nor has he killed anyone. In hoarding body parts without consent, he was only doing, albeit on a grander scale, what other doctors did.⁵³

The outrage at van Velzen’s activities was short-lived, the press having moved on within a matter of weeks to the next big issue: the seeking of monetary compensation from the hospitals concerned.

Obviously the reasons behind this reluctance to “name and shame” the relevant medical practitioners can only be guessed at. Whatever the reasons, it is remarkable that the media in both eras have, by and large, respected the medical profession and published relatively little on its misdeeds. Rather, they have provoked a wide public outrage that is aimed at the actions of “doctors” in general without specifically targeting the moral panic on those few practitioners who were involved.

THE MEDICAL JUSTIFICATION

In seeking to justify the actions that they took, the medical practitioners in both eras again show surprising similarities, despite the fact that different legal regimes existed and the nature of medical training between the two time frames was significantly different.

At the time Dr. Knox was conducting his anatomy lectures in Edinburgh, the legislation governing the use of corpses for anatomical uses was the Act of Geo. II which directed that “the bodies of murderers shall be given up to be anatomized”.⁵⁴ As a consequence the Select Committee on Anatomy of 1828, established to consider the problems faced by anatomists, found that the number of subjects available from this source was “so small in comparison to his total wants, that the inconvenience

⁵¹ *The Express*, 31 January 2001, p. 6.

⁵² *The Guardian*, 31 January 2001, p. 3.

⁵³ *The Guardian*, 4 February 2001 www.society.guardian.co.uk/alderhey/comment/.

⁵⁴ As stated in the *Report from the Select Committee on Anatomy* (House of Commons, London, 22 July 1828) at p. B2.

which he would sustain from its repeal would be wholly unimportant.”⁵⁵ The numbers claimed necessary for a student to be fully versed in the workings of the human body, and hence to be able to practise competently varied only slightly from witness to witness. For example, Sir Astley Cooper suggested:

If he be afterwards to practise surgery, I should say three bodies are required, two for anatomical purposes, the other for operations on the dead; less would be insufficient. . .⁵⁶

whereas William Lawrence Esq. stated:

I should think it desirable that a student who is going through his education as a professional man, more particularly if he is to practise surgery, should be able to employ three or four bodies annually for dissection and other purposes. A smaller number than that might be considered to be barely sufficient.⁵⁷

Despite these differences as to how many bodies were needed *per* student, all witnesses were agreed that anatomy, and the study of it, was critical to becoming an effective practitioner, and without anatomy, practitioners would be a danger to their patients:

. . . you must employ medical men, whether they be ignorant or informed; but if you have none but ignorant medical men, it is you who suffer from it; and the fact is, that the want of subjects will very soon lead to your becoming the unhappy victims of operations founded and performed in ignorance.⁵⁸

“. . . what degree of importance [do] you attach to dissection, both as regards the practice of surgery and of medicine?”

“There can be no knowledge of surgery without it, and very little knowledge of medicine”.⁵⁹

[Dissection] is of the highest importance. . .nothing in life, I believe, that can be considered as more important; it is the foundation of all medical knowledge.⁶⁰

The clear message was that dissection, and the supply of bodies to use for dissection, was crucial for medical education.

As to the level of knowledge of the legal provisions underpinning the supply of bodies, again most of the witnesses showed a surprisingly homogenous lack of understanding.

“The law does not prevent our obtaining the body of an individual if we think proper; for there is no person, let his situation be what it may, whom, if I were disposed to dissect, I could not obtain . . .”

“What have professional men generally understood to be the law on the subject of receiving into their possession, for the purpose of dissection, the bodies of persons who have been disinterred; have they known that for so doing they were indictable for a misdemeanour?”

“Until I read the charge of Baron Hullock, I did not understand that a surgeon was exposed to any danger from dissection, therefore I have never concealed dissection in my

⁵⁵ *Ibid.*

⁵⁶ Minutes of Evidence, *Report from the Select Committee on Anatomy*, 22 July 1828, *ibid* at p. 17.

⁵⁷ *Ibid.*, at p. 33.

⁵⁸ *Ibid* at p. 16.

⁵⁹ Benjamin Collins Brodie, Esq., Minutes of Evidence, *Report from the Select Committee on Anatomy*, 22 July 1828, *op. cit.* at p. 23.

