

ARE BODY BROKERS JUST THE MODERN BODY BURKERS? TRACING THE ACQUISITION AND SALE OF DONATED BODIES AND THE LACK OF EFFECTIVE REGULATION

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ABSTRACT

Donated bodies are essential to the advancement of medicine and science. However, the supply and demand for donated bodies is often disproportionate. Thus, bodies have often been acquired through illegal and questionable means to then be sold or leased. Those who used illegal murderous means of acquiring bodies for medical research were referred to as “graverobbers”, “resurrectionists”, and “body ‘Burkers.’”¹ As such, criminal laws were passed not only to regulate, but to end those practices. Today, those who acquire, sell, and lease donated bodies are called “body brokers”, and they exist and operate in a largely unregulated world.

This Article reviews the history of the body acquisition business by voluntary and involuntary means, illegal conduct, and ultimately unscrupulous activity that falls into a grey, unregulated area. Additionally, this Article examines the legal regulations governing body donation for medical and scientific purposes, while highlighting the absence of a regulatory framework for “body brokers,” who often acquire donated bodies and sell them without the consent or knowledge of the donor’s family. Further, this Article traces the inefficiencies of the Uniform Anatomical Gift Act and associated state laws that police modern body

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1. The term “Burker” comes from the way the infamous graverobber and eventual murderer, William Burke, who worked with his partner, William Hare murdering victims by suffocating them while laying on top of them in order to leave no discernible trace of their manner of death. Once the victim was deceased, Burke and Hare would sell the freshest bodies for a premium to anatomists for medical training purposes. See SAM KEAN, *THE ICEPICK SURGEON, MURDER, FRAUD, SABOTAGE, PIRACY, AND OTHER DASTARDLY DEEDS PERPETRATED IN THE NAME OF SCIENCE*, 61 (2021) (“...the Edinburgh duo’s method of smothering the face and chest - soon to be known as ‘burking’ - left the hyoid bone intact’ and allowed the pair to continue their murderous acquisition of bodies rather than resort to graverobbing.”); See also Ben Johnson, *The Story of Burke and Hare, Infamous Grave Robbers and Murderers in 19th Century Edinburgh*, HISTORIC UK, <https://www.historic-uk.com/HistoryUK/HistoryofScotland/Burke-Hare-infamous-murderers-graverobbers/> (last visited July 4, 2024); HOWARD WILCOX HAGGARD, *DEVILS, DRUGS, DOCTORS*, 154 (1929) (“Burke enriched the language with the word ‘burking,’ which now signifies ‘to suppress or hush up.’”).

broker activity. It posits two solutions: regulate body brokers through expanded federal legislation or explore innovative approaches by extending and applying contract law to these transactions. This Article concludes that, without new and effective regulation of modern day “body brokers”, there has been little legal progress since graverobbing and murderous body Burkers were prevalent, as today’s body brokers continue to commit atrocious acts on donated bodies with impunity.

Science Advances One Funeral at a Time.

-Max Plank²

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2. Max Planck was a German theoretical physicist and Nobel Prize winner in Physics.

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I. INTRODUCTION

Artificial practice tools and theoretical explanations of medical techniques fall short of preparing professionals to diagnose patients, provide treatment, and explore new therapies. Medical schools and research and scientific institutions have always relied on examination and experimentation on cadaver bodies.

As medical expertise advances, so do the tools used for treating patients. New diseases have also been discovered that require significant research and study, not only in laboratories but also in the human body for purposes of diagnosis, treatment, and ultimately cures. Therefore, donated bodies are essential to the improvement and advancement of medicine. This medical paradox—relying on the dead to heal the living—has existed for centuries.

Donated bodies today are often acquired through the generosity and altruism of individuals facing imminent death or by the family of deceased loved ones who wish to see some good come out of the tragedy of their loss. However, this process has not always been the case. When cadaver bodies were scarce, early anatomists and medical schools were forced to “buy” bodies. In fact, they were willing to pay a premium for “fresher” bodies which originally gave rise to the ghoulish industry of graverobbing.³ Graverobbing often targeted those from the “pauper class,” as they were less likely to be missed.⁴ However, many were missed, which led to horrific discoveries of this practice that compounded the tragedy of a loved one’s death. One early anecdote recounts a young boy peering in the window of an anatomy lab in the late 1700s when he was noticed by an anatomist who proceeded to

3. Graverobbing is often the term used when referring to the removal of a body from a grave. I will use this term for the purpose of this Article. However, a distinction is made in some modern statutes wherein graverobbing is specifically reserved for the removal of artifacts from a grave, i.e., jewelry or other personal possessions, while abuse of a corpse is the removal of the body itself. *See also*, 720 ILL. COMP. STAT. 5/12-20.6(a)(2) (Stating that theft or removal of a corpse is a Class 4 felony); 765 ILL. COMP. STAT. 835/1(1) (a-5) (stating that anyone “who willfully and knowingly removes a portion of the remains of a deceased human from a burial ground where skeletal remains are buried . . . is guilty of a Class 4 felony.”).

4. KEAN, *supra* note 1, at 63.

wave a severed arm at him.⁵ Lore recounts that the “boy ran home and told his father, who, concerned, ran to the recent grave of his wife and the boy’s mother only to find her body was gone.”⁶

While graverobbing filled a need, when it failed to produce the necessary inventory needed by the medical practitioners, a new industry was born—criminals began making “fresh bodies” out of unsuspecting, healthy, living individuals.⁷ This justification of necessity in pursuit of righteous scientific advancement provided cover for organized criminal commercialization of bodies with body burking bridged the supply and demand gap for years, lasting until cadavers were legally accessible and criminal laws discouraged the practice.⁸

Today, the phenomena of “graverobbing” and “body burking” are seemingly rare, but the practice of procuring bodies for sale for medical and scientific research has reinvented itself under the guise of “body brokers”. Are body brokers simply modern quasi-legitimized graverobbers or are they body Burkers and resurrectionists? Body brokers acquire bodies, legally through donations, and sell them to research facilities. However, how they use, sell, lease, and return the bodies to the families is largely unregulated or unreported. In fact, after acquiring and selling the donated bodies, the scope of this donation is often not agreed to nor communicated to the families of those who donated their loved ones’ bodies. Further, what happens to many of these bodies is reminiscent of the heinous misuse and abuse characteristic of the “Body Burking” era.

5. A.M. LASSEK, HUMAN DISSECTION: ITS DRAMA AND STRUGGLE, 224 (1958). See Haggard *infra* note 111, at 153.

6. *Id.* See also Raphael Hulkower, *From Sacrilege to Perspective: The Tale of Body Procurement for Anatomical Dissection in the United States*, THE EINSTEIN JOURNAL OF BIOLOGY AND MEDICINE, 24 (2011). Supposedly, a doctor working in the anatomy lab at New York Hospital waved the arm of a cadaver at a young boy looking in the window. The boy went home and told his father, who went to the graveyard of New York’s Trinity Church to visit the grave of the boy’s recently buried mother, only to find that the grave had been robbed. See also Aaron D. Tward, & Hugh A. Patterson, *From Graverobbing to Gifting: Cadaver Supply in the United States*, JAMA, Mar. 6, 2002, at 1–5.

7. JAMES BLAKE BAILEY, THE DIARY OF A RESURRECTIONIST, 16–17, 1811–12 (London, Swan Sonnenschein & Co. ed., 1896). Stating:

. . . a sailor is pressed into the service of some students who were anxious to obtain a body. The subject was safely brought home, and, on being taken from the sack, turned out to be the sweetheart of the sailor, who had just returned from sea, and, not having heard of his girl’s decease, was on his way to greet her after a long absence from home. Truth and fiction often agree. There is a case on record of a child who had died of scrofula, and whose body was brought to St. Thomas’ Hospital by Holliss, a well-known resurrectionist. The body was at once recognised by one of the students as that of his sister’s child; on this being made known to the authorities at the hospital, the corpse was immediately buried before any dissection had taken place.

Id.

8. See *infra* Part II Section 2.

Consider the 2014 story of the United States Army blowing up the body of an elderly woman for the purpose of testing the effects of an improvised explosive device (“IED”) on the human body.⁹ Most people likely consider this an urban legend. It is not. Doris Stauffer’s body was sold after it was donated to a body brokerage firm and used in a manner that was wholly inconsistent with the wishes of her family.¹⁰ Only when they received a singular cremated hand, did Ms. Stauffer’s family learn what her body had been used for. The rest of her body was sold for \$5,893.00.¹¹

In 2021, David Saunders died of COVID. His family decided to donate his body for medical research. “Instead, his body ended up in a ‘Portland Marriott hotel ballroom as the centerpiece of an autopsy and dissection before a live, paying audience.’”¹² Tickets were sold by the

9. Nicole Valdes, *Valley Man Learns Mom’s Body Was Sold for “Blast Testing”*, SCRIPPS MEDIA (July 31, 2019), <https://www.abc15.com/news/region-phoenix-metro/central-phoenix/valley-man-learns-moms-body-was-sold-for-blast-testing>.

10. John Shiffman, *Cashing in On the Donated Dead, The Body Trade: How the Body of an Arizona Great-Grandmother ended Up as Part of a U.S. Army Blast Test*, REUTERS (Dec. 23, 2016) <https://www.reuters.com/investigates/special-report/usa-bodybrokers-industry/>. Stating:

Jim Stauffer thought he was doing the right thing. He had cared for his elderly mother, Doris, throughout her harrowing descent into dementia. In 2013, when she passed away at age 74, he decided to donate her brain to science. He hoped the gift might aid the search for a cure to Alzheimer’s disease. At a nurse’s suggestion, the family contacted Biological Resource Center, a local company that brokered the donation of human bodies for research. Within the hour, BRC dispatched a driver to collect Doris. Jim Stauffer signed a form authorizing medical research on his mother’s body. He also checked a box prohibiting military, traffic-safety and other non-medical experiments. Ten days later, Jim received his mother’s cremated remains. He wasn’t told how her body had been used. Records reviewed by Reuters show that BRC workers detached one of Doris Stauffer’s hands for cremation. After sending those ashes back to her son, the company sold and shipped the rest of Stauffer’s body to a taxpayer-funded research project for the U.S. Army. Her brain never was used for Alzheimer’s research. Instead, Stauffer’s body became part of an Army experiment to measure damage caused by roadside bombs.

Id. See also John Shiffman & Brian Grow, *In A Warehouse of Horrors, Body Brokers Allegedly Kept Human Heads Stacked on His Shelves*, REUTERS (Oct. 31, 2017, 11:00AM) <https://www.reuters.com/investigates/special-report/usa-bodies-rathburn/>. Stating:

. . . the military used the body of an Army veteran who signed a donor form two months before he died of cancer in 2013. The man was so angry about the poor healthcare provided by the U.S. Department of Veterans Affairs that he checked ‘No’ to military experimentation on the consent form. It didn’t matter. His body was used in a violent Army test anyway.

Id.

11. Shiffman & Grow, *In A Warehouse of Horrors*, *supra* note at 10 (“Internal Biological Research Center and military records show that at least 20 other bodies were also used in the blast experiments without permission of the donors or their relatives, a violation of U.S. Army policy.”).

12. Linda Hasco, *Body of COVID-19 Victim Sold to Pay -Per-View Autopsy Show was Dissected Before Paying Audience, without Family’s Knowledge*, PENNLIVE NEWS (2021), <https://www.pennlive.com/nation-world/2021/11/body-of-covid-19-victim-sold-to-a-pay-per-view-autopsy-show-was-dissected-before-a-paying-audience-without-familys->

entity Death Science for a “Cadaver Class” with customers paying as much as “\$500 a ticket.”¹³

Stories about individuals and entities stealing or misusing donated body parts for profit are becoming increasingly common in the national press.¹⁴ The central theme of these stories is the egregious misuse, sale, or destruction of donated bodies perpetrated by the unregulated body broker industry. The stark reality is these atrocities often occur without discovery, thus there are few voices calling for change.

The current outrage at the body broker system, while justifiable and timely, seems to overlook the lengthy historical misuse of deceased bodies and the misdeeds in the name of medical and scientific discovery.

knowledge.html#:~:text=Organizers%20of%20the%20event%2C%20a%20group%20called%20Death,the%20autopsy%20and%20dissection%20of%20a%20human%20body.

13. Jack Beresford, *Live Autopsy of COVID Victim Allegedly Took Place Without Family's Consent*, NEWSWEEK, (Nov. 10, 2021), <https://www.newsweek.com/live-autopsy-covid-victim-took-place-without-family-consent-1645353>.

14. Not only are local news stations and newspapers reporting on the misuse of donated bodies and the body broker industry in general but Reuters News also published a multi-volume exposé on the body trade in 2016. *See generally* Brian Grow & John Shiffman, *The Body Trade*, Reuters Investigates <https://www.reuters.com/investigates/section/usa-bodies/> (last visited September 18, 2025). NBC News began running a similar series of investigative reports on the body trade involving university donations in January 2025. *See* Zerb Mellish, *Dealing with the Dead*, <https://www.nbcnews.com/specials/dealing-the-dead-2024/index.html> (last visited June. 24, 2025). Netflix released a documentary-style mini-series in December 2024. *See* THE KINGS OF TUPELO: A SOUTHERN CRIME SAGA (Netflix 2024). (discussing black market organ trafficking). *See generally* Chris Ingalls, *Former Seattle 'Body Broker' Convicted for Dumping Bodies in Arizona*, K5 NEWS, (Sep. 30, 2022) <https://www.king5.com/article/news/investigations/seattle-body-broker-convicted-arizona/281-8a1d2b19-ef30-43ad-9820-1e83d259dba1>. (Mitchell ran a company in Seattle called FutureGenex, which solicited donated bodies that the company sold to medical education and research firms. Mitchell closed the company in September 2020 and moved to Arizona. Mitchell packed several donated cadavers from Washington state on dry ice in a U-Haul truck and transported them to Arizona. In December 2020, he dumped at least two dozen body parts in the Prescott National Forest. Hunters and a couple collecting firewood discovered heads, arms and legs soon after at two separate dump sites.) *See also* Jesse Paul, *Montrose Funeral Home Owner Who Allegedly Sold Hundreds of Bodies Without Families' Consent is Federally Indicted*, THE COLO SUN (Mar. 17, 2020), <https://coloradosun.com/2020/03/17/megan-hess-sunset-mesa-funeral-body-parts-indictment/>. (The indictment, made public on Tuesday, says some families agreed to donation or to giving small samples, such as tumors or portions of skin, for testing or research. ‘Other families believed, based on representations from Hess or Koch, that donated remains would be used to treat living recipients. Still others only authorized donation of specific body parts, such as specific organs, but specifically denied donation for anything else.’ Hess and Koch, however, would frequently ‘exceed that authorization they obtained,’ the indictment alleges. “Body parts beyond those which were authorized, if not entire bodies, would be sold.’ ‘In each of these instances, the families would not have authorized donation had they been informed of what would actually be done with their loved one’s remains.’ ‘In many instances, a decedent’s entire body was sold,” the indictment says. “Nevertheless, the families were charged, and paid typically \$1,000 or more, for a cremation that never occurred. These families would receive cremains replaced or supplemented by Hess or Koch with the cremains from another person or persons.”).

These practices have persisted for far too long, and it is time to regulate and govern the modern body broker industry.

The desire to make a body donation for the benefit of others is a noble gesture by all measures. When a person donates their body, they are deciding to help or advance scientific research out of altruistic, scientific, religious, or social beliefs. They also certainly believe that their wishes will be honored, and their remains will be used exactly for their stipulated purposes. Often times individuals will discuss and entrust instructions for their families to comply with after their death; these wishes are often set forth in their estate planning and wills. Alternatively, the donor may enroll directly in a donor program or, lacking specific instructions to the contrary, family members may make a donation to a university donation program or research institution through a dedicated registration or donation process.¹⁵ But what happens if an individual makes the decision to donate their body to scientific research, their family ultimately facilitates the donation, and only later discovers that the body was used for other purposes? What happens if the donor has made no decision on the use of their body, but their family members subsequently wish to make a donation for scientific and medical advancements? How do the family members know what happened to the donated body? If the family discovers misuse or abuse of the donated cadaver, do they have any remedy?

This Article focuses on the need of bodies for medical and scientific advancement, and the regulation of how the bodies are acquired and the rights bestowed on the family members left behind. Section I of this Article traces the origins of medical and scientific inquiry and the eventual need for body acquisitions and donations to carry out experiments for advancement. It will also trace the history of the acquisition of cadaver or donor bodies throughout history, revealing that gross misconduct in the acquisition of cadaver bodies is unfortunately not a modern trend. Modern corollary issues, such as theft of body parts during autopsies, body part thefts from funeral homes, or from institutions that have legally acquired bodies, will not be addressed. These criminal acts have been and are being prosecuted.¹⁶ This Article also

15. See, e.g., *Anatomical Board of the State of Florida*, UNIV. OF FLORIDA, COLLEGE OF MEDICINE <https://anatbd.acb.med.ufl.edu>.

16. See generally *Complaint for Damages for Beatrice Cohen*, *Beatrice Cohen v. Johnson & Johnson*, No. BC 311865, 2004 WL 3179175 (Super. Ct. Ca. Mar. 9, 2004); *Com. v. Spector*, 395 Pa. Super. 656 (Super. Ct. Pa. 1989); *United States v. Hess*, No. 20-CR-00098-CMA-GPG, 2023 WL 5309821 (D. Colo. Aug. 11, 2023), appeal dismissed sub nom.; *United States v. Koch*, No. 23-1259, 2024 WL 1270720 (10th Cir. Mar. 26, 2024). See also *Sunset Mesa Funeral Home Operators Sentenced to Federal Prison for Illegal Body Parts Scheme*, U.S. ATTORNEY'S OFF. DISTRICT OF COLORADO (January 3, 2023); *United States v. Rathburn*, No. 16-CR-20043, 2022 WL 501403 (E.D. Mich. Feb. 18, 2022).

focuses on whole body donations and not body donations destined for transplantation or therapy, i.e., living organ donations.

Section II of this Article addresses the current laws and regulations that apply to body donations and the lack of uniform and nationwide regulations on body brokers. Historically, the granting of bodies for medical research has been carried out using the term donation, not contract, and has been governed by the Uniform Anatomical Gift Act (the "UAGA").¹⁷ The issue of direct donations to medical institutions is not discussed in this Article; the focus herein is on the evolution and use of middlemen body brokers to facilitate the transport of cadaver bodies to medical or scientific research institutions.

As "donations," the gift of a human cadaver cannot be sued upon because it lacks the contractual element of consideration to support a legally binding and enforceable agreement. However, the UAGA fails to provide any enforcement mechanism for body brokers who acquire and subsequently sell donated bodies. The lack of oversight within the UAGA has allowed for the rise of private body brokers, often contravening donor families' wishes.

