

# Slate

EXPLAINER

## Hands Off My Kidney!

Who owns a donated organ?

By Kathryn Lewis

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Two weeks ago, New York state's highest court ruled that [you can't sue an organ donor network](#) for giving away a kidney, even if the donor's family wanted you to have it. The case began several years ago, when a widow named her husband's childhood friend as the recipient of his kidneys. The friend died of renal failure in June, and his family wants to sue the network for donating one of the kidneys to someone else. Who owns a donated organ?

No one, really. American courts have generally refused to treat a corpse as someone's "property," and the same ambiguity extends to the organs. A common-law tradition dating back centuries holds that a dead body cannot be "owned," even by its heirs. That means the heirs can't make a claim on the body's organs, either.

The first recorded judicial pronouncement on the ownership of corpses comes from 1614, when William Haynes of Leicester, England, was accused of having raided four graves in order to steal the property of the deceased—i.e., the sheets in which the corpses were wrapped. Haynes was whipped for petty larceny, but the court ruled that he could not have stolen the sheets from the corpses, because the dead bodies could not have owned them. As dead bodies, they couldn't own anything.

With that, the notion that "there can be no property in a corpse" passed into common law. Later commentators cited Haynes' case (in an apparent misunderstanding) to imply that corpses cannot own property, but they cannot *be* property, either. Courts have repeatedly confirmed that the next of kin have no property right to a dead body. They can be "lawfully in possession" of a body, which only means they have the right to bury or cremate it, order or refuse an autopsy, and authorize the donation of organs. This right of lawful possession allows the next of kin to steward the body from the deathbed to the grave—but not to sell it or give it away to a friend.

Of course, there was no such thing as an organ transplant when William Haynes was robbing graves. Modern jurists have had to deal with other medical innovations, too, like the creation of cell lines from tissue samples. In one seminal [1990 case](#), the California Supreme Court ruled against John Moore, a businessman who sued the University of California after doctors created—and patented—a cell line derived from tissue in his cancerous spleen, which the doctors had removed. His tissue produced an extremely profitable antibacterial and cancer-fighting cell line, and Moore sought a share of the profits, claiming a property right to the byproducts of his own tissue. Though the court allowed that doctors might have deceived Moore by not explaining their intentions for his spleen, it forcefully reiterated that Moore had no property right to his tissue. Several other cases have addressed the legal status of embryos in situations in which divorced couples have fought for "custody" rights; one Tennessee case established that while embryos—like corpses—were neither persons nor property, they nevertheless "occupy an interim category that entitles them to special respect because of their potential for human life."



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Kathryn Lewis is a writer who lives in New York.

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