⁶⁰ John Abernethy, Esq., Minutes of Evidence, *op. cit.*, at p. 28

own house . . . I did not then know that I was amenable to the law . . . We did not consider, until of late, that it was a misdemeanour to have a body in our possession".⁶¹

In response to a question of the knowledge of anatomy professors on the legal position of having disinterred bodies in their presence, and the fact that this was a misdemeanour, Caesar Hawkins commented, "I believe it did not occur, it did not to myself, and probably not to others".⁶²

As for Dr. Knox, he also claimed no knowledge of, or breach of, the law. In March 1829 (notably after the Select Committee Report), Knox wrote to the *Caledonian Mercury* with evidence as to his innocence; this evidence being from a "Committee" established to assess his liability. The report concluded:

It appears, in evidence, that Dr. Knox had formed and expressed the opinion (long prior to any dealing with Burke and Hare) that a considerable supply of subjects for anatomical purposes might be procured by purchase, and without any crime, from the relatives or connections of deceased persons in the lower ranks of society.

In forming this opinion. . .the Committee cannot consider Dr. Knox to have been culpable. They believe there is nothing contrary to the law of the land in procuring subjects to dissect in that way . . .⁶³

This misconception as to the legal provisions was not confined to the medical men themselves – surprisingly perhaps, even magistrates did not know it was a misdemeanour to possess a body for dissection unless it was the body of a murderer, as was indicated by one Thomas Halls in his evidence to the Select Committee:

"You are one of the police magistrates for Bow-street?"

"Yes."

"Have you considered the state of the law as it affects persons having possession of dead bodies, whether they are guilty or not of any offence?"

"I should conceive that the mere possession of bodies for the purpose of dissection was not an offence."⁶⁴

With this level of knowledge among law enforcers,⁶⁵ it is perhaps not surprising that the medical men carried on their dissections in blissful ignorance of their own misdeeds!

The claims of benefiting medical science and lack of knowledge of the law are to be found in the Bristol Royal Infirmary and Alder Hey reports as justification for the actions of the profession, together with a desire to spare the deceaseds' relatives additional grief. As indicated earlier, the *Interim Report* from Bristol highlighted the common practice of retaining human material for a range of purposes and cites one pathologist thus:

Many of these conditions are rare and no two hearts with a given condition are quite the same. So, by keeping quite a large number, a very large number from the perspective of

⁶¹ Sir Astley Cooper, Minutes of Evidence, *Report from the Select Committee of Anatomy*, *ibid* at pp. 18 and 19. The reference to Baron Hullock refers to an indictment for conspiracy to procure a disinterred body for the purposes of dissection: *R. v. Davies and another*, reported in *The Times*, 19 May 1828 and included in the Appendices to the Select Committee Report.

⁶² Minutes of Evidence, *op. cit.*, at p. 46.

⁶³ Communication from Dr. Knox to the Editor of the *Caledonian Mercury*, dated 17 March 1829, National Library of Scotland, R.Y. III. a. 6.

⁶⁴ Minutes of Evidence, *The Report from the Select Committee on Anatomy*, *op. cit.* at p. 93.

⁶⁵ It is not unreasonable to assume a working knowledge of statutory law for a stipendiary magistrate at this point in time. Although for some time the magistrates attached to the nine police offices in London had no legal background, being aldermen *etc.*, after Robert Peel became Home Secretary in 1822 he adopted the practice of appointing lawyers as police magistrates. See further Bentley, D., *English Criminal Justice in the Nineteenth Century* (Hambledon Press, London, 1998).

people who are not pathologists, it is possible to provide somebody who wishes to study a particular anomaly a range of examples that would take them many years to see in their own practice.⁶⁶

The *Interim Report* goes on to conclude that:

taking and using human material were important for medical development, research and education was seen by the medical-scientific community as sufficient justification in itself.⁶⁷

The Alder Hey report endorses this reasoning for keeping substantial collections of body parts; in Chapter 2 stating for example:

There can be no doubt that the use of the heart collection has been invaluable in terms of research, education and training . . . Heart specimens have also been used to . . . develop methods of diagnosis in life, to develop operations and techniques . . . [and] the most compelling evidence of the value of the collection was the dramatic reduction in the mortality rate following complex cardiac surgery.⁶⁸