Section III of this Article posits alternative avenues for governance and oversight of body brokers if the UAGA does not extend its reach to regulate body brokers. Federal legislation is possible but has stalled in Congress. State laws exist and vary in success as deterrents. National databases for registration of body brokers do not currently exist.

The issue of stretching the evolutionary boundaries of other areas of law, such as contract law, to provide oversight and accountability to body brokers is explored in this Article. However, if body donations and body brokers are subject to the law of contract, the issue of whether a body is even property must first be confronted as well. If a body can be qualified as property, does the common law or Uniform Commercial Code govern the resulting contract? Additional fundamental contract issues arise relating to identifying who the contracting parties are, whether third-party beneficiary rules apply, and, most importantly, what remedies in the event of a breach are available. Finally, this Article explores applying equitable principles such as promissory estoppel or detrimental reliance as a substitute for missing consideration to create contractual relationships.

17. NAT'L CONF. OF COMM'RS ON UNIF. STATE LAWS, REVISED UNIFORM ANATOMICAL GIFT ACT (2006). The Act was promulgated by the National Conference of Commissioners on Uniform State Law (NCCUSL), also known as the Uniform Law Commission. This Article focuses solely on whole-body donations for medical and scientific research and experimentation purposes. Live body organ donations for the purposes of transplants and medical research are also overseen by the National Organ Transplant Act (NOTA). This Article will not discuss donations for living transplantation. *See generally*, Reid Kress Weisbord, *Anatomical Intent*, THE YALE JOURNAL FORUM (November 9, 2014) (discussing compensation for organ donation for transplantation).

Section IV of the Article concludes that the most effective, likely, and timely manner of providing oversight of body brokers can be achieved in one of two ways: either through the passage of federal legislative requirements for licensing, overseeing, and holding unscrupulous body brokers accountable, or enforcement of promissory estoppel claims through the judicial process.

II. HISTORY OF BODY DONATIONS

A. BODY DONATIONS FOR MEDICAL AND SCIENTIFIC RESEARCH

1. *Ancient & Early Middle Age Beginnings*

The use of corpses¹⁸ for the advancement of scientific and medical research is not novel. History is cyclically marked with scientific inquiry giving way to pressure from religious leaders who were more concerned about spiritual well-being and the afterlife, than the importance of understanding the human anatomy to further advance scientific knowledge.¹⁹

Civilizations including the Roman Empire,²⁰ Ancient Greeks, and Egyptians²¹ relied upon experimentation and dissection of corpses,

18. *Corpse*, BLACK'S LAW DICTIONARY (2d Ed. 1910) (“[t]he dead body of a human being.”); *body*, BLACK'S LAW DICTIONARY (2d Ed. 1910) (“[a] person; Used of a natural body. . . The main part of the human body; the trunk.”); *body*, The Am. Heritage Dictionary, <https://ahdictionary.com/word/search.html?q=body> (last visited Sep. 8, 2024) (“[t]he entire material or physical structure of an organism. . . . The physical part of a person, as opposed to the spiritual part; the flesh.”). This latter definition leads to the possibility that a body and a corpse are synonymous. A cadaver seems to have little legal difference from a corpse or body; although medically speaking there is a significant difference. A cadaver is “dead body; generally preserved for anatomical study. *See generally* MILLER-KEANE & MARIE T. O'TOOLE, ENCYCLOPEDIA AND DICTIONARY OF MEDICINE, NURSING, AND ALLIED HEALTH, SEVENTH EDITION (2003). (The definition of human remains seems to be the only real departure from the previous definitions because the definition includes the possibility of a partial corpse or cadaver.) *See also Importation of Human Remains in the U.S. for Burial, Entombment, or Cremation* Center for Disease Control [https://www.cdc.gov/importation/human-remains/index.html#:~:text=The%20body%20\(or%20part%20of,Cremated%20remains%3B%20or](https://www.cdc.gov/importation/human-remains/index.html#:~:text=The%20body%20(or%20part%20of,Cremated%20remains%3B%20or) (last visited December 6, 2024). (“Human Remains – the body (or any part of the body) of a dead person, except: clean, dry bones or bone fragments; human hair; teeth; fingernails or toenails. . . .”). This Article will use the terms donated body and cadaver interchangeably in the exploration as to how body brokers acquire donated bodies and whether they can be contracted-for rather than simply donated. This Article will use the term corpse in historical discussion.

19. *See generally*, HAROLD ELLIS, A HISTORY OF SURGERY (2001). Ellis discusses the history of surgery starting with prehistoric medical rites and tracing medical and scientific advancement through experimentation on patients and bodies. In Chapter Four, his discussion broadens to include the influence of the Church in Rome in the Dark Ages and Renaissance.

20. HAGGARD, *supra* note 1, at 40 (“ . . . the popular belief that Julius Ceaser was born by the so-called Caesarean operation.”).

21. KEAN, *supra* note 1, at 3. (“[a]ccording to legend, the first unethical science experiment in history was designed by none other than Cleopatra.”). Kean recounts

through autopsies, to gain an understanding of human anatomy.²² As early as 1500 B.C., Egyptians exhibited illustrations of anatomy, “surgery, healing, skin diseases, stomach ailments, medicines, the head, dentistry, gynecology, and diseases of the extremities.”²³ Ancient Egyptians were also expert embalmers. Their society possessed a keen understanding of anatomy from preparing bodies for mummification and they passed this on through their oral teachings, hieroglyphics, and papyri.²⁴ Egyptian papyri also provide early and accurate descriptions of the spinal cord, cardiothoracic system, nervous system, and reproductive anatomy.²⁵ “Like the Egyptians, the Babylonians had little knowledge of anatomy, although there were surgeons among them. As early as 2250 B.C., surgeons were conducting medical treatments for fees that were regulated by law. . . .”²⁶

Even during this era thousands of years ago, these societies had “certain conditions written into the law which must have discouraged reckless surgery: If as the result of an operation a gentleman lost his life or his eye, the surgeon had his hand cut off in retaliation.”²⁷ These deterrents or punishments continued throughout the ages and “surgeons often operated under similar penalties in Europe in medieval times.”²⁸

tales of her murderous medical experiments on pregnant women, poisons and cures for baldness. *Id.*

22. Marios Loukas, et. al., *Clinical Anatomy as Practiced by Ancient Egyptians*, 24 *CLINICAL ANATOMY* 409 (2011); see also Sanjib Kumar Ghosh, *Human Cadaveric Dissection: A Historical Account from Ancient Greece to the Modern Era*, 48(3) *ANATOMICAL CELL BIOLOGY* 153 (2015).

23. Loukas, et. al. *supra* note 22, at 415. (“Egypt’s contributions to science are undoubtedly substantial. The first contribution to the anatomical sciences out of Egypt was through the Egyptian embalmer who, through the process of mummification, explored the human body internally through the skillful removal of organs and detailed observation.”); See also HAGGARD *supra* note 1, at 127. Stating:

The earliest known pictures of surgical operations are engraved on the stones over a tomb near Memphis, Egypt. These engravings were made 2,500 years before Christ; their age is more than twice that of the Christian era. The pictures show the operation of circumcision and operations on the legs and arms, and these operations, with the addition of castration, included all the surgical procedures performed by the Egyptians.

Id.

24. Loukas, et. al. *supra* note 22, at 413 (“. . . the first appearance in ancient medical literature of the word ‘brain’ [is] in the Edwin Smith Papyrus.”).

25. *Id.* at 413–414.

26. HAGGARD, *supra* note 1, at 129. See also ELLIS, *supra* note 19, at 11.

27. HAGGARD, *supra* note 1, at 129.

28. *Id.* See also, ELLIS, *supra* note 19, at 11–12. Stating:

We have evidence from these writings that surgical conditions such as wounds, fractures, and abscesses were treated. Thus, we read: If a doctor heals a free man’s broken limb and has healed a sprained tendon, the patient is to pay the doctor five shekels of silver. If he is the son of a nobleman, he will give him three shekels of silver. If the physician has healed a man’s eye of a severe wound by employing a bronze instrument and so healed the man’s eye, he is to be paid

The “Father of Medicine,” Hippocrates, worked in Ancient Greece between 460-437 B.C., and he wrote no less than seventy works of medical observations.²⁹ While early anatomists’ work was for varied religious, magical, and scientific purposes, the Egyptians and Greeks continued to prioritize scientific discovery.³⁰

Galen of Pergamum was a Turkish physician who wrote about dissection and human anatomy after training in Egypt and Rome.³¹ He was constrained to perform early anatomical dissections on animals, due to a “social taboo against dissecting human corpses.”³² He was thorough in his documentation of his discoveries. Most of his manuscripts were saved, and subsequently expanded upon by physicians who translated his works, making them more accessible to other empires of the Ninth century.³³ Galen’s legacy ultimately inspired future anatomists such as Hunayn ibn Ishāq,³⁴ Andreas Vesalius³⁵ and William Harvey.³⁶

ten shekels of silver. If a doctor has treated a man for a severe wound with a bronze instrument and the man dies and if he has opened the spot in the man’s eye with the instrument of bronze but destroys the man’s eye, his hands are to be cut off.

ELLIS, *supra* note 19, at 11–12.

29. ELLIS, *supra* note 19, at 21.

30. *Id.* at 24. Stating:

The Macedonian, Alexander the Great, a pupil of Aristotle, conquered Greece, Asia Minor and Egypt, marched through Persia and reached India. In his progress he founded a string of at least 17 Alexandrias but it was Alexandria of Egypt that was by far the most important. After the death of Alexander, one of his generals, Ptolemy, declared himself Pharaoh, took up residence in Alexandria and there founded a great medical school and library at about 300 BC; into these institutions were imported scientists, mainly from Greece.

Id.

31. *Id.* at 25.

32. Vivian Nutton, *Galen*, BRITANNICA, (Aug. 11, 2025) <https://www.britannica.com/biography/Galen>. See also ELLIS, *supra* note 19, at 25. Stating:

Undoubtedly the most famous of the physicians of this time period, and indeed of all time, was Galen (?AD 131-201). He . . . devoted himself to the study of medicine at an early age. . . In AD 158 he returned to Pergamum a surgeon to the gladiators and in the next five years developed an extensive practice in traumatic surgery. He dissected and experimented extensively on animals, since human dissection was not permitted, and wrote vast numbers of books on anatomy, physiology, pathology, therapeutics and indeed, on every branch of medicine known at the time. . . The whole corpus of Galen’s knowledge was regarded as sacred by later generations.

ELLIS, *supra* note 19, at 25.

33. ELLIS, *supra* note 19, at 25–26.

34. *Hunayn ibn Ishāq*, BRITANNICA, <https://www.britannica.com/biography/Hunayn-ibn-Ishaq> (last visited August 6, 2024). Hunayn ibn Ishāq was an Arab scholar who traveled extensively collecting transcripts of important medical and scientific discoveries and translated them from Greek to Arabic and Syriac. *Id.*

35. ELLIS, *supra* note 19, at 26. (“The dissections carried out by Vesalius (1514-1564) swept away many of Galen’s false anatomical concepts. . .”).

36. Andrew Gregory, *Key Discoveries and Influences of William Harvey*, BRITANNICA, (Sep. 6, 2025) <https://www.britannica.com/biography/William-Harvey/Key-discoveries-and-influences>. William Harvey was an English doctor and anatomist who in 1628

The landscape of medical priorities was also constantly shifting between the religious sanctity of the body, and the need for understanding of medical maladies. Thus, advancements were often thwarted or postponed when religion prevailed. With the rise and spread of Christianity,

[T]he development of rational thought and investigation was paralyzed by the Church authorities, physicians could only repeat the doctrines of the major figures of the past, such as Aristotle or Galen, without questioning them. Anatomical dissection was illegal, so the Galenic work constituted the most complete description of the human body.³⁷

As this pendulum of anatomical progress swung back towards religious piety and purity the prioritization of scientific advancement was diminished. “Revelation replaced reason; the cause of disease became possessions by devils, and the cure of disease was attempted by exorcism or miracles. Rational medicine was replaced by superstition.”³⁸ However, the medical and scientific advancements and discoveries were not lost forever, “they were buried . . . to be resurrected [and] rediscovered, centuries later.”³⁹

2. *The Medieval, Renaissance, Age of Enlightenment Use of Corpses*

“The earliest medical school in Europe was founded at Salerno and is in the literature of the tenth century.”⁴⁰ The goal of the medical school was to treat wounds not advance medical or scientific understanding and techniques, and “[t]he only anatomy that was taught was that of the hog.”⁴¹ Napoleon eventually closed the school a thousand years later, although its legacy remained through the publication of one of the first textbooks of medieval medicine, the *Regimen Sanitatis*.⁴²

The Catholic Church as previously noted was also suspicious of medical practices and wielded its power through a series of edicts that

published *Exercitatio Anatomica de Motu Cordis et Sanguinis in Animalibus* and in 1653 the English version *Anatomical Exercise on the Motion of the Heart and Blood in Animals*. *Id.*

37. Alexandra Mavrodi and George Paraskevas, *Mondino de Luzzi: a luminous figure in the darkness of the Middle Ages*. *CROAT MED J.*, Feb. 2014, at 50 (citing FAUVET J. *HISTORY OF MEDICINE ATHENS: ZAXAROPOULOS* (1964)). *See also*, ANNIE CHENEY, *BODY BROKERS, INSIDE AMERICA’S UNDERGROUND TRADE IN HUMAN REMAINS*, 100 (2006) (“Sadly, in the Middle Ages much medical knowledge advanced by the Greeks and then Romans was lost. Papal law prohibited human dissection, and the human body came to be seen merely as a source of mysterious ailments.”). *See also* ELLIS, *supra* note 19, at 29. (“Medical schools did not exist, dissection was forbidden by Church edict . . . science was simply disregarded.”).

38. HAGGARD, *supra* note 1, at 25.

39. *Id.*

40. HAGGARD, *supra* note 1, at 136. *See also* ELLIS, *supra* note 19, at 29–30 (“the university of Salernum . . . was established about the 9th century.”).

41. HAGGARD, *supra*, note 1, at 136.

42. *Id.* at 137.

essentially stalled the progress of medical and scientific advancement through the study of anatomy.⁴³ However, “[i]n the late Middle Ages and in the Renaissance an occasional dissection, called ‘making an anatomy,’ was allowed by ecclesiastical authorities. The subjects for dissection were executed criminals, but the actual dissection was a subordinate part of what was in reality an elaborate social function.”⁴⁴ Thus, the Catholic Church showed some willingness to balance religious tradition with early anatomical discovery. One explanation of this softening attitude against medical advancement may have been due to the fact that the Catholic Church wanted to work with anatomists to dissect would-be saints. “How else would they get at the bones and hearts and other shriveled relics that brought in pilgrims and packed the pews?”⁴⁵

The Sixteenth Century brought sweeping advancements, “. . . Magellan circumnavigated the world, Charles V sacked Rome and declared surgery ‘respectable,’ and Cortez entered Mexico; Copernicus described the revolution of the planets about the sun, Galileo demonstrated the law of falling bodies, Paracelsus founded chemotherapy, Vesalius laid the foundation of human anatomy”⁴⁶

43. *Id.* at 140. Stating:

The school of Salerno had a quickening influence on medicine and surgery that brought a number of priests and monks into the practice of these arts. There followed many abuses; medical fees were sought, to the detriment of regular duties of the priests and often to the detriment of the patients. The Church recognized the fact that a priest or monk might, as the result of his treatment, be the cause of a patient’s death. Such an occurrence was at variance with the purpose of holy orders, and the Church instituted edicts.

Id.

44. *Id.* at 143–44. Stating:

The subject for the dissection was selected from among prisoners, special rites were performed over him, and spiritual indulgences were allowed for the indignities which were to be done to his corpse. When the prisoner was prepared spiritually he was then strangled by the executioner and the corpse was turned over to the university. Invitations to the dissection were issued to city officials and other prominent persons. In the presence of the assembled company the papal indulgence permitting the dissection was read and the corpse was then stamped with the seal of the university. Often as a preliminary act to the dissection the subject’s head was removed in accord with the prejudice against exposing the brain, which, according to the Christian conception, is the seat of the soul. After these formalities an introductory oration was read and the physicians sang in chorus. Then came the dissection, which was a perfunctory affair. The physician in charge did not touch the corpse. Instead, it was opened by a servant while the physician stood to one side and read aloud from Galen, pointing with a wand to the various structures as they were enumerated in the text. A celebration followed the dissection and there was a concert, banquet, or theatrical performance. The whole affair occupied the greater part of two days and was concluded by ceremoniously burying the slightly mangled corpse.

Id.

45. KEAN, *supra* note 1, at 61.

46. HAGGARD, *supra* note 1, at 44.

The important work of Andreas Vesalius is credited as being inspired by the works of Galen. It provided further insight and contributions to medical advancement through the study of human anatomy in 1543 and is credited as the first “comprehensive textbook of anatomy.”⁴⁷ Legend has it that Vesalius actually stole the skeleton of an executed criminal from the gallows to further his anatomical studies and studied bones taken from cemeteries.⁴⁸ However, Vesalius encountered the very modern problem of not having enough human corpses to dissect and the historical problem of “religious opposition to dissection . . . based upon a belief in material resurrection.”⁴⁹

As religious fear and power to limit medical advancement waned, Vesalius legally availed himself to the corpses of executed criminals.⁵⁰ When even this source of bodies did not meet demand, extreme steps were often taken. Graverobbing grew in frequency, and one story states that when a “professor of the medical school of Montpellier” did not have a corpse to dissect for his lesson on anatomy, he “dissected the body of his own dead child before his classes.”⁵¹

On the European continent during the Renaissance, scientific dissections were fairly common,⁵² and the practice gained acceptance for the benefit and usefulness of scientific and medical training.⁵³ The need for donated corpses continued to persist to support these

47. Marcel Florin, *Andreas Vesalius*, BRITANNICA <https://www.britannica.com/biography/Andreas-Vesalius> (last visited August 6, 2024).

48. HAGGARD, *supra* note 1, at 144, 146. Stating:

As might be expected, the first correct demonstration of the anatomy of the human body was met with a storm of violent protest. Vesalius had dared to cast discredit on Galen! But it was not so much that fact alone as it was the abrupt way in which Vesalius did it. The human mind has an amazing ability to hold simultaneously two distinct and irreconcilable beliefs. For instance, it is possible for a man to believe in the Old Testament Creation and at the same time acknowledge the truth of the evolutionary rise of man. It was possible for the anatomist to believe and teach Galen and yet know that the anatomy they saw in their brief dissections was different from that which Galen described. The conflict between two opposing views of the mind comes only when the mind is forced to make a positive and open choice of one or the other. The conflict results in indignation against the person who forces the issue. Vesalius by publishing his book forced the issue; he discarded Galenic tradition. Intense indignation was aroused among the physicians; in the words of Sylvius, his former teacher, Vesalius was “an impious madman who is poisoning the air of all Europe with his vaporings.”

Id.