However, despite these benefits the report points out that “the value and benefits generally . . . does not in itself justify the collection”.⁶⁹

With regard to legal knowledge, the medical profession was equally lacking, although the lack of clarity of the legal regime itself could be seen to provide some form of excuse. The primary Act called into question where *post mortem* examinations, whether for the coroner or for the hospital itself, are concerned is the Human Tissue Act 1961 although the precise details of the Act are not important here. In the *Interim Report* from Bristol the lawfulness, and legal knowledge of the medical practitioners was considered in the following manner:

As regards the lawfulness of the practices adopted . . . , the overall impression . . . is that, while the law was recognised as having some relevance, it was not clearly understood . . . It is no wonder that a kind of professional folklore developed which served the role of the real law . . . Practice had developed . . . which suited the interests and needs of those involved: the medical professionals. Pathologists and clinicians largely held the view, if they ever gave their mind to it, that the law was something remote, far removed from the realities of their daily practice.⁷⁰

Equally, the Alder Hey Inquiry was

surprised at the general ignorance of the medical profession concerning the provisions of the Human Tissue Act 1961. No doctor could remember having read it . . . [N]one had any training in the legal requirements at undergraduate level and nor did they receive any training in their various clinical posts.⁷¹

The paternalistic approach of the practitioners in both hospitals, in claiming that detail was not given about *post mortems* in order to protect parents from the realities of the examination, and through a desire not to upset the parents any further at a time of grief was noted, but also seen as a reason self-serving to the profession, and was certainly no excuse for failing to comply with the law.

The use of paternalism by the profession, and the concern to ensure the development of medical knowledge in both eras is not unexpected. However, the disregard of legal provisions is of more concern. In both time periods, the lack of adherence to the law

⁶⁶ Per Professor Berry, *Bristol Royal Infirmary Interim Report*, *op. cit.* at para. 27.

⁶⁷ *Ibid* at para. 31.

⁶⁸ *The Report of The Royal Liverpool Children's Inquiry*, *op. cit.*, at paras. 6.1 to 6.6

⁶⁹ *Ibid*, at para. 5.1

⁷⁰ *Bristol Royal Infirmary Interim Report*, *op. cit.*, at paras. 58 and 59.

⁷¹ *The Report of The Royal Liverpool Children's Inquiry*, *op. cit.*, Chapter 10 at para. 7.2.

was blatant, whether or not linked to a desire to do good to the greater number, and that ignorance should be used as a justification should only add to the moral panic that these scandals caused.

LEGISLATIVE RESPONSES

The Anatomy Act 1832

Exposure of [Burke and Hare's] crimes aroused public sentiment to such an extent that the Parliament, which had long ignored the prayers and petitions of anatomists and surgeons for the legalisation of anatomical study, was compelled to act.⁷²

Although this statement by J.M. Ball is a popular view of the consequences of the Burke and Hare case, the extent to which it is valid can be questioned. The public outrage at the crimes of Burke and Hare was considerable, as indeed the actions of the public at Burke's hanging illustrates. The fact that the actions of "true" resurrectionists had been known for some time is evidenced in the 1828 *Report of the Select Committee on Anatomy*, which highlights the cause of some of the difficulties in procuring suitable bodies:

"To what particular cause do you attribute the present difficulty of obtaining a supply?"

"To the vigilance of the public in watching all the depositories of the dead."⁷³

"To what do you ascribe the increase of the difficulty?"

"In a great measure to the increased severity with which magistrates act in case of any discovery, and partly also because those constant discoveries which take place, increase the prejudices of the people against dissection generally, and cause greater vigilance in endeavours to prevent exhumation."⁷⁴

Hence, to return to J. M. Ball, the actions of the resurrectionists invited disgust and horror on the part of the public, and whilst not necessarily seen as significant enough to create a moral outrage in themselves, were clearly significant enough to impede the supply of human bodies to anatomists. The increasing need for bodies to dissect was such that the resurrectionists could make a more than decent living from the task, the cost of corpses having risen dramatically as demand outstripped supply. Indeed, anatomists were even paying the fines imposed by the more vigilant magistracy, or supporting the families of convicted bodysnatchers.⁷⁵ Hence pressure to reform the legislation was coming from two sides, the public who disliked the practice and the anatomists who could not afford the inflated prices, and whose students were commonly studying abroad in countries where the supply of bodies was less restricted.