49. HAGGARD, *supra* note 1, at 149.

50. *Id.*

51. *Id.*

52. ELLIS, *supra* note 19, at 32–40.

53. Arseny Shevelev and Georgy Shevelev, *The Nature of the Right in a Dead Body Revisited: A Study of Comparable Legal Ideas*, 83 LA. L. REV. 1361, 1375 (2023). (“The exception for the use of corpses of persons sentenced to execution was one of the evolving trends in the use of bodies for scientific research at that time.”) (citing Heinrich von Staden, *The Discovery of the Body: Human Dissection and Its Cultural Contexts in Ancient Greece*, 65 YALE J. BIOL. MED. 223, 225–26 (1992)).

experiments and scientific endeavors. Medical advancements, discoveries of new diseases, new treatments, and advanced medical instruments all needed to be tested and developed before they could be offered to the living public. Corpses were essential to these medical procedures as well as the training of new doctors.

B. HISTORICAL ACQUISITION OF CORPSES⁵⁴

1. *The Need for Corpses for Scientific Advancement*

“Medicine arose from religion; fortunately, it has retained in its principles some of the religious virtue of sacrificing self to the suffering of others, a course that must seem most impracticable to many men of commerce.”⁵⁵ Thus altruism assisted in meeting some of the demand for cadavers and when the supply fell short, men of commerce and anatomists began to get murderously creative.

When the pendulum swung once again in favor of medical inquiry, medical schools and anatomists relied upon corpses of executed criminals for teaching anatomy to medical students.⁵⁶ In Eighteenth Century England, a medical student could not receive a certificate of practice from the Corporation of Surgeons unless he had successfully completed two courses of human anatomical dissection.⁵⁷ If the anatomy school⁵⁸ did not have any corpses available for students to dissect, the students “. . . supplied their own wants as they arose.”⁵⁹ Thus, if the interest or demand exceeded the supply of available human corpses, doctors, anatomists, and researchers had to get creative in their procurement methods. Sometimes they were fortunate to have the bodies of recently executed criminals,⁶⁰ other times they relied on more nefarious and murderous means of procurement.

54. Deceased human bodies are not only acquired for medical and scientific purposes. An entire industry exists for the purpose of displaying dissected bodies, body parts and fetuses in museums. While this Article will not discuss the acquisition of cadavers for these purposes, for a discussion of the plastination, preservation and display of human remains. See generally Traci McKee, *Resurrecting the Rights of the Unclaimed Dead: A Case for Regulating the New Phenomenon of Cadaver Trafficking*, 36 STETSON L. REV. 843 (2007).

55. HAGGARD, *supra* note 1, at 149.

56. Ghosh, *supra* note 22, at 156. (“When a shortage of executed criminals left young anatomists in need of cadavers, students were required to pay for and also attend the subsequent funeral of the corpse after dissection to encourage local families to offer their dead for anatomical studies.”).

57. BAILEY, *supra* note 7, at 14.

58. COLIN BLAKEMORE & SHEILA JENETT, EDS. *THE OXFORD COMPANION TO THE BODY*, 111 (2001). Anatomy schools were the equivalent to modern day medical schools. *Id.*

59. BAILEY, *supra* note 7, at 15.

60. Clinton Jones, *Cadaveric Confusion: Conflicts between Whole Body Donation and Family Wishes*, 11 EST. PLAN & CMTY. PROP. L. J. 387, 389 (2019). Jones notes the history of body donations and the cyclical attitude towards dissection. He further notes that “[t]he stark change in view largely stemmed from the nonconsensual use of executed

In fact, the United Kingdom Parliament passed the Murder Act in 1752, expressly granting medical schools the right to use the corpses of executed criminals for medical training and research.⁶¹ Blackstone's Commentaries on the Laws of England, Volume 4, published in 1769 reiterated that an executed murderer's corpse should be "delivered to the surgeons to be dissected."⁶² Competition for freshly executed criminal cadavers was fierce.⁶³ When the supply of executed criminal cadavers was scarce, scientists and students took to graverobbing paupers for donor bodies.⁶⁴ Unclaimed bodies were also made available to medical schools in times of need.⁶⁵ The burgeoning need for corpses for medical dissection and how exactly to obtain them was not confined to sterile anatomy labs or even the Halls of Parliament. Many people weighed in with suggestions:

The newspapers of the day contain many proposed solutions of the difficulty. One correspondent gravely suggested that as prostitutes had, by their bodies during life, been engaged in corrupting mankind, it was only right that after death those bodies should be handed over to be dissected for the public good. Another correspondent proposed that all bodies of suicides should be used for dissection, and that all those persons who came to their death by duelling, prize-fighting, or drunkenness, should be handed over to the surgeons for a similar purpose.⁶⁶

criminals as dissection specimens . . . The deceased had no say in the fate of their bodies." *Id.* (citing Ghosh, *supra* note 22, at 153).

61. *Body Snatching*, UK PARLIAMENT, (May 1, 2014) <https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/death-dying/dying-and-death/body-snatching/#:~:text=Anatomy%20Acts&text=In%20addition%2C%20some%20MPs%20were,unclaimed%2048%20hours%20after%20death>. See generally, Janet Philip, *Bodies and Bureaucracy: The Demise of the Body Snatchers in 19th Century Britain*, THE ANATOMICAL RECORD, Oct. 11, 2021.

62. WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, Volume 4 (1796). See also KEAN, *supra* note 1, at 62.

63. Janet Philip, *Bodies and Bureaucracy: The Demise of Body Snatchers in 19th Century Britain*, 11 October 2021, <https://doi.org/10.1002/ar.24794> (Last visited June 4, 2025) ("[The Murder Act] established that anyone executed for the act of murder would have their body handed over to the medical schools for dissection. Although this route established a small regular supply, the increasing number of medical students meant that it still fell far short of what was needed for teaching.")

64. KEAN, *supra* note 1, at 63. ("Government officials tended to look the other way at graverobbing for two reasons. First, most officials were rich and powerful. Most bodies for dissection, meanwhile, came from the pauper class."). See also Philip, *supra* note 63. ("In France, after the Revolution, a scheme has been introduced for the distribution of bodies of the poor to medical teaching establishments.") (citations omitted).

65. Ghosh, *supra* note 22, at 160. ("Many European countries passed legislations allowing the use of the unclaimed bodies of 'paupers,' inmates of prisons as well as psychiatric and charitable hospitals for dissection in addition to the corpses of executed criminals.") (citation omitted).

66. BAILEY, *supra* note 7, at 31. See also LASSEK, *supra* note 5, at 183 ("[t]hose taking their own lives were not made available for dissection in the New England Colonies.") (citing F.C. Waite, *An Episode in Massachusetts in 1818 Related to the Teaching of Anatomy*, 220 NEW ENGLAND J. MED., 221-227 (1939)).

As the years progressed, religious beliefs continued to fight an uneasy war against the advancement of scientific discovery. Religious individuals were concerned about arriving in the afterlife with “bodies mangled on Judgment Day.”⁶⁷ As the availability of corpses waned once again, the cottage industry of graverobbing really found its capitalistic roots.⁶⁸ Graverobbers often referred to themselves as resurrectionists, possibly a way to pseudo-legitimize their actions.⁶⁹

John Hunter, an anatomist in the mid-1700’s, relied heavily on graverobbers for corpses to dissect for medical research.⁷⁰ Hunter was atypical in the fact that he willingly and unflinchingly relied upon graverobbers. He also made significant medical discoveries and contributions.⁷¹ Hunter is credited with discovering tear ducts and the olfactory nerve, creating the classification system for teeth (incisors, molars, etc.), and “he oversaw the first artificial insemination in humans and pioneered the use of electricity . . . to jump-start the heart.”⁷² He was also said to be the inspiration for author Robert Louis Stevenson’s *Dr. Jekyll and Mr. Hyde* tale.⁷³

One of Hunter’s occasional students, Astley Paston Cooper, was slow to embrace medicine and anatomy, but when he finally found his passion, it manifested prominently in the dissection of human corpses that he stole or, later, bought.⁷⁴ Cooper traveled to France and, during his honeymoon, toured French hospitals and found that the French Revolution made “bloody bonuses” of inventory for an anatomist.⁷⁵ Cooper, as he gained acclaim and prominence in the field of anatomy and medical advancements, also oversaw his own organization of “body snatchers and suppliers that sent him endless corpses and specimens.”⁷⁶ Cooper was also quite successful in making medical and

67. KEAN, *supra* note 1, at 61.

68. *See generally*, John Philip Jenkins, *William Burke and William Hare*, BRITANNICA, <https://www.britannica.com/biography/William-Burke-and-William-Hare> (last visited July 4, 2024). *See also* Johnson, *supra* note 1.

69. Body Burkers were often also referred to as resurrectionists. *See Ghosh supra* note 22, at 160 (citation omitted). *See generally* BAILEY *supra* note 7.

70. KEAN, *supra* note 1, at 65. (“[Hunter’s] . . . majestic house even had a second, less wholesome, back entrance just for resurrectionists; it overlooked an alley and at 2 a.m. [the resurrectionists] would slink up and unload the night’s catch.”).

71. *Id.*

72. *Id.* at 64.

73. *Id.* at 65.

74. Druin Burch, *Astley Paston Cooper (1768-1841): Anatomist, Radical and Surgeon*. J R Soc MED. Dec. 2010. *See generally* DONALD A. LOW, *THE REGENCY UNDERWORLD*, 1982.

75. *Id.* (“Legend has it that when he and his bride escaped France back to England he smuggled a ‘cargo of French body parts, exactly the things an ambitious surgeon needed to form a collection and make a name.’”).

76. *Id.* Stating:

Astley became gripped by surgery, and (at least in retrospect) it had seemed to reach out to him all of a sudden. The next few years saw him begin a self-directed course of dissection and vivisection that occupied him until his death.

anatomical breakthroughs and is credited with advancing diagnoses and surgical treatment of deafness and hernias and wrote prolifically, helping train future doctors.⁷⁷

The need for corpses for anatomical discovery and medical advancement has undoubtedly clouded the ethical and moral judgment of learned men of science while creating a market for graverobbers, resurrectionists, Burkers, or any other person who worked in the shadows of cemeteries, funeral homes, pauper hospitals, and often pubs looking for the freshest specimens. The work of these procurers flourished to the point that even Charles Dickens wrote the character “Jeremiah Cruncher” in *A Tale of Two Cities* as a resurrectionist.⁷⁸

2. Demand Exceeds Supply

a. England, Wales & Scotland⁷⁹

Historically, Barber surgeons had the exclusive right to carry out anatomy lessons and dissections.⁸⁰

[A] selected group of physicians and surgeons from the Royal college of Physicians and Company of Barber Surgeons (founded in 1540) were given permission to dissect a very limited number of human cadavers. . . . [I]n 1745, rift appeared between the barber surgeons and the licensed surgeons, with

He stole his neighbours' pets and his neighbours' corpses, graduating as he became wealthier to paying others to steal on his behalf.

Id.

77. See generally *id.*

78. See generally CHARLES DICKENS, *A TALE OF TWO CITIES* (2012).

79. While this Article focuses on resurrectionists and graverobbing in the United Kingdom, on the European continent similar laws were being passed. See BAILEY, *supra* note 7, at 119–122. After the French Revolution, bodies that were unclaimed after 24 hours could be donated for anatomical dissection. *Id.* Stating:

In Germany the bodies of persons who died in prisons, or penitentiaries, and those of suicides, were given up for dissection, unless the friends of the deceased cared to pay a certain sum to the funds of the school; in this case the body was handed over to the friends. Other sources of supply were the bodies of those persons who died without leaving sufficient to pay the cost of burial, poor people who had been supported at the public cost, all persons executed, and public women. . . . In Austria, . . . unclaimed bodies were used for dissection; these were given up to the teachers forty-eight hours after death. . . . The supply in Italy came from a source similar to that of the other countries named. The rule was that all bodies of persons who died in hospital were given up for dissection if required; but, by paying the cost of the funeral, friends could, if they wished, take away the body. This, however, was seldom done. There was generally a sufficient supply of bodies; but, if this ran short, the subjects were obtained from “the deposit” of poor people who died and were buried at the public cost. In every parish church in Italy there was a chamber in which all the dead bodies of the poor were deposited during the day-time, after the religious ceremonies had been performed over them in the church; at night these bodies were removed either to the dissecting-room or to the burial-fields, outside the town.

Id.

80. James O. Robinson, *The Barber-Surgeons of London*, 119 JAMA, no. 10, Oct. 1984 at 1171–75.

the later breaking away and forming the Company of Surgeons . . . which was empowered as the sole authority to receive cadavers of executed criminals⁸¹

This, coupled with the privatization and proliferation of medical schools, lead to increased opportunity for students to study medicine and the increased need for donated corpses for anatomical study.

In England, Wales, and Scotland for nearly 200 years, “there were more than 200 . . . offenses” that were considered serious enough to be punishable by death.⁸² These offenses were collectively known as the “Bloody Code” and were meant to “act as deterrents to further criminal activity and protect landowners’ interests.”⁸³ Those that were put to death for their crimes were primarily hung at public executions.⁸⁴ The convicted criminals could be sentenced to “death and dissection”⁸⁵ but “. . . there were never enough executions to satisfy the demand from medical schools”⁸⁶ This shortage in turn led to unseemly scenes at public hangings, with students from rival medical schools brawling over corpses.

The Bloody Code was abolished by way of the “Gaols Act of 1823, which removed the death penalty for 130 offences [sic]”⁸⁷ The 1823 Judgment of Death Act also granted the judiciary discretion over punishments, including imposition of the death penalty.⁸⁸ These actions, arguably correct and just legal pronouncements, had an equal and opposite reaction. This is because as long as the Bloody Code was enforced, fresh corpses were available and “. . . medical and anatomical schools were only legally allowed to dissect the bodies, or cadavers, of those who had been condemned to death.”⁸⁹ With the passage of the Judgement Death Act “. . . an extreme shortage of dead

81. Ghosh, *supra* note 22, at 159. See also BAILEY, *supra* note 7, at 43–44. Stating: In Great Britain, as no licence was required for opening an Anatomical School, there was no limit to their number; there was also no regular legal supply of subjects, except the bodies of murderers, executed in London and the county of Middlesex, which came to the schools through the College of Surgeons.

Id.

82. Emma Slattery Williams, *The Bloody Code: Your Guide to the Severe Legal System*, HISTORY EXTRA, Sep. 26, 2021. Stating:

Capital offences included arson, the cutting down of trees, wrecking a fishpond, destroying turnpike roads and impersonating a Chelsea pensioner. Between 1735 and 1799, 80 women were hanged for “murdering their bastard child.” While some women were driven to commit the offence due to the stigma of having a baby out of wedlock, in reality, most of the infants had probably been stillborn, or had died shortly after birth due to natural causes.

Id.

83. *Id.*

84. *Id.*

85. KEAN, *supra* note 1, at 62.

86. *Id.*

87. Williams, *supra* note 82.

88. *Id.*

89. Johnson, *supra* note 1.

bodies [became] available”⁹⁰ further fueling the graverobbing industry.⁹¹ Medical schools were forced to buy corpses, and they were willing to pay a “flat fee for adult bodies. . . . For smalls (children) gangs charged by the inch. For rare specimens (e.g. pregnant women during their last months) prices might rise to £20 (\$2,500 today) which was one of the original motives for graverobbing.”⁹²

“Grave-robbers usually worked in teams. Less sophisticated crews would poach from mass graves, the open pits that were left unattended until they’d filled with paupers’ bodies. The best crews had more elaborate setups.”⁹³ Not only did the gangs of resurrectionists compete for corpses, but they also simultaneously sabotaged rival gangs’ bodies by mutilating them. Sometimes gangs banded together to create a monopoly charging exorbitant fees to the anatomists—who also tried to band together, hoping to keep prices regulated and fair.⁹⁴

When graverobbing became too difficult or dangerous, the resurrectionists would out-source the acquisition process to other scam artists,

90. *Id.*

91. *Id.*

92. KEAN, *supra* note 1, at 67-68. (“A particularly ghoulish part of this history is the graverobbing of infants and children who were highly sought after for medical research on “human growth and development;” these bodies were paid for, not by a lump sum fee, but by the inch.”).

93. KEAN, *supra* note 1, at 66–67. Stating:

Many of them employed female spies—who attracted less attention—to linger near hospitals and workhouses waiting for people to die. The spies would then attend “the black” (thief cant for a funeral) and follow the wake to the “hospital crib” (graveyard) to note the location of the plot. Spies also kept an eye out for booby traps, such as spring-loaded rifles buried in the dirt and “torpedo” coffins that exploded if tampered with. Less drastically, some families would arrange twigs, stones, or oyster shells into a pattern on the surface of the plot, so they could tell if the dirt had been disturbed. The lady spies passed all this information on to the gangs for a cut of the proceeds. The actual resurrecting took place at night. Sack-’em-up men had to become amateur astronomers, in fact, and chart the rising and phases of the moon to determine the time of peak darkness. Guards were little worry. If a graveyard even had one, the gangs either bribed him or got him so drunk he passed out. Then the thieves would tiptoe up to the fresh grave, disable any booby traps, memorize the pattern of sticks or shells, and start digging with their soft, quiet, wooden shovels. The gangs rarely disinterred a whole coffin—too much work. Rather, they’d expose just the head of it, then jigger a crowbar underneath the lid and use the weight of the overlying dirt to snap the boards. A rope slipped under the arms of the body retrieved the prize. Brutally, they often disfigured the face at this point to prevent recognition. Before leaving, they stripped the shroud and any jewelry off the body and discarded it, since stealing gold or clothing would ratchet the deed up to a capital offense. Pros could empty a grave in fifteen minutes, and they were veritable Picassos when it came to recreating the look of an undisturbed plot. More than one gang snuck into a churchyard and started digging, only to find an empty grave below—the work of a more punctual rival.

Id. See also KEAN, *supra* note 1, 67 (“[p]eople who died during the summer were lucky in that their bodies decayed faster in the heat. Hence, they were of less use to anatomists, who often took summers off.”).

94. BAILEY, *supra* note 7, at 49–50.

who would pretend to be relatives of the recently deceased at hospitals and claim the corpse for the purpose of selling it to an anatomist.⁹⁵

Graverobbing did not always satisfy the demand for corpses. When it was insufficient, murder solved the inventory problem. In the 1820's in Edinburgh, Scotland, William Burke and William Hare murdered sixteen people and sold their corpses to Professor Robert Knox, an anatomy lecturer at the medical school at Edinburgh University.⁹⁶ Burke and Hare were paid a little less than eight pounds per body which is the 2024 equivalent to almost \$1,000.⁹⁷ They were so prolific and efficient at murdering for the sake of having fresh corpses to sell, that the term "burking" was coined to describe their practice of "plying [their victim] with whiskey, and then suffocating him by covering his mouth and nose while he was forcibly restrained," leaving their "bodies unmarked and undamaged for the medical students to dissect."⁹⁸ This also helped them to evade suspicion until they were eventually caught in 1828.⁹⁹ Burke and Hare were certainly the most famous murderers for hire. It is with no irony that when William Burke was hanged for his crimes, his body was displayed to the public and then donated to a medical facility for scientific research.¹⁰⁰

The well-known infamous work of Burke and Hare and other resurrectionists gave way to an odd cottage industry, coffins made to prevent graverobbing. An extraordinary advertisement which appeared in Wooler's British Gazette in 1822 stated:

Many hundred dead bodies will be dragged from their wooden coffins this winter, for the anatomical lectures. . . the articulators, for those who deal in the dead, for the supply of the country practitioner and the Scotch schools. The question of the right to inter in iron is now decided. . . . The violation of the sanctity of the grave is said to be needful, for the instruction of the medical pupil, but let each one about to inter a mother, husband, child or friend, say shall I devote this object of my affection to such purpose; if not, the only safe coffin is Bridgman's Patent wrought-iron one, charged the same price as a wooden one, and is a superior substitute for lead¹⁰¹

95. KEAN, *supra* note 1, at 67.

96. See generally, John Philip Jenkins, *William Burke and William Hare*, BRITANNICA, <https://www.britannica.com/biography/William-Burke-and-William-Hare> (last visited July 4, 2024). See generally, KEAN, *supra* note 1, at 60; Philip, *supra* note 63; Hulkower, *supra* note 6; Johnson, *supra* note 1; and Carine Dornbush & Patrick McGonagill, *Grave Robbing, Cadaver Acquisition Evolve from Cemetery to Classroom*, 109 AMERICAN COLLEGE OF SURGEONS, February 7, 2024.

97. KEAN, *supra* note 1, at 60. See also Johnson *supra* note 1; *CPI Inflation Calculator*, <https://www.in2013dollars.com/uk/inflation/1820?endYear=2024&amount=8> (Last visited June 19, 2025).

98. Johnson, *supra* note 1.

99. *Id.*

100. *Id.*

101. BAILEY, *supra* note 7, at 76–77. See also KEAN, *supra* note 1, 66 (“[S]pies also kept an eye for booby traps, such as spring-loaded rifles buried in the dirt and ‘torpedo’

Unfortunately, the capture of Burke and Hare did not end anatomy's "murder-for-bodies" scheme, and other famous murder for profit enterprises were active until the government ultimately passed the Anatomy Act of 1832.¹⁰²

The Anatomy Act of 1832 paved the way for medical schools to legally acquire cadavers "... from workhouses and hospitals and prisons that were unclaimed 48 hours after death. It was also made possible for a person to donate a next of kin's body for medical study."¹⁰³

The Diary of a Resurrectionist 1811-1812, published in 1896 by James Blake Bailey, sets out a disturbing, comprehensive historical diary-style account of body-snatching, Burking, and resurrectionist work.¹⁰⁴ During these early years, as medical school training programs evolved and introduced the public autopsy for training purposes, scientific value prevailed over religious and cultural concerns, and government entities recognized the need to create laws and regulations for the donation and use of human corpses for medical training and research purposes.¹⁰⁵ The Anatomy Act of 1832, along with support from important anatomists such as, Interestingly, Astley Paston Cooper, "helped advise Parliament on the Anatomy Act of 1832, which provided surgeons with a means of a good supply of bodies."¹⁰⁶

Most recently, the United Kingdom Parliament passed the "Anatomy Act [of] 1984 which enabled people to donate their bodies" for medical and scientific study.¹⁰⁷ This supports the Human Tissue Act of 1961 "which govern[s] the removal and retention of organs . . . post-mortem."¹⁰⁸ The subsequent 2004 Human Tissue Act created the Human Tissue Authority (HTA) for the purpose of enacting and enforcing codes of practice on "all aspects of the use of human remains for medical science."¹⁰⁹ This latest piece of legislation "makes it clear that personal informed consent is needed for body and organ donation."¹¹⁰ Additionally, the World Health Organization and European countries have modern legislation and guidelines to "protect ethical and legal

coffins that exploded if tampered with."). See generally, Patricia Hartley, *10 Ways Sextons and Senators Have Historically Defended Corpses and Their Rights*, CONNECTING DIRS. (August 11, 2012) <https://connectingdirectors.com/61402-bodysnatching-corpses> (describing coffin torpedoes, grave guns, mortsafes, watchtowers, iron coffins and dead houses).

102. Johnson, *supra* note 1.

103. *Body Snatching*, *supra* note 61.

104. BAILEY, *supra* note 8, at Introduction IV.

105. *Body Snatching*, *supra* note 61 ("The Anatomy Act of 1832 gave surgeons and their students legal access to bodies from workhouses, hospitals and prisons that were unclaimed 48 hours after death. It was also made possible for a person to donate a next of kin's body for medical study").

106. Burch, *supra* note 74, at 508.

107. *Body Snatching*, *supra* note 61.

108. *Id.*

109. *Id.*

110. *Id.*

standards for the management of human tissue, organs and bodily remains.”¹¹¹

C. EARLY AMERICA

In early America, the need for corpses for medical training and dissection had long been evident, and so had the trafficking of corpses.¹¹² The corpses of executed criminals, specifically those who died by dueling, were the only legal source of bodies for medical and scientific research. Thus, graverobbing by resurrectionists or “ghouls” grew in America as a means of procuring corpses for medical school training.¹¹³ Most graverobbers worked and resurrected corpses in late fall into spring when classes were in session and, if luck was on the resurrectionist’s side, when the ground was soft and wet.¹¹⁴

Many cite Giles Firmin, a physician and clergyman, for carrying out the “first dissection” in the Massachusetts Bay Colony in 1638, likely on an “executed criminal”.¹¹⁵ In the early 1770’s, the colonists’ focus was not necessarily on anatomy lessons and medical schools, but this changed towards the end of the American Revolution when medical schools were founded.

Dr. William Shippen, co-founder of America’s first medical school in 1765, College of Philadelphia, was accused of graverobbing.¹¹⁶ He did himself no favors with the public by placing an advertisement in the “Pennsylvania Gazette” offering “anatomical lectures . . . [for] gentlemen who incline to see the subject prepared for the lectures, and to learn the art of dissection, injections, etc. . . .”¹¹⁷ While he performed these lectures for a few years, three years later his house was “mobbed for alleged violation of the church burying-ground.”¹¹⁸ In response

111. *US Trade in Body Parts Signals Concern Over Ethical Misconduct and Collusion*, DOCTORS AGAINST FORCED ORGAN HARVESTING, June 3, 2018.

112. CHENEY, *supra* note 37, at 9. See also LASSEK, *supra* note 5.

113. Edward Mussey Hartwell, *American Anatomy Acts*, 103 BOS. MED. SURGEON J., no. 16, Oct. 14, 1880, at 361–63. Stating:

Massachusetts in 1784, New York in 1789, and New Jersey in 1796 passed acts to allow the courts to add dissection to the death penalty in certain cases. Virginia refused to do even that much, and Pennsylvania seems never to have legislated in the matter. The legal status of anatomy in America, at the beginning of the century, is well illustrated by the Connecticut acts of 1810.

Id. See also MICHAEL SAPPOL, A TRAFFIC OF DEAD BODIES, ANATOMY AND EMBODIED SOCIAL IDENTITY IN NINETEENTH-CENTURY AMERICA, 3 (2002) (“ . . . dissectors had difficulties obtaining bodies. Most states allowed executed criminals to be dissected, but not enough people were hanged. The only remaining source of cadavers was the grave. Medical grave robbery (“body snatching” or “resurrectionism”) aroused popular anger and revulsion.”).

114. Hulkower, *supra* note 6, at 24 (“Most bodies were stolen between November and March, when medical schools were in session and the cold helped preserve the corpses.”).

115. LASSEK, *supra* note 5, at 184.

116. WILLIAM WILLIAMS KEEN, ADDRESSES AND OTHER PAPERS, 1–41 (1905).

117. *Id.*

118. *Id.*

Dr. Shippen made a “public announcement [denying the allegation], and at the same time declared that he had only dissected the bodies of ‘suicides, executed felons, and now and then one from the Potter’s Field.’”¹¹⁹

One particularly famous event relating to graverobbing and resurrection practices was the Doctor’s Mob of April 1788:

On that day Dr. Richard Bayle, working in the laboratory of the Hospital Society, observed a small boy peering in at one of the windows. In a spirit of medical humor he waved the arm of a cadaver at the boy to frighten him away. The exaggerated tales told by the terrified boy resulted in the collection of a mob which stormed the building and burned the anatomical collection. The physicians of the hospital took refuge in the jail. The jail was attacked and it was necessary to call out the militia in order to quell the disturbance. In the encounter that followed, seven of the rioters were killed and several more were seriously wounded.¹²⁰

When Dartmouth College was founded in New Hampshire in 1769 and subsequently opened its medical school in 1797, the state passed a law outlawing graverobbing as a response to the increased need for corpses for dissection.¹²¹ Vermont followed suit in 1804 outlawing body snatching.¹²² Additional states followed over the years with more clearly defined laws that differentiated between graverobbing and transporting, possessing, and concealing bodies.

Legend also has it that, in 1876, Jesse James and his band of thieves passed through Northfield, Minnesota and attempted to rob a bank. In the aftermath of the failed attempt, two men, one of whom was a medical student named Henry Mason Wheeler, shot at the marauders killing two.¹²³ As a posse was formed to chase down the rest of the thieves, Wheeler told a friend and fellow medical student at the University of Michigan to try to acquire the corpses of the two dead thieves.¹²⁴ The students knew that having bodies to dissect would advance their studies. The students, having acquired the corpses, placed them in wooden barrels and labeled them “fresh paint.”¹²⁵ The bodies arrived at the medical school, and while the body of one thief was claimed, the other one was subject to dissection.¹²⁶

119. *Id.* A potter’s field is a common cemetery for bodies that are unclaimed, unidentified, or from the pauper class. *Id.* at 13.

120. HAGGARD, *supra* note 1, at 153.

121. LASSEK, *supra* note 5, at 185.

122. *Id.* at 185–186.

123. William Holtz, *Bankrobbers, Burkers, and Bodysnatchers*, 6 MICH. Q. REV. 2 1967, at 90, 96.

124. *Id.* at 96.

125. *Id.*

126. *Id.*

While this oral history has been told over generations, it does have roots in fact, specifically the way the University of Michigan medical school acquired its corpses for dissection. One notable tale relates to a young new Professor of Anatomy, Dr. Moses Gunn. When he “arrived in Ann Arbor just fifteen days after his graduation from Geneva Medical College in New York[,] [a]mong his baggage was ‘a box of suspicious shape and size and unmarked content.’”¹²⁷ Gunn had stolen a corpse from his former medical school and “. . . used [it] for his first lectures on anatomy in Ann Arbor.”¹²⁸ Thus, the services of resurrectionists and Burker-inspired individuals were also employed in elaborate networks across the countryside. Additional lore paints striking images of the storage and shipment of the corpses to the medical schools in wooden barrels marked “pickles,” reflecting acknowledged lawlessness and risk-taking in acquiring corpses.¹²⁹

Furthermore, as America expanded its infrastructure and transportation capabilities through improved railroad services, graverobbers and resurrectionists, increasingly known as “body snatchers”, were able to more efficiently ship the corpses they had procured to medical schools in need of corpses further away. “Among the many unforeseen consequences of this transformation was this peculiar note: [b]ody snatchers digging up graves could quickly ship corpses to medical schools needing dissection material,”¹³⁰ ultimately growing their clientele and fortunes.

Even in these early days, graverobbers were acutely aware of their misplaced ethical and legal practices. However, in 1828 in New York, a ghoul or graverobber who could have made a dollar as a day laborer,

127. *Id.* at 92.

128. *Id.* The anecdotes and statements made by Holtz in his article are without footnotes. However, he cites as a source Professor Donald F. Huelke, author of *University of Michigan Medical Bulletin*, XXVII, 1-27, XXVIII, 127-149, and XXIX, 133-144, and Professor F. Clever Bald for his assistance and the volume *Things for the Surgeon* by Hubert Cole in 1964. *Id.*

129. *Id.* See also, CHENEY *supra* note 37, at 113 (“The brokers and ghouls devised clever ways of disguising and preserving their ‘goods’ for the journey. One method was to ‘pickle’ the corpses in brine—likely a combination of salt and vinegar—and to pack them in wooden casks.”).

130. Antero Pietila, *In Need of Cadavers, 19th Century Medical Schools Raided Baltimore’s Graves*, October 25, 2018, SMITHSONIAN MAGAZINE, (Oct. 25, 2018 <https://www.smithsonianmag.com/history/in-need-cadavers-19th-century-medical-students-raided-baltimores-graves-180970629/>). Stating:

The plunderers began by shoveling at the head of a freshly buried coffin, breaking the lid, placing a hook around the deceased’s neck or armpit and, with the help of a rope, easing the body out of the grave. For shipment elsewhere, the corpses were folded into barrels filled with whiskey—to mask the odor. At the destination, a medical school took the remains for dissection. And that wasn’t the end of it: The “rotgut” whiskey was sold to all comers as “stiff drinks.”

Id.

could sell a corpse for ten dollars¹³¹ creating a strong incentive to enter the graverobbing business. By the end of the beginning of the Twentieth Century, American lawmakers adopted the policies making unclaimed bodies and pauper bodies available for medical and scientific research.¹³² This legitimization of cadaver supply did not abate the business of graverobbing, which continued through the Twentieth Century.

The “only known ‘Burking’ in the United States of America occurred in Baltimore in 1886.”¹³³ It involved a well-to-do woman who had the reputation of being well-educated and charming.¹³⁴ After her father died, she fell on hard times and moved to Baltimore, where she lived a transient life full of alcohol and drugs.¹³⁵ Legend states that she was strangled by two individuals, and her body was sold for fifteen dollars to the University of Maryland.¹³⁶ Her murderers were brought to justice and hanged but her death is both tragic and a reminder that even though Maryland had passed an Anatomy Act in 1882, the need for and acquisition of cadavers was still largely ignored by the authorities.¹³⁷ In fact, the next century, states haphazardly enacted and enforced anatomy acts.

In 1902, “the United States Congress created an Anatomical Board” that oversaw the distribution of “unclaimed dying persons” in the District of Columbia. Virginia medical schools had no legal access to cadavers for training purposes, so the professor “. . . organized groups of students to undertake expeditions of systematic body snatching.”¹³⁸ A. M. Lassek, in his treatise *Human Dissection, Its Drama and Struggle*, systematically reviews the history of early medical school anatomy needs and the illicit means employed by each U.S. state throughout the Nineteenth and Twentieth Centuries.¹³⁹

An article from the 1962 Journal of Medical Education entitled *Medical Education From the Ground Up or Our Late Resurrection Men*, sets forth the remarkable diary entries of “Bill” who worked at the Vanderbilt Medical School between 1916 and 1919 and was revered for his devotion to the medical school. He was, by the author’s account, a “resurrectionist, embalmer, major domo in the anatomy department

131. CHENEY, *supra* note 37, at 10.

132. *Id.* at 121.

133. LASSEK, *supra* note 5, at 228–229.

134. *Id.*

135. *Id.*

136. *Id.* at 230.

137. *Id.*

138. *Id.* at 232.

139. *See generally* LASSEK, *supra* note 5.

and valued friend to all who knew him.”¹⁴⁰ “Bill,” worked diligently for Vanderbilt Medical School for thirty-five years and is said to have robbed as many as 150 graves for Vanderbilt and other medical schools.¹⁴¹ He did so, not for money, but out of loyalty for his institution and possibly the thrill of “outwitting the law.”¹⁴²

As seen with “Bill,” often those involved in the resurrection of the newly deceased were intermediaries, medical school employees, medical school students, and sometimes professors themselves, although they “preferred not to do the excavating.”¹⁴³ Some corpses were acquired through long-standing relationships with operators or custodians of the potter’s field or with mail carriers who would help facilitate the transportation of the corpse. At least one cemetery custodian required her payment upfront, along with “maybe a quart of whiskey.”¹⁴⁴ However the transactions were carried out, it is clear that the medical school professors and students were complicit, fully aware of the provenance of the corpse. They competed for fresh corpses and were willing to pay. According to the Diary, at least one professor was caught and sentenced to four years in prison but was pardoned by the governor after just a few months.¹⁴⁵

Whether the procurer of cadavers was a Burker, resurrectionist, graverobber, ghoul, or employee of the medical school itself, two commonalities existed: they acted illegally and they provided intact corpses, as fresh and quickly as possible to the medical schools. Many modern-day body brokers also act unethically or illegally. However, thankfully, the practices of assisting in the actual death and murder or graverobbing are no longer favored acquisition methods. Today many of those acquiring corpses do so through falsifying documents, misleading the families of the deceased, and selling the bodies. They are called body brokers.

More interestingly, body brokers also diverge from their earlier counterparts because they realized they can make more money from the cadavers if they perform the dissection and disarticulation themselves. Thus, the early Burkers and resurrectionists made one sale for each cadaver, while modern body brokers make many sales with one body. While no means an equivalency to murder, the body brokers’ continued avarice and depravity is stunning and shows a lack of moral

140. Sam L. Clark et. al., *Medical Education from the Ground Up or Our Late Resurrection Men*, J. OF MED. EDUC., Vol. 37, Dec. 1962, at 1291.

141. *Id.*

142. *Id.* at 1292. According to “Bill,” the medical school professors would use him as an intermediary with a network of undertakers, informers, and resurrectionists who would monitor funerals at small cemeteries that did not have security guards. *Id.*

143. *Id.*

144. *Id.* at 1293.

145. *Id.*

and ethical evolution in the industry of cadaver procurement for medical and scientific purposes.

D. MODERN DAY AMERICAN BODY BROKERS

Every year in the United States, tens of thousands of corpses enter the cadaver trade—a business that supplies bodies and body parts to scientists, surgical equipment corporations, hospitals, pharmaceutical companies, and researchers all over the world. “Cadavers that enter this business are cut up into parts, not unlike chickens, and distributed through a complex network of suppliers, brokers, and buyers.”¹⁴⁶

With the phenomena of graverobbing or the work of resurrectionists now seemingly rare, has this ultimate practice of procuring bodies for sale for medical and scientific research really become extinct or has it simply been rebranded as legitimate through body brokers? Are body brokers just more sophisticated graverobbers or resurrectionists?

Body brokers are often for-profit entities and individuals that acquire bodies and sell or lease them to medical, scientific, and research facilities.¹⁴⁷ While body brokers are certainly not committing murder, as they acquire the bodies legally through donations, the fact remains that they are subsequently selling the bodies often without the knowledge or consent of the deceased’s family members. Furthermore, what happens to the donated bodies is often never agreed to or communicated to the families of those who made the body donation.