The first real sign of action to address the difficulties being experienced was in April 1828 when the Select Committee on Anatomy was established. The committee was charged with inquiring

into the manner of obtaining Subjects for Dissection in the Schools of Anatomy, and into the State of Law affecting the Persons employed in obtaining or dissecting Bodies.⁷⁶

This Select Committee commenced its inquiries on 28 April and the report was published on 22 July 1828: well before the actions of Burke and Hare had been

⁷² Ball, J. M., *op. cit.*.

⁷³ John Abernethy, Esq., Minutes of Evidence, *The Report from the Select Committee on Anatomy*, *op. cit.* at p. 30.

⁷⁴ Caesar Hawkins, Esq., Minutes of Evidence, *ibid.* at p. 40.

⁷⁵ See for example the evidence of Sir Astley Cooper and Joseph Henry Green, Esq. contained in the Minutes of Evidence, *ibid.* at pp. 17 and 36.

⁷⁶ *Report from the Select Committee on Anatomy*, *ibid.* at p. 3.

discovered. As has been seen earlier, the Committee was clear that the dissecting of bodies, other than those provided after hanging for murder, was unlawful. However, throughout the Minutes of Evidence, the questions were primarily focussed not on the illegality of the anatomists' actions, but on how to improve the supply of bodies, with the options of importing them from abroad, or using unclaimed bodies from workhouses or public hospitals being the favoured approaches. Despite recommendations for the repeal the Act of Geo. II which caused "more evil than good" and for the House to consider if "it would be expedient to introduce . . . some legislative measure"⁷⁷ to increase the supply of bodies from the workhouse, it was some eight months before a proposal was made in the House of Commons to introduce a Bill. In so doing, Mr. Warburton made reference to what "had so lately occurred in Edinburgh" and to the requirement for legislation to exonerate the medical profession and prevent its being implicated by the wrong doings of "either resurrection-men, or a class of villains whose atrocities had been so very recently brought to light".⁷⁸ Leave to introduce the Bill was granted. However, the Bill that was introduced – which made it unlawful to disinter a body; required licensing of schools of anatomy and made provision for unclaimed bodies from workhouses and hospitals to be given up to such schools – did not succeed. In the Lords, the Archbishop of Canterbury, whilst noting the inconveniences that resulted from the then state of the law, hoped that it would not proceed further and that a new Bill would be introduced which was "less offensive to the feelings of the community, and therefore less objectionable".⁷⁹ After more debate the Bill was withdrawn by the Lords in June 1829, having successfully completed its passage through the Commons.

Mr. Warburton waited over two years before seeking leave to reintroduce a Bill for Regulating Schools of Anatomy, with leave being given on 15 December 1831.⁸⁰

This Bill differed somewhat from the one introduced in 1829, and when it finally completed its passage through Parliament, it included provisions of a similar thrust to parts of the current Human Tissue Act 1961 and Anatomy Act 1984, but what is perhaps most interesting is the cause that precipitated the government's action.

On 5 November 1831, John Bishop and Thomas Williams were apprehended and detained on suspicion of murder and subsequent sale of a body to King's College, London. The inquest into the death of this adolescent heard evidence from the porter at the dissecting room of King's, who confirmed that he had been offered a body for the purposes of dissection. The body had been bought for nine guineas, and on subsequent examination by the anatomist, signs of an unnatural death were found. Bishop, Williams and another, May, were tried for murder on 2 December 1831, and were accused not just of the murder of the boy, but of a woman who was presumed sold for dissection. The accused were convicted of murder, and Bishop subsequently confessed to the murders, with Williams alone, for the purpose of sale, but denied murder in relation to the some other 500/1000 bodies that they had sold for dissection. Bishop and Williams were executed outside Newgate gaol, with May's sentence being commuted.⁸¹ The fact that "Burking" had been discovered so close to home has been suggested as the real reason for introducing the Bill for Regulating Schools of Anatomy at this time, rather than the events in Edinburgh three years earlier:

⁷⁷ *Report from the Select Committee on Anatomy, ibid.*, at p. 12.