“When Americans leave their bodies to science, they are also donating to commerce: Cadavers and body parts, especially those of the poor, are sold in a thriving and largely unregulated market.”¹⁴⁸

146. CHENEY, *supra* note 37, at 8.

147. Brian Grow & John Shiffman, *In the U.S. Market for Human Bodies, Almost Anyone Can Dissect and Sell the Dead*, REUTERS (Oct. 26, 2017, 11:00AM) <https://www.reuters.com/investigates/special-report/usa-bodies-brokers/>. Stating:

Through interviews and public records, Reuters identified Southern Nevada and 33 other body brokers active across America during the past five years. Twenty-five of the 34 body brokers were for-profit corporations; the rest were nonprofits. In three years alone, one for-profit broker earned at least \$12.5 million stemming from the body part business.

Id.

148. *Id.* See also Brian Grow & John Shiffman, *A Reuters Journalist Bought Human Body Parts, Then Learned a Donor’s Heart-Wrenching Story*, REUTERS (October 25, 2017) <https://www.reuters.com/investigates/special-report/usa-bodies-cody/>. Stating:

On August 2, 2016, Cody died after a heart attack on his way home from dialysis. Too poor to bury or cremate him, Cody’s parents donated their son’s body to an organization called Restore Life USA. The facility sells donated bodies – in whole or by part – to researchers, universities, medical training facilities and others. “I couldn’t afford nothin’ else,” father Richard explained. The month after Cody died, Restore Life sold part of the young man’s body: his cervical spine. The transaction required just a few email exchanges and \$300, plus shipping.

Id.

Body brokers are the middlemen who receive donated bodies and make them available to medical, scientific, and research facilities for a fee. A body “can generate anywhere from \$10,000 to \$100,000 depending on how it is used.”¹⁴⁹ Body brokers work exclusively in the acquisition and sale of donated bodies and do not engage in living donations or transplants. Those activities are highly regulated, while the regulation of body brokering is “a free-for-all.”¹⁵⁰

If a body is donated through a body broker, the process can be broken down into several steps. The first step is the solicitation of donations that may occur through advertisements or glossy brochures at funeral homes, hospices, and hospitals.¹⁵¹ Often, donors and the deceased’s family members are incentivized to donate their loved one’s body with the offer of free cremation and the belief that they are helping in advancement of medical and scientific discovery.¹⁵² Using tactics such as these, body brokers have had significant success in targeting lower-income and poor families who may be struggling with funeral costs.¹⁵³ The sales pitch consists of something along the lines of assuring the grieving family that something good can come out of their tragedy. Their donation will advance medical and scientific research, and their beloved’s cremated remains that were not used will be returned to the family at no cost.¹⁵⁴ Thus, body brokers acquire donated bodies for small cremation fees or for free. Because the donated cadaver is a commodity to the body broker and often free or nearly free, the opportunity for body brokers to amass significant profits is limited only by the number of bodies they can acquire.

149. Alexandra Piscitello, *Cadavers in Commerce: Regulating Under a Federal Body of Laws*, 48 HOFSTRA L. REV. 1041 (2020).

150. Grow & Shiffman, *In the U.S. Market*, *supra* note 147.

151. *Id.* See also John Shiffman & Brian Grow, *How An American Company Made a Fortune Selling Bodies Donated to Science*, REUTERS (Oct. 26, 2017, 11:00AM) <https://www.reuters.com/investigates/special-report/usa-bodies-science/>. Stating:

Science Care spent more than \$1 million on marketing and branding to attract donors. “With what we do, you don’t sell it,” Rogers said of body donation in his testimony. “It’s educating people and allowing them to make an informed decision. And then we combine that with all the branding and the touch points and the look and feel.” The typical pitch to the dying and their families is two-pronged. The first is altruism: The gift of a body will benefit medical science and, by extension, others in need. The second is financial: Body donation saves a family money. The average funeral, including coffin, memorial service and burial, costs about \$7,000, according to the National Funeral Directors Association. Simple cremation, an increasingly popular option, costs \$400 to \$1,000 or more. Body brokers like Science Care offer the cheapest option: free cremation in exchange for the body. The deal: Science Care pays for the cremation of a donor’s unused remains and for returning the ashes to the bereaved family, usually after a few weeks.

Id.

152. Grow & Shiffman, *In the U.S. Market*, *supra* note 147.

153. Shiffman & Grow, *How an American Company Made a Fortune*, *supra* note 151.

154. Piscitello, *supra* note 149, at 1040.

The most recent general pricing guidelines from 2021, promulgated by the National Funeral Directors Association, reveal that “the median cost of a funeral has increased only 6.6% over the past five years to \$7,848 and the median cost of a funeral with cremation has increased 11.3% over the past five years to \$6,970.”¹⁵⁵ Therefore, those struggling to deal with the death of a loved one and the costs of funeral expenses are particularly vulnerable and the body broker’s ideal candidate.¹⁵⁶

Once a donated body is delivered to a body broker, the body can be sold intact or dissected into parts and sold separately to different scientific, medical, and research facilities.¹⁵⁷ A Reuters News in-depth investigation into body brokers outlined the broker process through a series of steps starting with the aforementioned solicitation of the donation and consent to procure the body.¹⁵⁸ Once the broker takes possession of the body, it conducts medical testing and then determines whether to offer the body as a whole cadaver or to dissect it into pieces.¹⁵⁹ Only then does the body broker cremate the final remains and return them to the family. Thereafter, the body broker business shifts into full gear and price quotes, purchase orders, and sales are

155. 2021 NFDA General Price List Study Shows Funeral Costs Not Rising as Fast as Rate of Inflation, NAT’L. FUNERAL DIRECTORS ASS’N, (Nov. 4, 2021) <https://nfda.org/news/media-center/nfda-news-releases/id/6182/2021-nfda-general-price-list-study-shows-funeral-costs-not-rising-as-fast-as-rate-of-inflation>.

156. Victoria J. Haneman, *Funeral Poverty*, 55 U. RICH. L. REV. 387, 397 (2021). Stating:

An enduring myth is that medical donation of remains is an option for anyone who is unable to afford death care service. Cadavers are needed for medical education and research, these programs rely upon goodwill donations, and so the institution accepting the donation agrees to cover cremation costs when the cadaver is no longer needed. The reality is that there are broad disqualifications to donate remains and this is not a viable option for many Americans.

Id. (citations omitted).

157. Shiffman & Grow, *How An American Company Made a Fortune*, *supra* note 151.

158. Grow & Shiffman, *In the U.S. Market*, *supra* note 147. Stating:

1. Soliciting Donors: body brokers solicit donors online, and via funeral homes, hospices, hospitals. Donors are told they will contribute to science and receive a free cremation.
2. Consent: A donor can sign a consent form giving their body to a broker before dying. Or next of kin can sign the form after death.
3. Medical Checks: After death, the broker assesses the body’s medical history and physical condition – weight, surgical implants, scars – and tests it for infectious diseases.
4. Dissection: The broker either retains the whole cadaver or dissects it. Most bodies are cut into six parts, such as the head, torso, arms and legs.
5. Cremation: If requested, a portion of the body not sold for research and education is cremated within weeks and returned to the next of kin.
6. Place Order: A broker’s client, such as a medical device company, submits an order for body parts. Example 27 elbows for a surgical training seminar.
7. Price Quote: The broker assesses its inventory, provides a price quote for the body parts, and if accepted, sells or rents the body parts to the client.
8. Return: Rented body parts are returned to the broker for potential reuse; body parts sold to clients are cremated after research or training and disposed.

Id.

159. *Id.*

negotiated. If the body or body parts are simply leased, agreements for the return of the parts are entered into, and upon return, the body or parts may be leased again or sold.¹⁶⁰ With each of these transactions, the body broker may pay a nominal fee, but they ultimately reap a fee, or multiple fees on one body, and their profits soar.

As body brokering profits rose, some brokers have become more brazen and reckless. Tales of unscrupulous body brokers have revealed details as monstrous and gruesome as those of the early days of the resurrectionists. The earlier discussed misuse of the bodies of Doris Stauffer and David Saunders are unfortunately not anomalies. Investigative reporters have uncovered many heartbreaking stories of atrocities that at best end with criminal charges and at worst, go nowhere close to a finding of liability or peace of mind for the grieving families.

One successful prosecution resulted from the FBI investigation of Arthur Rathburn and his company International Biological, Inc.¹⁶¹ Rathburn operated as a body broker for years before his misdeeds came to light.¹⁶² Taking advantage of a lack of oversight in Michigan, Rathburn profited more than thirteen million dollars while selling bodies, body parts, and infected body parts with HIV or hepatitis.¹⁶³ He was ultimately convicted for federal wire fraud and illegal transportation of hazardous materials.¹⁶⁴ He, to date, has not been charged with any crimes relating to the misuse of the donated bodies or any type of breach of his agreements with the families of the deceased.¹⁶⁵ Thus, the families of those cadavers he misused have seen no recourse or recompense for his actions.

In late 2015, authorities responding to a complaint about a foul smell, found a Southern Nevada Donor Services employee defrosting a human torso in the company driveway with a garden hose in the middle of the afternoon.¹⁶⁶ The only legal consequence of this action was a misdemeanor charge for the employee for polluting stream water with human tissue.¹⁶⁷ No citation or charge was issued against Southern Nevada Donor Services.

160. *Id.* See generally, Andrew Y. Schiefer, *Robbing the Grave: Amending the Uniform Anatomical Gift Act to Curtail Abuses Within the Whole-Body Donation Industry*, 29 HEALTH MATRIX: J. OF L.-MED. 317 (2019).

161. Shiffman & Grow, *In A Warehouse of Horrors*, *supra* note 10.

162. *Id.*

163. Tresa Baldas, *Feds: Grosse Pointe Businessman Made \$13M Selling Diseased Body Parts*, Detroit free press, (May 11, 2018, 11:20AM) <https://www.freep.com/story/news/local/michigan/wayne/2018/05/11/grosse-pointe-cadaver-dealer/596104002/> (Last visited Sept. 8, 2024). See also Piscitello, *supra* note 149, at 1047–48; Shiffman & Gross, *In A Warehouse of Horrors*, *supra* note 10.

164. *Id.*

165. *United States v. Rathburn*, 771 F. App'x 614, 617 (6th Cir. 2019).

166. Grow & Shiffman, *In the U.S. Market*, *supra* note 147.

167. *Id.*

Bio Care, an Albuquerque, New Mexico body broker, assured a donor's daughter that donation of her dying father's body would benefit medical and scientific research and training of new surgical techniques.¹⁶⁸ When her father died, and she delivered his body, she waited for his eventual cremated remains to return after his contributions to science were completed. What she received was an urn full of sand.¹⁶⁹ Her father's head was eventually found "at a medical incinerator," and she discovered he had been dismembered with a chainsaw-like instrument and sold piece by piece.¹⁷⁰ The body broker owner was only charged with fraud, which was subsequently withdrawn for lack of evidence.¹⁷¹

III. CURRENT AMERICAN GOVERNANCE AND OVERSIGHT OF BODY DONATIONS

With the recognition that medical research and scientific advancements require the use of cadavers, laws relating to such have had to keep pace. The practice of graverobbing or theft of a corpse has been dealt with through the criminalization of desecrating graves and removing bodies without permission. However, while some modern body brokers have been held criminally responsible for their actions, civil liability remains elusive. This is largely due to the lack of effective regulation of body brokers. From the state level to the federal level, no current legislation sufficiently polices body brokers.

A. EARLY STATE STATUTORY LAW-ANATOMY ACTS

"The American medical profession, following trends in Britain, France and Germany . . . became ever more attached to an anatomical understanding of the body and an increasing role for anatomy in the medial curriculum."¹⁷² By the time early America was establishing educational institutions and training doctors, state legislatures were aware of the necessity to regulate the procurement, use, and disposal of human corpses used for medical and research purposes.¹⁷³ Until that time, barring any conflict with an existing law, the use or donation of a deceased loved one was left to the "final decision about the disposition of the body' with the family of the deceased."¹⁷⁴

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. SAPPOL, *supra* note 113, at 2.

173. *Id.* at 4 ("Starting with Massachusetts in 1831, states began passing 'anatomy acts'").

174. Jones, *supra* note 60, at 392. (citations omitted).

Early Massachusetts legislation recognized that “thus far we have seen that dissection, so far from being wrong or censurable, is in every respect worthy of the encouragement and countenance of the good and enlightened. Its objects are praiseworthy—its ends most important and beneficial to society, and the objections to it unphilosophical and imaginary.”¹⁷⁵ But the Massachusetts House of Representatives also recognized that the laws were far from complete; they were either out-of-date or non-existent.¹⁷⁶ They failed to build in protection for the sanctity of the burial place from disturbance by immoral men for the sake of acquiring cadavers for dissection.¹⁷⁷

A 1784 Massachusetts Law, the Act of Dueling, based upon the Massachusetts’ *Body of Liberties*,¹⁷⁸ allowed for slain duelists’ bodies to be “buried in a public place without a coffin or given to a surgeon for dissection.”¹⁷⁹ The law stipulated that bodies that required burial at state expense or which remained unclaimed within 24 hours could be donated for anatomical study, as long as the final remains were properly interred according to religious practices.¹⁸⁰ Additionally, early laws addressed and prohibited graverobbing and the removal of body parts for the purpose of sorcery or witchcraft.¹⁸¹

175. H.R. Report of the Select Committee of the House of Representatives, of Massachusetts, On So Much of the Governor’s Speech at the June Session, 1830, As It Relates to the Legalizing of the Study of Anatomy, 51.

176. Select Comm. of the H.R., 4th H.R. of Mass., Legalizing the Study of Anatomy 51 (Mass. Print 1831).

177. *Id.*

178. S. WHITMORE, BIBLIOGRAPHICAL SKETCH OF THE LAWS OF MASSACHUSETTS COLONY, 32–60 (1889). The *Body of Liberties* reflects that the governing bodies of the original colonists were even supportive of dissection of executed criminals. Stating:

44. No man condemned to dye shall be put to death within fower dayes next after his condemnation, unles the Court see spetiall cause to the contrary, or in case of martiall law, nor shall the body of any man so put to death be unburied 12 howers, unlesse it be in case of Anatomie.

Id.

179. Hulkower, *supra* note 6, at 23. See also *An Act Against Duelling*, (June 30, 1754) archives.lib.state.ma.us/server/api/core/bitstreams/b9058e1c-4f54-43fc-bb2b-88a14c52755b/content. Stating:

That when it shall appear by the Coroner’s inquest that any person hath been killed in lighting a duel, the Coroner of the county where the fact was committed, shall be, and he hereby is directed and empowered to take effectual care that the body of such person so killed be immediately secured and buried without a coffin, with a stake drove through the body at or near the usual place of execution, or shall deliver the body to any surgeon or surgeons to be dissected and anatomized, that shall request the same and engage to apply the body to that use

Id.

180. Select Comm. of the H.R., 4th H.R. of Mass., Legalizing the Study of Anatomy 51 (Mass. Print 1831); S. WHITMORE, BIBLIOGRAPHICAL SKETCH OF THE LAWS OF MASSACHUSETTS COLONY, 32–60 (1889).

181. LASSEK, *supra* note 5, at 183.

In 1789, New York passed a law against resurrectionist acts and graverobbing. The legislation was meant to deter “the odious practice of digging up and removing bodies interred in cemeteries for the purpose of dissection. The penalty for so doing was corporal punishment. It also provided that those executed for murder, arson, burglary, if unclaimed, or given by relatives, could be used for dissection.”¹⁸²

The New Hampshire general assembly passed its first law prohibiting graverobbing in 1796¹⁸³ and Vermont followed suit in 1804, outlawing body snatching.¹⁸⁴ Additional states followed over the years with more clearly defined laws that differentiated between graverobbing and concealing bodies.

Massachusetts followed suit with detailed laws against graverobbing between 1830 and 1833.¹⁸⁵ However, these laws typically also granted the corpses of surrendered, unidentified persons, and paupers to medical schools for anatomical study.¹⁸⁶ The Massachusetts Anatomy Act of 1831 provided “adequate legal provision for human dissection” creating better trained doctors who would ultimately help the wealthy and the poor.¹⁸⁷

In fact, Massachusetts led the way in sanctioning the use of executed criminals for dissection.¹⁸⁸ Thereafter, other states followed suit “legislating that unclaimed bodies of people who died in hospitals, asylums, and prisons would be allocated to that state’s medical schools for the purpose of anatomical dissection.”¹⁸⁹ As the supply of corpses became regulated and thus stabilized, the effect was lower rates of illegal activities and graverobbing. Some believe that these subsequent laws were, at least in part, a reaction to the famous story of “the dead son of President William Henry Harrison found in 1878 . . . in the Ohio Medical College waiting for dissection.”¹⁹⁰ He was recognized and

182. *Id.* at 225.

183. *Id.* at 185.

184. *Id.* at 186.

185. S. Act 21 (Mass. 1831) (stipulating that it would be a felony punishable with up to ten days of solitary confinement and not exceeding one year of hard labor (with discretion to imprison a felon for up to two years) with a fine not to exceed two thousand dollars for the unlawful knowingly and willfully digging up and removal or conveyance of any human body).

186. *Id.*

187. LASSEK, *supra* note 5, at 204–05.

188. See Tward, *supra* note 6 (citing D. GARETH JONES, SPEAKING FOR THE DEAD: CADAVERS IN BIOLOGY AND MEDICINE (2000)) (“At that time, the only legally available cadavers were those of executed criminals, provided under laws such as the Massachusetts’ *Body of Liberties*. The remainder of the demand was most likely met by the grave robbing activities of the anatomy instructors and their students.”).

189. Hartley, *supra* note 101 (citation omitted).

190. Hulkower *supra* note 6, at 124 (“Another gruesome and famous anecdote states that in 1878, the dead son of President William Henry Harrison was found hanging in the Ohio Medical College waiting for dissection. The visitors to the medical school who discovered the stolen body were the son of the deceased himself and his nephew.”).

recovered prior to dissection and Ohio passed anatomy laws in quick succession to this egregious event.¹⁹¹

These laws attempted to balance the financial burdens of medical school cadaver acquisitions with those that local governments were bearing in burying unclaimed bodies. By the mid-1800s at least twenty-eight states had anatomy laws prohibiting graverobbing, and additional states followed to various degrees in determining how and when corpses could be delivered to medical schools for medical anatomical research and teaching.