⁷⁸ *Per Mr. Warburton, Hansard, New Series (Commons) Vol. XX 6 Feb – 30 March 1829 at cols. 998 to 1000.*

⁷⁹ *Hansard, New Series (Lords) Vol. XXI 31 March – 24 June 1829 at cols. 1170–1171.*

⁸⁰ *Hansard, 3rd Series (Commons) Vol. IX 6 Dec 1831 – 6 Feb 1832 at cols. 300 to 307.*

⁸¹ See note 16.

... the fact remains that Government did nothing for the relief of the medical profession or for the furtherance of anatomical study until after crimes, like those committed in Edinburgh, had aroused the citizens of London.⁸²

The validity of this claim can be seen in the debates in Parliament on Warburton's new Bill:

Something must be done to put an end to the dreadful practices which had recently occurred;⁸³

... was not the Legislature, therefore, bound to guard against the repetition of such atrocious crimes as had been lately committed, by reducing the temptation to commit them?⁸⁴

... it [was] a matter of great regret that some bill had not been brought forward to prevent the practice of "Burking"; a practice which had been carried on of late to such an extent, that he was surprised it had not come under the special notice of Ministers;⁸⁵

An ordinary murderer hides the body, and disposes of the property. Bishop and Williams dig holes and bury the property, and expose the body to sale.⁸⁶

The Bill for Regulating Schools of Anatomy did this time succeed in becoming the Anatomy Act 1832 on 1 August 1832. The Act required all schools to register and gain a licence to practise; permitted persons in lawful custody of bodies to allow them to undergo anatomical examination after death (unless the nearest known relative objected) and removed any criminal liability of an anatomist who was in possession of a body for the purposes of dissection. Burke and Hare therefore provided a catalyst for the change in the law, but did not precipitate it.

The Human Tissue Act 1961 and the future

As indicated before, the inquiries into these scandals of the 20th century identified a lamentable lack of knowledge of, or concern by practitioners for, the legal provisions governing the practice of removal and retention of body parts. While so doing, the Bristol Royal Infirmary Inquiry did acknowledge that the legislation on this issue was vague and difficult to understand, but did not allow that fact to condone all the practices of the medical practitioners. In both situations, the main concern was the removal and retention of human material without the consent or understanding of the "victims" parents during both coroner's and hospital *post mortems*, and this resulted in the moral outrage demonstrated through the media. Both reports called for a review of the legislation, and, in response to that and to the public reaction, the government produced a consultation document in 2002 to consider the options.⁸⁷

With regard to the actual legal provisions in place, *post mortems* carried out for the purpose of a coroner's inquiry are covered by the Coroners Act 1988, and those requested by the hospital are covered by the Human Tissue Act 1961. The former category of *post mortem* does not rely on the consent or failure to object by a relative; the coroner has a legal duty to act in specified circumstances as laid down by the Act and associated regulations. The latter form of *post mortem*, because it is not required by law, is governed by the Human Tissue Act 1961, which again does not rely on consent, but on the objection of the deceased's relatives where there is no clear evidence

⁸² Ball, J. M., *op. cit.*, at p. 163.

⁸³ Mr. Hunt, Hansard, 3rd Series (Commons) Vol. IX, 6 Dec 1831 – 6 Feb 1832 at col. 302–303.

⁸⁴ Mr. Hume, *ibid.*, at col. 580.

⁸⁵ Mr. Hunt, *ibid.*, at cols. 582–583.

⁸⁶ Mr. Macaulay, Hansard 3rd Series (Commons) Vol. X 7 Feb – 8 March 1832 at col. 834.