These reactionary dissection laws “were not aimed at meeting the educational needs of those in medical training. Rather, by preventing a formal burial, dissection was often also viewed as a form of supra-capital punishment.”¹⁹² The local “coroner was authorized to dispose of the bodies of men killed in dueling either by burial, . . . ‘or to deliver . . . to be dissected and anatomized.’”¹⁹³

The Crimes Act of 1790 codified the first federal crimes in America.¹⁹⁴ This Act defined federal criminal offenses and set forth applicable punishments. One such punishment was “the ability of a judge to order the dissection of the corpse of an executed murderer.” This punishment served two purposes. First, dissection was a feared deterrent which held more sway for many than the death penalty itself. Second, dissection provided cadavers for use by the medical profession.¹⁹⁵

Almost a century after the Crimes Act of 1790, Pennsylvania passed its Anatomical Act in 1867, Maryland passed the 1882 Anatomy Act.¹⁹⁶ The Tennessee Anatomical Act of 1899 legalized the sourcing of cadavers for medical schools from only a few sources, leading to large scale graverobbing in Nashville, Tennessee where four medical schools competed for cadaver resources.¹⁹⁷

As late as 1960, Jack Olender, author of *Donation of Dead Bodies and Parts Thereof for Medical Use*, opined that “[t]he legality of a donation of a dead body for anatomical study or dissection in a medical school must be apparent within a reasonable time after death to allow for its receipt before other, more conventional, disposition is made of it.”¹⁹⁸ At that time, medical research facilities relied largely

191. LASSEK, *supra* note 5, at 239–40.

192. Tward, *supra* note 6 (“For example, to discourage dueling, a 1784 Massachusetts law dictated that a slain duelist would be either buried in a public place without a coffin with a stake driven through his body or given to a surgeon for dissection.”).

193. HAGGARD, *supra* note 1, at 153.

194. Crimes Act of 1790, Ch.9, 1 Stat. 112.

195. Tward, *supra* note 6.

196. Clark, *supra* note 140. Other states enacted similar acts during the same period. For example, Pennsylvania enacted the Anatomy Act of 1883. *Id.*

197. Clark, *supra* note 140.

198. Jack Olender, *Donation of Dead Bodies and Parts Thereof for Medical Use*, 21 U. PITT. L. REV. 523 (1960).

upon state anatomy acts which "provide for a waiting period of at least twenty-four hours to permit relatives, and, in some states, friends to claim the body."¹⁹⁹ Thus, throughout the years, the anatomy acts are marked with an undeniable lack of consistency.

State donation acts or anatomical statutes also vary greatly in when, how, and whether a donor may even make an anatomical gift prior to death or whether only the family of the deceased possesses such power.²⁰⁰ Pennsylvania enacted the Humanity Gifts Registry in 1983 which governs state legislation for the receipt and distribution of cadavers to medical schools or doctors for scientific study or teaching.²⁰¹ The Registry requires that anyone who receives a cadaver must post a bond and use that body for the promotion of medical science within a state.²⁰² Section 1093 of the Humanity Gifts Registry grants identified proper recipients of donated bodies that do not have current supply needs the right to distribute the additional donated bodies to ". . . other schools and colleges giving courses in science in which the use of cadaveric material would be advantageous . . ."²⁰³ Any associated costs of preparing or shipping the bodies would be borne by the recipient.²⁰⁴ Pennsylvania law also makes it a criminal act to abuse a corpse,

199. *Id.* at 524 (citing *Admitting and Discharge*, CHART B, HOSPITAL LAW MANUAL (Health Law Center, University of Pittsburgh, 1959)).

200. *Holland v. Metalious*, 198 A.2d 654, 656 (1964). Upon the death of Grace Metalious her will stipulated that her body be given to Dartmouth Medical School for medical experimentation or Harvard Medical School. *Id.* Her family declined to follow her wishes and the medical schools did not accept her body. *Id.* The administrator of her estate sued to enforce her wishes and the Court noted that while New Hampshire law allowed for unclaimed bodies to be donated to medical schools and surgeons going back as far as 1869, ". . . existing 'anatomical' statutes, . . . are inadequate, and the need for appropriate statutory provision to implement the desires of the dying to aid the living is increasingly urgent." *Id.* at 686.

201. 35 PA. CONS. STAT. § 1091. Stating:

The professors, associate professors, and assistant professors in the department of anatomy, the head of the department of surgery, and the head of the department of pathology of each medical and dental school and each medical and dental college of this Commonwealth, which is now or may hereafter become incorporated, and the Secretary of Health of this Commonwealth shall be and hereby are constituted a board for the distribution and delivery of dead human bodies, hereinafter described, to and among such institutions and persons as, under the provisions of this act, are entitled thereto. . . The said board shall have full power to enter into contracts, make purchases, and perform such other acts as are necessary for the proper performance of its duties. All financial transactions of said board shall be audited annually by authority of, and by the Auditor General of the Commonwealth. A report of the activities of said board shall be made annually to the Secretary of Health of the Commonwealth, and to the deans of the medical and dental colleges represented in said board. The name of said board of distribution shall be—Humanity Gifts Registry.

Id.

202. *Id.*

203. 35 PA. CONS. STAT. § 1093.

204. *Id.*

meaning: “treat[ing] a corpse in a way that he knows would outrage ordinary family sensibilities.”²⁰⁵ Finding a consistent reading of allowing a donated body to be distributed elsewhere due to an abundant inventory without notifying family members or outraging their sensibilities by any normal societal measure, is problematic.

Today, many states continue to lack updated statutes and laws governing anatomical donations and the sale of body parts to and by body brokers. New York, Virginia, Oklahoma, and Florida “closely track donations and sales [but] the breadth of the market for body parts remains unknown.”²⁰⁶ Virginia and Florida have guidelines for requiring permission for importing bodies and body parts into those states.²⁰⁷ Oregon and Oklahoma have inspection and paperwork tracking regulations for body brokers.²⁰⁸

In other states, regulation does not appear to be a high priority. Massachusetts created a “carve-out” giving the Board of Health authority to donate cadavers of those who would otherwise be the responsibility of the Commonwealth to bury.²⁰⁹ New York is an example of a state that strictly regulates of the business of donated bodies. “New York requires licenses, inspections and annual statistical reports—for any broker, even those not based in the state, that ships body parts to customers in New York. State health officials travel around the country to inspect brokers.”²¹⁰

Arizona also passed legislation in 2016 that required body brokers to obtain a state license to operate within the state.²¹¹ Additionally, Arizona law requires body brokers hire a medical director who was also a licensed physician and undergo inspections and conform to regulatory requirements.²¹²

With inconsistent or unenforced regulations, body brokers work within a legal grey area. Even when they are caught committing acts of atrocity, the reward of a large fee for a cadaver may still outweigh the

205. 18 PA. CONS. STAT. § 5510.

206. Grow & Shiffman, *In the U.S. Market*, *supra* note 147. *See also* Shiffman & Grow, *How An American Company Made a Fortune*, *supra* note 151. Stating:

Reuters calculated that from 2011 through 2015, private brokers received at least 50,000 bodies and distributed more than 182,000 body parts. Permits from Florida and Virginia offer a glimpse of how some of those parts were used: A 2013 shipment to a Florida orthopedic training seminar included 27 shoulders. A 2015 shipment to a session on carpal tunnel syndrome in Virginia included five arms.

Id.

207. *Id.*

208. *Id.*

209. S. Act 21 (Mass. 1831).

210. Shiffman & Grow, *In A Warehouse of Horrors*, *supra* note at 10.

211. H.R. 2307, 52nd Leg., 2nd Reg. Sess. (Ariz. 2016).

212. *Id.*

risk of legal consequences. Sometimes, those consequences never come. “[I]n Honolulu, police were called twice to storage facilities leased by body broker, Bryan Avery, in 2011 and 2012. Each time, they found decomposing human remains. Both times, police concluded that Avery committed no crimes because no state law applied.”²¹³

The current landscape of state laws is haphazard, non-existent, or underemployed to regulate body brokers. The federal response is equally discouraging. Today, there are no federal laws that govern the sale of human bodies or parts thereof or medical or scientific advancement and inquiry.

The combination of reliance on legislation, anatomy acts, state laws and the common law has been less than uniform or clear on the issue of body donations. One solution to this problem is somewhat fulfilled through the adoption of the Uniform Anatomical Gift Act (the “UAGA”) which sets out guidelines for body donations and qualifies the exercise as a moral right.²¹⁴ Many states have adopted the UAGA and are also creating state-level administrative agencies and anatomy boards to oversee compliance with the UAGA.²¹⁵

B. UNIFORM ANATOMICAL GIFT ACT

Modern day organ donations are governed by the U.S. Department of Health and Human Services. Full body donations do not fall under this jurisdiction.

The body brokering business is distinct from organ transplantation, in which hearts, livers, eyes, and lungs are carefully removed from the dead to extend or enrich the lives of the living. It also is separate from the business of using skin, tendon, or bone from cadavers to repair joints or other parts of the body. Those practices are strictly regulated by U.S. law. In contrast, as noted above, the buying and selling of human bodies not used for transplant receives scant oversight. No federal law regulates body brokers . . . and no U.S. government agency monitors what happens to cadavers pledged for use in medical education and research.²¹⁶

213. Grow & Shiffman, *In the U.S. Market*, *supra* note 147.

214. Hulkower, *supra* note 6, at 25.

215. See, e.g., Maryland State Anatomy Board, *About the Board*, MD. DEP’T. OF HEALTH, <https://health.maryland.gov/anatomy/Pages/Frequently-Asked-Questions.aspx> (last visited Dec. 6, 2024). Stating:

Mission Statement: To manage with care and dignity the decedent affairs of all who have donated themselves to the Maryland State Anatomy Board and from this selfless act of generosity provide member medical schools and other public health education programs unparalleled resources to teach theory and techniques that promote medical-dental education, improve clinical-surgical practices, positively impact research and improve public health for generations to come.

Id.

216. Shiffman, *supra* note 10.

The only regulation that provides guidance and a framework for oversight is the Uniform Anatomical Gift Act (“UAGA”). As its name implies, the UAGA applies only to whole or partial living and cadaver gifts or donations.

In 1968, the UAGA was promulgated by the National Conference of Commissioners on Uniform State Laws (the “NCCUSL”)²¹⁷ with the purpose of creating uniform domestic guidelines and default rules for legal body and organ donations.²¹⁸ While each state also has authority to create state-wide laws or regulations that govern the donation of bodies and body parts, every U.S. jurisdiction has enacted some version of the original UAGA, the 1987 revised UAGA, or the latest 2006 revised UAGA.²¹⁹

The UAGA provides guidelines for donation procedures and permits adults to donate all or part of their bodies for various medical and scientific purposes and experimentation.²²⁰ The original Act failed to address whether unclaimed bodies could be donated for medical research, and it did not expressly ban the sale of organs; but it did grant easier and more timely access of donated bodies to donee institutions after a donor’s death.

In 1987, the UAGA was amended and subsequently adopted in twenty-six states. The major changes in the 1987 version created the right for coroners to remove organs without express consent²²¹ and expressly prohibited the sale of organs and body parts.²²² The 2006 revision failed to expressly discuss body broker regulation.²²³

However, the implementation of the right to remove organs from deceased without family permission has, to date, been used for transplantation purposes and not whole body donation to body brokers for profit.²²⁴

The UAGA creates a right for body and organ donation that “. . . was not clearly recognized in the common law. By creating this right,

217. Also known as the Uniform Law Commission.

218. REV. UNIF. ANATOMICAL GIFT ACT, §§ 22, 23 (2009). Furthermore, much has been written about the body acquisition practices in the United Kingdom. It is important to note that in 2004 the United Kingdom Parliament passed the Human Tissue Act that regulates body and tissue donations for various purposes including obtaining scientific or medical information . . . research. *Id.* The Act also requires licensure for those who receive and possess donated bodies and codifies criminal sanctions for sales of donated bodies and organs. *Id.*

219. By 1972, all fifty states and the District of Columbia adopted some form of the statute. *See Anatomical Gift Act*, UNIF. L. COMM’N. <https://www.uniformlaws.org/committees/community-home?communitykey=015e18ad-4806-4dff-b011-8e1ebc0d1d0f> (last visited Sep. 14, 2025).

220. REV. UNIF. ANATOMICAL GIFT ACT, *supra* note 218, § 1.

221. *Id.* § 4(a).

222. *Id.* § 10.

223. *Id.* *See also* Piscitello *supra* note 149, at 1034.

224. *See generally* Georgia Lions Eye Bank, Inc. v. Lavant, 335 S.E.2d 127 (Ga. 1985); State v. Powell, 497 So. 2d 1188 (Fla. 1986).

individuals became empowered to donate their parts or their loved one's parts to save or improve the lives of others."²²⁵ The gifts may be used for living donations (i.e., a donation for transplantation of an organ, tissue or eyes to a living recipient) or for donations to research, educational, and scientific purposes. The revised UAGA also included a section that stipulates that anyone found in violation of the UAGA has committed a felony and is subject to pay a fine up to \$50,000, be sentenced to five years in jail, or both.²²⁶

Generally speaking, the UAGA "governs how to and who can make, amend or revoke an anatomical gift."²²⁷ It also sets forth the "general type of gift use, such as transplant and clinical therapy and education and research."²²⁸

The UAGA also strives to respect the wishes of donors and ensures that unintended contracts are not made by requiring ". . . positive affirmation of intent to make a gift and prohibiting the sale and purchase of organs."²²⁹ "[A]n individual becomes a donor only if the donor or someone acting on the donor's behalf affirmatively makes an anatomical gift."²³⁰

Section 2 of the UAGA sets forth important definitions for the implementation and interpretation of the Act. "Anatomical gift' means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education."²³¹ While the Act includes comments sections which act as clarifying and reference material, no comment specifically discusses the definition of an organ procurement organization ("OPO"). The only interpretive assistance comes from the comment discussing the "Donor Registry" definition wherein the comment states, "[m]any states now have donor registries. Most of them are operated by private organizations, such as a procurement organization . . . while some are operated by the state."²³²

Section 5 of the UAGA addresses whole body donation before death.²³³ This process requires that the donor make the anatomical gift prior to death in one of three ways: by way of a will, during a terminal illness through the expression of their intent to at least two witnesses,

225. REV. UNIF. ANATOMICAL GIFT ACT, *supra* note 218.

226. *Id.* § Prefatory Note.

227. Rozina Sini, *A Body Donated to Science -But Used to Test Bombs*, BBC NEWS (August 6, 2019) <https://www.bbc.com/news/world-us-canada-49198405>.

228. *Id.*

229. REV. UNIF. ANATOMICAL GIFT ACT, *supra* note 218, § Prefatory Note.

230. *Id.* § Prefatory Note.

231. *Id.* § 1.

232. *Id.* § 2.

233. *Id.* § 5.

or through a donor registry.²³⁴ Furthermore, after death, the family members of the deceased may elect to donate their family member's body.²³⁵

While private, for-profit body brokers are not defined within or governed by the Act, Section 16, "Sales or Purchase of Parts Prohibited," does expressly prohibit the sale or purchase of donated body parts "for transplantation or therapy."²³⁶ However, the UAGA makes no mention of the sale of donated bodies or body parts for educational, medical, research, or scientific use. The comments to Section 16 support the interpretation that the section only applies to donations for transplantation and therapy, leaving the issue of the sale for other purposes unregulated under the UAGA.²³⁷

Furthermore, Section 16(b) of the UAGA states, "A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part."²³⁸ Thus, the UAGA fails to specifically address the propriety of whole-body donations for medical or scientific advancement. Experts interpreting the entirety of the UAGA agree that the body broker industry falls through a loophole within the Act that is perfectly legal.²³⁹ Additionally, body brokers are well aware of the lax provisions relating to profiting on whole body donations, and they often rely on Section 16(b) which allows them to recoup their costs for transportation, preservation, and disposal of the bodies they have acquired.²⁴⁰

The UAGA operates within a vacuum of federal legislation to regulate or police the sale of bodies for medical or scientific purposes. However, this does not mean that no regulation has been considered on the federal level; it simply means that current regulation occurs at the state level, if at all.

234. *Id.*

235. *Id.* § 9.

236. *Id.* § 16.

237. *Id.* § 17. *See also* *Caminetti v. United States*, 242 U.S. 480 (1917). Stating:

Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion . . . statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them.

Id.

238. REV. UNIF. ANATOMICAL GIFT ACT, *supra* note 218, § 16.

239. Piscitello, *supra* note 149, at 1041.

240. REV. UNIF. ANATOMICAL GIFT ACT, *supra* note 218, § 16.

IV. PROPOSED REGULATION AND OVERSIGHT SOLUTIONS FOR BODY BROKERS

A. PROPOSED FEDERAL REGULATION

In 2004, a federal health panel sought U.S. governmental intervention to regulate the body broker industry. “That panel asked the U.S. government to apply the same oversights [sic] to the body parts trade that governs organ transplantation. The panel’s efforts resulted in nothing. How and whether or not a state regulates the industry is left up to each individual state.”²⁴¹

Almost anyone, even those without medical or mortuary training, can sell a donated body. In fact, bodies can be bought and sold many times over. They can be rented and returned and re-rented. They can even be sold across state lines.

As of today, body brokers are not required to register in any national or federal database or registry. No national uniform oversight framework exists to police the actions of body brokers.

The U.S. House of Representatives proposed House Bill 1835 during the 116th Congressional Session to amend the Public Health Services Act by creating regulatory oversight for body brokers or anyone transferring or receiving donated human bodies for medical, scientific, or educational purposes.²⁴² The proposed bill, which would have created the Consensual Donation and Research Integrity Act of 2019, narrowly attempted to provide legal oversight to an otherwise largely unregulated industry by limiting the use of donated bodies, requiring applications for registration, and giving the Secretary of the Public Health Services Act, who is the head of the U.S. Department of Health and Human Services inspection rights.²⁴³ The bill also imposed record-keeping requirements to include the names of donors, descriptions of what is donated, the identities of brokers, and those to whom they are transferred.²⁴⁴ The Bill requires transparency and disclosure of the final disposition of the body²⁴⁵ in order to prevent non-scientific or non-medical uses of donated bodies and sanctions for violations, such as revocation of the license and fines. Bill 1835 did not progress into the above-mentioned Act during the Congressional term. This Bill would require legislation overseeing and “person who acquires or transfers or affecting interstate commerce a human body or human body parts

241. MISSING IN THE CAROLINAS: *The Business of Body Brokers* (Spotify, Feb. 2, 2024).

242. Consensual Donation and Rsch. Integrity Act of 2019, H.R. 1835, 116th Cong. (2019).

243. *Id.*

244. *Id.* See also Piscitello, *supra* note 149, at 1033.

245. Consensual Donation and Rsch. Integrity Act of 2019, *supra* note 242.

for education, research, or advancement of medical, dental, mortuary science (and not for use in human transplantation).²⁴⁶

House Bill 1835 was essentially reintroduced on June 22, 2023, as House Bill 4275—once again with the possibility of becoming the Consensual Donation and Research Integrity Act of 2023.²⁴⁷

The same bill text was introduced simultaneously in 2023 in the U.S. Senate as Bill 2191 which ominously notes:

In almost every state, it is legal for anyone, even if they do not have training, to sell the human remains of adults. A body broker can sell a donated human body for \$5,000 - \$10,000 or more. Bodies and body parts can be repeatedly sold and leased across state lines. As a result, it can be difficult to track what becomes of donors' bodies or body parts, ensure they are handled with dignity, and returned to their loved ones after cremation. The lucrative business model for body brokers hinges on access to a large supply of free bodies, which often come from the poor and elderly. In return for a body, brokers typically offer free removal and cremation.²⁴⁸

Section 2 (a)(1) of the Senate Bill sets forth, “[a] person who acquires human bodies and sells for profit a whole human body or human body part in or affecting interstate commerce shall register with the Secretary at such time and in such manner as the Secretary may require.”²⁴⁹ The Senate Bill was subsequently referred to the Committee on Health, Education, Labor and Pensions.²⁵⁰ The 2023 proposed Senate Bill strengthens the language of the eventual Act, referring explicitly to those who, “sell[] for profit a whole human body or human body part.”²⁵¹ The intent of the 2023 proposed Bill is to regulate body brokers, and the unambiguous language is an acknowledgment that human bodies and body parts are being sold as well as donated. If the Bill is passed, the resulting Act will require body brokers to register with the Health and Human Services Department, which in turn gives the Agency the obligation and right to inspect body broker facilities, documentation, and business practices. It would also set out penalties for any violations discovered. To date, no further action has been taken by the subcommittee or general legislative bodies.

246. *Id.* at 2.

247. Consensual Donation and Rsch Integrity Act of 2023, HR 4275, 118th Cong. (2023).

248. *Protecting Dignity, Providing Peace of Mind Consensual Donation and Research Integrity Act*, NAT'L FUNERAL DIRS. ASS'N, <https://nfda.org/advocacy/current-issues/body-broker-bill> (last visited December 6, 2024). *See also* Consensual Donation and Rsch Integrity Act of 2023 S. 2191, 118th Cong. (2023).

249. Consensual Donation and Rsch Integrity Act of 2023 S. 2191, 118th Cong. (2023).

250. *Id.*

251. *Id.*

Congress has also found widespread support for these Bills from related industries such as the National Funeral Directors Association, which noted the lack of state and federal oversight of body brokers and body broker specific regulation which allows “anyone, regardless of expertise, [to] set up a facility and dissect and sell or lease human bodies and body parts to anyone. The money that can be made by body brokers is significant. . . .”²⁵²

Furthermore, “[t]here are 55 OPOs, each mandated by federal law to perform a life-saving mission in their assigned donation service area.”²⁵³ Congress may use the existing governance, regulation, and supervision processes for OPOs as a template to create, at the least, the same levels of oversight and regulation for body brokers. Additionally, the American Association of Tissue Banks is a nationwide, non-governmental association that provides registration and accreditation opportunities to transplant and non-transplant tissue banks to ensure minimum levels of universal care, record-keeping, and medical and ethical standards.²⁵⁴ However, because the American Association of Tissue Banks is a private entity, body brokers are free to opt out of registering.

If Congress mobilizes and prioritizes these Bills, then a regulatory structure for the supervision of body brokers may also begin, in earnest, at the state level with registration and qualification requirements. As of today, neither the 2019 nor the 2023 House or Senate Bills have become Acts because they have not made it out of their respective subcommittees. Either pressure must be placed on Congress to act more determinatively and expeditiously, or alternative avenues for regulation of body brokers must be explored.

252. *Congress takes Significant Step to Regulate Body Brokers*, NAT'L FUNERAL DIRS. ASS'N, (June 23, 2022) <https://nfda.org/news/media-center/nfda-news-releases/id/7475/congress-takes-significant-step-to-regulate-body-brokers>.

253. Organ Procurement Organizations, UNITED NETWORK FOR ORGAN SHARING, <https://unos.org/transplant/opus-increasing-organ-donation/>, (last visited June 9, 2024). See generally Nat'l Organ Transplant Act, Pub. L. No. 98-507, 98 Stat. 2339 (1984). See also Thomas Mone & Gabriel Danovitch, *US Organ Procurement Organization Donation Principles, Laws, Practices. Policy Forum Editorial*, 76 AM. J. KIDNEY DISEASES 735, 737 (2020). Stating:

US OPOs provide donor families with aftercare services, a practice that is designed to refer donor families to community resources, as well as professional grief and family support counseling to assist in grief recovery. Donor remembrance ceremonies, support groups, and opportunities to become volunteer ambassadors provide donor families the emotional support of sharing experiences with other donor families and the opportunity to share their personal stories of gratitude at the chance to leave a legacy of life from their loved one's death. In doing so, they advance the public education and donation promotion mission of the OPO.

Id.

254. See generally AM. ASS'N OF TISSUE BANKS, <https://www.aatb.org/>, (last visited June 22, 2025).

B. FURTHER AMENDMENT TO THE UAGA

Not only does the UAGA fail to adequately address the current state of commoditization of donated bodies through intermediary body brokers, but the foundations of jurisprudence also require a constant critical reading of laws and regulations to ensure adequate conformance with social and legal progress. From a purely public policy point of view, the UAGA should be updated to address and curtail the actions of body brokers and to ensure private and public respect and dignity are afforded to bodies donated or sold to brokers.

Revisions to the UAGA or new federal legislation must reign in body broker activities by penalizing gruesome and disturbing events, such as the desecration of Doris Stauffer's and David Saunders' bodies for monstrous, profit-based purposes. These are merely two examples of numerous abuses²⁵⁵ at the hands of body brokers and reflect the exigent need to protect those who act out of altruism from those who act out of greed and nefarious objectives. Such protection is the very cornerstone of public policy. These known cases should be impetus enough to instigate a review for improvement of the UAGA. They should also be a siren to the ears of the NCCUSL to investigate how many other acts have gone unreported to date. Without any modernization of the UAGA or the enactment of federal legislation, regulating body brokers through private law is the last opportunity for relief for the families of the deceased whose wishes have not been respected.

The idea of increased regulation and transparency is not without merit or historical success. Section 11 of the UAGA requires identification of how a donation is used.²⁵⁶ A simple redrafting or strengthening of this provision is a logical starting place. Here, the UAGA could stipulate that any body acquired by a body broker must be transparently disclosed and supported with detailed information on the location, use, purpose, and disposal of the donated body.

Another relatively simple amendment to the UAGA is a revisitation to Section 17, which sets forth prohibited acts such as the falsification of documents for donation gifts.²⁵⁷ This Section creates both a civil and criminal penalty for violation. Taking into consideration that the UAGA has been amended several times since its original adoption, it is clear the NCCUSL is aware of the need for the UAGA to keep pace with the evolution of how society responds to the demand for donated bodies. Additionally, these amendments show a willingness to improve the Act, in light of the lack of alternative, universal protection at the federal level.

255. See generally Shiffman, *supra* note 10.

256. REV. UNIF. ANATOMICAL GIFT ACT, *supra* note 218, § 11.

257. REV. UNIF. ANATOMICAL GIFT ACT, *supra* note 218, § 17.

Additionally, at least one modern body broker, Science Care, has already sought and received accreditation from the American Association of Tissue Banks for donated body parts for non-transplantation.²⁵⁸ While not solving the problem of body broker regulation, if accreditation along with regulation, supervision, and transparency can be required for non-transplant donations, it is not unrealistic that a similar process can be implemented for whole body donations.

C. AMENDMENT TO STATE ANATOMICAL GIFT LAWS

Most current state laws relating to cadavers are limited to the donation process. The laws fail to address what happens to a cadaver after its donation. States like Maryland, have “anatomy boards” that, [govern and] manage with care and dignity the decedent affairs of all who have donated themselves to the Maryland State Anatomy Board and from this selfless act of generosity provide member medical schools and other public health education programs unparalleled resources to teach theory and techniques that promote medical-dental education, improve clinical-surgical practices, positively impact research and improve public health for generations to come.²⁵⁹

Many state anatomy boards have a history of underfunding and confusing mandates that makes them largely ineffective. The National Survey of State Laws is a database that includes information on how each state deals with unclaimed bodies.²⁶⁰

If federal legislation is created, many of the state-level problems may be resolved through implementation of the federal act. Such legislation also would have the collateral effect of creating a uniform blueprint for states to create their own anatomy boards. This leads to consistency, predictability, and diminished problems with enforcement when issues or infractions arise.

Lacking a federal act, each state should take an inventory of its legislation and anatomy board administrative agencies, or lack thereof. Furthermore, and most importantly, state budgets must be amended to finance the implementation of regulatory bodies to include effective inspection, registration, and regulation of body brokers. Each state must also determine how they will police the body broker process and enforce the penalties for violations—will they be criminal or civil in nature?

258. See *Compliance and Safety*, SCI. CARE, <https://www.sciencecare.com/medical-researchers/compliance-safety>, (last visited June 22, 2025).

259. See generally Maryland State Anatomy Board, *About the Board*, MD. DEP'T. OF HEALTH, <https://health.maryland.gov/anatomy/Pages/About-the-Board.aspx>, (last visited June 22, 2025).

260. See generally RICHARD LEITER, NAT'L SURV. OF STATE L. (9th ed. 2022).

The states are not totally without resources or private sector assistance in this seemingly Herculean, yet necessary, effort. The American Association of Anatomists already provides proposed “policy [guidelines] for how bodies should be handled when they are donated. For instance, the policy states that donations must follow all state and local laws, and donation literature should describe all possible uses of donated bodies at that institution.”²⁶¹ Coordination between state law, new federal legislation, and experts from the private sector easily allows for streamlining the process of creation process.

D. CONTRACTUAL ENFORCEMENT

Given the nature of the industry, acquisitions and sales are currently being controlled through contracts formed between body brokers and their medical or scientific customers. From the outside, it also appears that body brokers are coming dangerously close to forming contracts with their donors. If these relationships are contractual in nature, contract law should logically govern.

A contract is a legally binding and enforceable arrangement voluntarily entered into between two or more parties. “It comes from two Latin words, ‘con’ and ‘trahere,’ to draw together, where the minds of two persons meet, come together, with regard to the same subject-matter, at the same time, and for valuable consideration . . .”²⁶² Contracts may be an agreement, a promise to do or refrain from doing, something, or an exchange of promises.²⁶³ They are legally enforceable because they are recognized under the law as a vehicle that grants and preserves rights and benefits through the creation of a relationship.

Contracts exist on a continuum. They govern an executory relationship but are performed according to what the parties agreed upon, either expressly or through conduct, and subsequently memorialized. As a legally enforceable instrument, a contract creates a set of default

261. Piscitello, *supra* note 149, at 1044 (citations omitted). See also Lori Cuthbert, *How to Donate Your Body to Science*, NAT'L GEOGRAPHIC (Dec. 18, 2018), <https://www.nationalgeographic.com/science/2018/12/how-to-donate-your-bodyto-science-cadavers-medicine>; *Organ Donation vs. Whole Body Donation: Can You Do Both?*, SCI. CARE (Oct. 23, 2014), <https://www.sciencecare.com/blog/organ-donation-vs-whole-body-donationcan-you-do-both> (stating donation literature should describe all possible uses of donated bodies at that institution).

262. *Garrison v. McGimpsey*, 122 S.E. 754 (N.C. 1924).

263. *People v. Pinto*, 387 N.Y.S.2d. 385 (1976). Stating:

What is a contract? A contract is an agreement in which a party undertakes to do or not to do, a particular thing. No contract can be demonstrated to exist without the indispensable essentials of an agreement or meeting of the minds of the contracting parties and a consideration moving to the person against whom enforcement of the asserted agreement is sought.

Id. (citing 9 N.Y. Jur., Constitutional Law Section 260; 9 N.Y. Jur., Contracts Section 1). See also RESTATEMENT (SECOND) OF CONTRACTS §1 (Am. Law Inst. 1981).

rules for parties, and it creates social incentives. These incentives include: the limitation of power imbalances; the creation of acceptable behavioral norms to limit “strategic” behavior; and the creation of precedent establishes clear and concise agreements and performance obligations.

There is anecdotal evidence that contracts arise within the death industry. Funeral homes enter contracts for the performance of services and provision of goods for funerals. These contracts are entered into between the family of the deceased and the funeral home. The Federal Trade Commission (the “FTC”) and Funeral Industry Practices Rule (“Funeral Rules”).²⁶⁴ “The FTC enacted the Funeral Rule in 1984 to curtail systematic abusive practices within the funeral industry.”²⁶⁵ There is no question that the Funeral Rule is important in offering a consumer some form of protection.

While the FTC Funeral Rule and contracts exist for services and goods necessitated by the funeral process, their success seems to be limited. Only six actions were filed by the FTC against funeral homes for violations of their contractual agreements and regulatory obligations between 2000 and 2012. Due to litigation diversion rules under the Federal Rules Offender Program, the eventual decisions are confidential.²⁶⁶ The legal significance of these rules reflect that our legislation and federal agencies already consider funeral arrangements a consumer contract. If a contract is formed for a funeral service or donated body, then upon proof of a breach of the contract, contractual remedies would be available to the non-breaching party.

Furthermore, “the sale of human organs has been practiced for centuries. Since the common law did not permit disposition of the decedent’s body through will, there existed a flourishing black market for human cadavers used in medical school dissection classes.”²⁶⁷

If the arrangements between the body brokers and the families of the deceased were deemed to be contractual in nature, then upon the misuse of the donated body, the family members have the right to sue for breach of contract. While much has been written about the difficulty of discovering the misuse of the cadaver, this issue could be resolved or clarified through an identifiable series of obligations that extend past the acquisition of the donor body, such as requiring clear

264. *See generally Complying with the Funeral Rule*, FTC, <https://www.ftc.gov/business-guidance/resources/complying-funeral-rule>, (last visited June 22, 2025). *See also* Haneman, *supra* note 156, at 407.

265. *Complying with the Funeral Rule*, FTC, <https://www.ftc.gov/business-guidance/resources/complying-funeral-rule>, (last visited June 22, 2025).

266. Haneman, *supra* note 156, at 409–10.

267. Donald R. McNeil Jr., *The Constitutionality of Presumed Consent for Organ Donation*, 9 *HAMLIN J. PUB. L. & POL’Y* 343, 352 (1989).

and concise reporting and transparency of party obligations during the “performance” phase of the contract execution.²⁶⁸

Building on the position that bodies granted to body brokers could be qualified as contracts, minimum contract requirements in addition to valid subject matter must be present. Generally speaking, a valid contract is formed when two or more parties meet and express mutual assent manifested through an offer and acceptance. This process reflects intent to be bound by the underlying agreement. When consideration is added to mutual assent, a valid contract is formed.²⁶⁹ Regardless of whether the common law or Uniform Commercial Code governs the contract, the minimum requirements that must be clear and definite are the parties, subject matter, and intent to be bound.²⁷⁰

1. Offer

A valid offer is made when the terms of the offer are communicated in a clear and definite manner by the offeror and it is clear that the offeree’s acceptance is invited.²⁷¹ Clear and definite terms are an essential characteristic of a valid offer.²⁷² While the law does not require perfect clarity of all possible outcomes of an agreement, courts have held that offers comprised of ambiguous material terms are unenforceable if the ambiguity could reasonably affect the offeree’s decision to enter into the contract.²⁷³ Additionally, courts have held that in order for an offer to be valid, the offeror must manifest an intent to be bound by the terms he has proposed.²⁷⁴ This intent to be bound by the terms is measured objectively by the offeror’s outward expression at the time the offer was made to the offeree.²⁷⁵ In many negotiations that result in a contract, the identities of the offeror and offeree are not always clear, nor do they stay the same.

Consider the following hypothetical scenario. A body broker could offer the family of a deceased loved one the opportunity for free

268. Schiefer, *supra* note 160, at 386 (“Once a body is donated to a body broker, the family has no prescribed method to discover how the donation was eventually used.”). See also Piscitello, *supra* note 149, at 1067–1068.

269. RESTATEMENT (SECOND) OF CONTRACTS §§ 22, 71.

270. RESTATEMENT (SECOND) OF CONTRACTS §§ 24, 33; UNIFORM COMMERCIAL CODE § 2-204.

271. *Minkoff v. Hicks*, No. 05-10-00606-CV, 2010 Tex. App. LEXIS 8444, at *6 (Tex. App. Oct. 21, 2010) (“To prove a valid offer, a party must show (1) the offeror intended to make an offer, (2) the terms of the offer were clear and definite, and (3) the offeror communicated the essential terms to the offeree.”).

272. *Id.*

273. *Five for Entm’t S.A. v. Rodriguez*, No. 11-24142-CIV, 2017 U.S. Dist. LEXIS 216411, at *18–19 (S.D. Fla. Mar. 30, 2017).

274. *Neenan v. United States*, 112 Fed. Cl. 325, 329 (2013) (“An offer does not exist unless the offeror manifests an intent to be bound.”).

275. *First Nat’l Exch. Bank v. Roanoke Oil Co.*, 169 Va. 99, 114, 192 S.E. 764, 770 (1937) (“We must look to the outward expression of a person as manifesting his intention rather than to his secret and unexpressed intention.”).

cremation in exchange for possession and use of the body. This makes the body broker the “offeror” and the family the “offeree.” During this hypothetical negotiation, if a grieving family receives this offer and then rejects it by making a counteroffer, then the family members have become the offerors. Such a counteroffer may look like the decedent’s family telling the broker: we will grant you possession of the cadaver if and when you pay for the cremation. You must also provide us with a detailed explanation of how the body was used and return the cremated remains to us after a mutually agreed upon amount of time.

While an exchange such as this seems characteristic of usual contract negotiation, a learned assumption can be made—the professional body broker possesses superior knowledge of the process and likely superior bargaining power. Thus, it is safe to assume the professional broker will often be identified as the offeror in the contractual relationship.

2. *Acceptance*

Once a valid offer has been extended, the formation of a valid contract is dependent upon valid acceptance. The courts will look to determine whether the offer was validly accepted by the offeree in the event of a dispute. Valid acceptance of an offer is defined as a manifestation of assent to the terms proposed by the offeror in a manner that is invited or required by the extended offer.²⁷⁶ Similar to the requirements for proposing an offer, the acceptance of an offer is measured objectively by the outward acts and conduct expressed by the accepting party at the time of the offer.

Returning to the original hypothetical from above, negotiation between a body broker and a decedent’s family, a valid acceptance is created in the offeree’s assent to the terms of the offer, by promising to deliver the donated body.²⁷⁷

3. *Consideration*

Valid consideration is often described as a bargained-for exchange. Some refer to this colloquially as a *quid pro quo*. Consideration is a two-way street, both parties must both benefit from the agreement and incur some detriment. Body brokers often tell donors, “they will contribute to science and receive a free cremation.”²⁷⁸ Alternatively, the body brokers “offer grieving families a way to eliminate expensive

276. RESTATEMENT (SECOND) OF CONTRACTS § 50 (“Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.”).

277. RESTATEMENT (SECOND) OF CONTRACTS §§ 50–70.

278. See, e.g., Shiffman & Grow, *How An American Company Made a Fortune*, *supra* note 151.

funeral costs: free cremation in exchange for donating a loved one's body to 'advance medical studies.'²⁷⁹

Acknowledging that consideration is a bargained-for exchange, then the granting of possession of the deceased's cadaver in exchange for a free cremation rings of the contractual element of consideration.