⁸⁷ *Human Bodies, Human Choices: The law on Human Organs and Tissue in England and Wales* (London: HMSO, 2002).

of the wishes of the deceased.⁸⁸ In the presence of a “rights-based” culture, where consent to medical procedures is seen as crucial to validate the actions of the medical practitioner, the scenario where intervention is linked to active objection is seen as problematic. The *Bristol Royal Infirmary Interim Report* questioned whether the law of consent applies at all, arguing that it should as it is so closely connected to the deceased victims’ medical treatment. If it does, the issue is then whether the same level of information provision should apply, *i.e.* is there a law of informed refusal, and what are the obligations of the medical profession to communicate this information? The Alder Hey Inquiry, while focussing on the issue of what was required of the profession in establishing whether there was an objection, concluded:

“... the wording of the Human Tissue Act 1961 differs from the concept of *informed consent*, in practical terms there had to be informed consent for the next of kin at least for there to have been compliance with the Act in the overwhelming majority of cases;⁸⁹

and recommended that

The Human Tissue Act 1961 be amended to provide a test of fully informed consent for the lawful post mortem examination and retention of parts of the bodies of deceased persons.⁹⁰

The *Issacs Report*,⁹¹ concerning as it did, the unlawful retention of adult brains, also called for amendments to the Human Tissue Act 1961. This report recommended that the term “lack of objection” be replaced with the phrase “with consent of”. Interestingly however, this Report implies that any existing permission granted by the deceased themselves is irrelevant. The consultation exercise on the legislation announced in July 2002 has sought to address these concerns and recommendations. The issues for debate include the amendment of the 1961 Act to ensure that consent of parents or relatives be obtained for the retention of organs or tissue following *post mortem*; whether the same requirements should apply to the death of an adult, and how consent should inform the use that is actually made of these retained parts of human material. The conclusions from this consultation exercise include the need for adherence to the wishes of the deceased, where known, and where there is no such expression, for consent to removal and retention to be granted by a person nominated by the deceased, or failing that, someone close to the deceased.⁹² Although it is early days on the reform road for the Human Tissue Act 1961, since no replacement legislation has been formulated and will only be done when Parliamentary time permits,⁹³ some of the proposals have been implemented in any event by hospitals changing the structure of the consent forms for *post mortem*. It is not clear, however, whether such changes would prevent similar scandals in future. The ability of relatives to obtain information and make an informed decision in the aftermath of death will still be questionable – all the parents involved in Bristol were found to have given consent to the *post mortem*, but did not know what it meant – and even if informed consent is given, it will not automatically prevent a pathologist acting in the manner of Professor van Velzen. Indeed, it is questionable whether there is in fact any real distinction between the ability to object in the current law and a requirement to

⁸⁸ See further Part III to the *Bristol Royal Infirmary Inquiry Interim Report* for a fuller explanation as to the workings of the legislation and the identified problems.

⁸⁹ *The Report of The Royal Liverpool Children's Inquiry*, *op. cit.*, Chapter 10 at para. 10.

⁹⁰ *Ibid.*, Chapter 10 at para 11.1.

⁹¹ HM Inspector of Anatomy, HMSO, May 2003 at p. 21.

⁹² *Human Bodies, Human Choices: Summary of responses to the consultation report* (London: DoH, 2003) at p. 35.

⁹³ *Per* Sir Liam Donaldson (12 May 2003), Department of Health Press Release, www.info.doh.gov.uk.

consent. Surely for both to be valid, there has to be the provision of information to enable objection or consent to take place? Amendments to the legislation may provide some reassurance to the public and assuage the panic of the 1990s, but can only do so if workable and enforceable. Given human sensitivity to death, and particularly to the death of a child, informed consent would seem to be storing up problems some of which have already been identified: such as how much information needs to be given and how quickly. In the absence of clear legal requirements this will no doubt produce yet another bodysnatching scandal in the future.

CONCLUSION

It is often said that we learn by experience, and yet, as the above has illustrated, the human experience seems to be one of repeating, or permitting, the same mistakes. In the early 19th century, scientific knowledge and the desire to improve medical practice, despite being a laudable goal, was allowed to override popular feeling until it reached the stage where public outrage boiled over. The anatomists were required to admit a lamentable lack of knowledge of the law, and blatant disregard for that law. As a consequence, however, the anatomists eventually got the legislative regime they desired with the implementation of the Anatomy Act 1832. The 20th century anatomists and medical practitioners again demonstrated their woeful ignorance of the law and their adherence to a paternalistic approach to communication with patients and their next of kin. Unlike their peers of yesteryear, they may not get a law they want, since the reforms that are underway remove the scope for paternalism and continue to enforce the patient rights culture in medical practice. But will the changes remove the excuse of “we didn’t understand?”, and “medical science necessitated our actions”? Given this illustration of the way in which history repeats itself, the answer must be no.