Furthermore, taking into account that many of the grieving families that body brokers target are poor, their incentive to enter into the exchange is even greater when faced with large funeral and burial costs. Thus, the value of the exchange, is both monetary, the saving of the expense of the funeral or cremation, and altruistic. The deceased's family may not have financial resources to make sure their loved ones are taken care of after death, but the families feel a sense of peace believing that the bodies would be advancing medical and scientific research. The belief that the body may make a real contribution to future medicine and possibly ease the suffering of future patients, and give comfort to grieving families left behind. The offer from a body broker is extremely enticing.

[The body broker] industry's business model hinges on access to a large supply of free bodies, which often come from the poor in return for a body, brokers typically cremate a portion of the donor at no charge. By offering free cremation, some death care industry veterans say brokers appeal to low-income families at their most vulnerable. Many have drained their savings paying for a loved one's medical treatment and can't afford a traditional funeral.²⁸⁰

Therefore, free cremation of a body is an exchange of value that should qualify as consideration.

4. *Are Human Bodies Res Nullius?*

In order to be able to create an enforceable contract, the law requires that the subject matter have legal status, i.e., it is real property, personal property, or intellectual property. Property can be transferred, sold, leased, donated, or otherwise monetized. A body must fall into some type of category of property; it cannot be qualified as *res nullius*.²⁸¹

279. See, e.g., *Id.*

280. Grow & Shiffman, *In the U.S. Market*, *supra* note 147.

281. *Res Nullius*, U.S. Legal, <https://definitions.uslegal.com/r/res-nullius/> (last visited July 15, 2024). Stating:

Res nullius literally means nobody's property or a thing which has no owner. If the owner of a property abandons his/her property then that property is called *res nullius*. Such property is as much *res nullius* as a property that is ownerless. *Res nullius* is ownerless property and it can be owned by any person.

Id.

Contracts typically govern the legal relationships formed through service agreements, personal property agreements, intellectual property monetization, or real property sales or leases. Building off of this over-simplification, a donated body must either fall under one of these property categories or a newly created property category so that it can be contracted for. If a body can be classified as a type of property, then a discussion of the elements of a valid contract can proceed; however, without a valid property interest being transferred, any contract law discussion becomes moot. The qualification of a body and the debate over its possible ownership and use stretches back millennia and is fraught with real and philosophical quandaries.

a. Canonical or Ecclesiastical Recognition of Bodies

Early determinations on the ownership of corpses was governed by canonical law, which is the law that arises from religious authority and is broadly used as a term to describe ecclesiastical law arising from early Christianity in Eastern and Western civilizations.²⁸² Religious people believed that anatomical dissection was a desecration of the body and would deny future resurrection.²⁸³

The body occupies a special place in canon law, for it is not only the body of a dead person, who continues, in spite of the death of the body, to retain their soul and spirit, but also it is that in which the person will inevitably be resurrected at the moment of the Last Judgment Therefore, from canon law's point of view and morals, ownership in the corpse would be utterly absurd: why ownership—which grants the power to possess, use, dispose of, and exclude—would be conferred in relation to a corpse . . . so that on the day of the universal Resurrection a person will be dressed in their flesh and blood.²⁸⁴

In 1788, the King's Bench decided *R. v. Lynn*, which involved an individual removing a body from a buried coffin for the purpose of selling it for dissection. The defense cited Lord Coke: “[i]t is to be observed that in every sepulchre, that hath a monument, two things are to be considered, viz., the monument, and the sepulture or burial of the dead; the burial of the cadaver is *nullius in bonis* and belongs to ecclesiastical cognizance.”²⁸⁵ The Court then noted that an action

282. Peter J. Huizing & Ladislav M. Orsy, *Canon Law*, BRITANNICA (May 16, 2024), <https://www.britannica.com/topic/canon-law>. See generally EDWARD COKE THE THIRD PART OF THE INSTITUTES OF THE LAWS OF ENGLAND: CONCERNING HIGH TREASON, AND OTHER PLEAS OF THE CROWN, AND CRIMINAL CAUSES (1644). See generally Paul M. Quay, *Utilizing the Bodies of the Dead*, 28 ST. LOUIS U. L.J. 889 (1984).

283. Hulkower, *supra* note 6, at 23–26.

284. Shevelev & Shevelev, *supra* note 53, at 1368–69.

285. *R. v. Lynn*, 2 T.R. 733, 734 (1788). See generally EDWARD COKE, THE THIRD PART OF THE INSTITUTES OF THE LAWS OF ENGLAND CONCERNING HIGH TREASON, AND OTHER PLEAS OF THE CROWN AND CRIMINAL CAUSES (4th ed. 1669).

in common law would arise only for the defacement of the burial monument.²⁸⁶ In layman's terms, Lord Coke stated that disturbing the grave was an issue for the ecclesiastical courts because there was no property interest in a dead body; the only crime was ecclesiastical, i.e., the desecration of the grave, which necessitated a fine.²⁸⁷

During the English Victorian age, burial rights and family squabbles appeared often in the courts. In the 1614 *Haynes' Case*, the court stated that “[a] corpse could not own property. Yet this unremarkable legal principle was misreported . . . by inverting the two nouns and omitting the qualifying verb so it read ‘there ca be no property in a corpse’” which laid the groundwork for the canonical justification for the no-property rule.²⁸⁸

In the American 1905 case, *Louisville & N.R. Co. v. Wilson*, the Court took great pains to explain the history of the jurisdiction of the ecclesiastical courts in England.²⁸⁹ The Court also cited the “an elaborate learned report” from Hon. Samuel B. Ruggles who noted:

[t]he power thus exercised by the early ecclesiastical tribunals was not spiritual in its nature, but merely temporal and juridical. It was a legal, secular authority, which they had gradually abstracted from the ancient civil courts, to which it had originally belonged; and that authority . . . must now be vested in its secular courts of justice.²⁹⁰

With this shift to legal, secular authorities, the Courts began to consider other property classifications of a deceased's body.

b. No-Property Rule v. Quasi-Property Rule²⁹¹

While Sir William Blackstone extolled the English principle that a corpse has no owner and no one be charged as a crime if it is stolen; if a deceased's “graveclothes” were taken, a felony could be charged.²⁹² Graverobbers could not be charged with a crime by merely possessing

286. *R. v. Lynn*, 2 T.R. 733, 734 (1788).

287. BAILEY, *supra* note 7, at 90–91.

288. Andrew Campbell-Tiech, *A Corpse in Law*, 117 BRITISH J. OF HAEMATOLOGY, 809, 809–811 (2002).

289. *Louisville & N.R. Co. v. Wilson*, 51 S.E.2d 25 (Ga. 1905).

290. *Id.* See also “The 2Point Way” – *The Right of Sepulture (Call Before You Dig)*, 2Point, Inc. (July 16, 2023) <https://www.2point.net/post/the-2point-way-the-right-of-sepulture-call-before-you-dig> (“ . . . Samuel B. Ruggles a respected New York Attorney who was tasked by the New York court system to provide an opinion on the rights associated with burial sites.”). See generally LAW OF BURIAL, REPORT TO THE SUPREME COURT OF THE STATE OF NEW YORK, Weed, Parsons & Company Printers 1858 (containing a copy of Samuel Ruggles' opinion).

291. This Article does not address the sale or theft of cell tissue for medical experimentation; see generally Stephen Ashley Mortinger, *Spleen for Sale: Moore v. Regents of the University of California and the Right to Sell Parts of Your Body*, 51 OHIO STATE L. J. 499 (1990).

292. BLACKSTONE, *supra* note 62.

a deceased body as “no one could technically own a body, and corpses weren’t considered property.”²⁹³ Thus, while the act of robbing the grave was illegal the possession of the deceased was not. Therefore, “[t]he ‘resurrectionists’ were careful to avoid taking the clothing of the corpse, for that would have been theft.”²⁹⁴

However, several years earlier in the previously mentioned English *Haynes* Case of 1614, Mr. William Haynes was charged with stealing burial shrouds from three buried bodies, in other words, he did not steal the bodies he simply stole property belonging to the deceased occupants of the graves.²⁹⁵ In this case, the court noted that a corpse could not own property.²⁹⁶ “Yet this unremarkable legal principle was misreported in two early textbooks . . . by inverting the two nouns and omitting the qualifying verb, so it read ‘there can be no property in a corpse.’”²⁹⁷ Sir William Coke agreed with this misinterpretation which formed the basis of his opinion, “[i]f there can be no property in a corpse, neither can there be in part of a corpse.”²⁹⁸

In 1857, a young man dug up his mother’s gravesite to bury his recently deceased father alongside her. He was ultimately convicted of trespass and misstatement because he entered the burial grounds not for the purpose of disturbing his mother’s body, but because the law continued to “recognize [sic] no property in a corpse.”²⁹⁹

In 1875, Henry Crookenden died in England after had expressed his intentions to be cremated.³⁰⁰ After his death, his wife and sons buried him instead. His daughter then took steps to have him disinterred and cremated, per his written wishes.³⁰¹ The primary issue of the case turned on whether Mr. Crookenden’s daughter had been totally honest when seeking permission to disinter her father—however, the corollary issue of the nature of disposal a dead body was definitively stated by the Court when it held, “[A] man cannot by will dispose of his dead body. If there can be no property in a dead body it is impossible that by will or any other instrument a body can be disposed of.”³⁰²

A similar case was brought in the United States. One of the first American cases to address the doctrine of no-property was *Pierce v. Properties of Swan Point Cemetery*.³⁰³ This 1872 case arose from a

293. KEAN, *supra* note 1, at 68.

294. Haggard, *supra* note 1, at 154–55.

295. Campbell-Tiech, *supra* note 288, at 809.

296. *Id.*

297. *Id.*

298. *Id.*

299. R. v. Sharpe, 169 ER 959 (1856).

300. Williams v. Williams, 20 Ch. D. 659 (1882).

301. Williams, 20 Ch. D. at 659.

302. *Id.*

303. *Pierce v. Properties of Swan Point Cemetery*, 10 R.I. 227, 14 Am.Rep.667 (1827).

family dispute when the daughter of the deceased, Whiting Metcalf, objected to his widow disinterring his body after thirteen years and moving it to a different family burial plot.³⁰⁴ The widow claimed she had the right to move his body. His only child disagreed and brought a claim against Mrs. Metcalf in court. The court, before deciding on the merits, and noting it was a case of first impression, followed the no-property rule and cited Lord Coke and determined that the widow of Mr. Metcalf “had no right of property or of *quasi*-property in, or control over, the remains of her dead husband.”³⁰⁵ The court then reiterated its holding, taking into consideration this was possibly a case of first impression in the United States, “[t]hat there is no right or property in a dead body, using the word in its ordinary sense, may well be admitted.”³⁰⁶ However, many scholars believe that this case is the first American case to coin the term quasi-property.³⁰⁷

This opened the door to the American courts’ wrestling with bestowing cadavers with the status of quasi-property.³⁰⁸ “Quasi-property is an American common law conception composed of limited interests that mimic some of the functions of property but does not formally qualify as property.”³⁰⁹

In 1914 in North Carolina, a mother sued the railway for the negligent mutilation of her son, who was killed by a train.³¹⁰ While the Court followed the common law rule that “no property interest is vested in a deceased body,” the Court noted that the decedent’s mother was not suing on the basis of her property, i.e. her deceased son’s body.³¹¹ Most significantly, the Court stated, “[w]hile the common law does not recognize dead bodies as property, the courts of America and other Christian and civilized countries have held that they are quasi property, and that any mutilation thereof is actionable.”³¹²

In 1936, when a cemetery prepared the wrong gravesite for the deceased and subsequently buried him in the proper place but outside of the presence of the family, the family members sued for infringement of the right to attend the burial service as agreed with the cemetery. The Court relied upon and recognized a quasi-property right in human remains.³¹³

304. *Pierce*, 10 R.I. at 228.

305. *Id.* at 234.

306. *Id.* at 237.

307. Shevelev & Shevelev, *supra* note 53, at 1398.

308. Alix Rogers, *Unearthing the Origins of Quasi-Property Status*, 72 HASTINGS L.J. 291 (2020).

309. *Id.* at 295.

310. *Floyd v. Atlantic Coast Line Ry. Co.*, 83 S.E. 12 (N.C. 1914).

311. *Floyd*, 83 S.E. at 13.

312. *Id.* (citing *Larson v. Chase*, 47 Minn. 307, 50 N.W.238 (1891)).

313. *Spiegel v. Evergreen Cemetery Co.*, 117 N.J.L. 90, 186 A. 585, 584 (N.J. 1936).

During its formative period, the ecclesiastical courts had jurisdiction of the dead; and, in consonance with the doctrines of that jurisdiction, the common law clearly rejected the concept of property in the corpse and the ashes, and treated them as subjects largely of church superintendency. But the assumption of exclusive jurisdiction by the temporal courts brought radical changes of theory; and it is now the prevailing rule, in England as well as in this country, that the right to bury the dead and preserve the remains is a quasi right in property, the infringement of which may be redressed by an action in damages. The dead body is no longer *res nullius*.³¹⁴

In 1891 Minnesota, Lena Larson brought a cause of action against Charles A. Chase "for the unlawful mutilation and dissection of" her deceased husband's body.³¹⁵ Mrs. Larson asserted that she had the right to determine what would happen to her husband's body and make his burial decisions.³¹⁶ Chase defended the action by asserting two defenses: "First. That the widow has no legal interest in or right to the body of her deceased husband, so as to enable her to maintain an action for damages for its mutilation or disturbance . . . Second. That a dead body is not property."³¹⁷ While the court discussed the evolution of custody and jurisdiction over dead bodies as having originated in the English ecclesiastical courts, which the American founders declined to embrace, the court concluded that the possession of a deceased family member's body did indeed belong with the surviving family members.³¹⁸ Once again the court cloaked itself with the words of Lord Coke and noted that it "may be true still that a dead body is not property in the common commercial sense of that term"³¹⁹ but the Court showed a willingness to edge closer to determining that a decedent's body required a classification of its own.

In the 1900 *Enos v. Snyder* case, the issue of whether a surviving family member had the right to carry out the deceased's wishes was reexamined.³²⁰ In this case, the court cited the English case *Williams v. Williams*, wherein the English court reiterated that there could be no property in a dead body.³²¹ The Court in *Enos v. Snyder* chose to limit its decision to ownership and control of a decedent's remains rather than address the actual nature of the cadaver itself.³²²

314. *Spiegel*, 117 N.J.L. at 92-93.

315. *Larson v. Chase*, 47 Minn. 307, 308, 50 N.W. 238 (1891).

316. *Larson*, 47 Minn. at 308.

317. *Id.*

318. *Id.* at 308-09.

319. *Id.* at 310.

320. *Enos v. Snyder*, 63 P. 170, 171 (Cal. 1900).

321. *Id.* (citing *Williams v. Williams* 20 Ch. Div. 659 (1882)). See also, *In re Johnson's Est.*, 169 Misc. 215, 7 N.Y.S.2d 81 (1938).

322. *Id.* at 172.

In the 1938 American case of *In Re Johnson's Estate*, the court further balanced Lord Coke's position with state penal law which provided that a person had the "[r]ight to direct disposal of one's own body after death."³²³ In fact, Margaret Johnson did just that, she drafted a last will and testament and subsequent codicil which stipulated that her body should be used for medical research purposes and then subsequently cremated.³²⁴ When she died, a petition to avoid the probate process was filed to determine if the codicil was a testamentary instrument that triggered the probate process, or if it was simply a case of written instructions for the disposal of Ms. Johnson's body after death.³²⁵ The court chose to limit and frame Coke's position as product of Seventeenth Century religiosity and faith in the Resurrection. Thereafter, the court traced the origins of change in the concept of the body as property based on three "distinct and unrelated causes": the challenge of determining who the next of kin was; the rise in medical schools and related body-snatching; and finally the shift away from internment as a means of final resting place.³²⁶ The court specifically discussed "burking" and body-snatching as an impetus for change in the law to give grieving families a remedy.³²⁷ This case, nearly a century old, cracked open the legal window for the possibility of granting non-criminal remedies for the injustices perpetrated.

In the American case, *Carney v. Knollwood Cemetery Association*, the Appellate Court determined that "calling the right to control the dead body of a relative a 'quasi-property right'" would create a legal fiction.³²⁸ The Court concluded: "[t]his court rejects the theory that a surviving custodian has quasi-property rights in the body of the deceased, and acknowledges the cause of action for mishandling of a dead body as a subspecies of the tort of infliction of emotional distress."³²⁹

In *Brotherton v. Cleveland et. al.*, the legal issue revolved around the theft of a body part, specifically the corneas of Steven Brotherton.³³⁰ Upon Mr. Brotherton's death, his widow was asked if she was willing to make an anatomical gift of her husband's body, and she declined.³³¹ During his autopsy his corneas were removed, and upon this discovery, Mrs. Brotherton brought suit against the coroner, Dr. Cleveland,

323. *In re Johnson's Est.*, 7 N.Y.S.2d 81, 82–83, 169 Misc. 215 (1938).

324. *Johnson's Est.*, 7 N.Y.S.2d at 82.

325. *Id.* at 83.

326. *Id.* at 85.

327. *Id.*

328. *Carney v. Knollwood Cemetery Ass'n*, 33 Ohio App.3d 31, 36–37 514 N.E.2d 430 (1986).

329. *Carney*, 33 Ohio App.3d at 37, ("We hold that all four appellees as direct blood descendants . . . had standing to press their claim for outrageous disturbance of her remains.")

330. *Brotherton v. Cleveland*, 923 F.2d 477 (6th Cir. 1991).

331. *Id.* at 478–79.

the hospital, and the eye bank.³³² In 1991, the U.S. Court of Appeals for the Sixth Circuit held that property interests must be “more than abstract desires or attractions to a benefit” to qualify for due process protection.³³³ To determine whether a dead body would create a property interest that is protected by the Due Process clause, the body must first be recognized as property. After examining multiple state decisions, the court noted that “[a] majority of the courts confronted with the issue of whether a property interest can exist in a dead body have found that a property right of some kind does exist and often refer to it as a ‘quasi-property right.’”³³⁴ The court also noted that this determination was far from universal, citing the history of the English determination that there is “no property right in a dead body.”³³⁵

The Court seemed persuaded by the “prevailing view of both English and American courts [that] eventually became that next of kin have a ‘quasi-property’ right in the decedent’s body for purposes of burial or other lawful disposition.”³³⁶ However, the court stopped short of categorizing Mr. Brotherton’s body as property or quasi-property holding:

[W]e do not need to determine whether the Supreme Court of Ohio would categorize the interest in the dead body granted to the spouse as property, quasi-property or not property. Although the existence of an interest may be a matter of state law, whether that interest rises to the level of a ‘legitimate claim of entitlement’ protected by the due process clause is determined by federal law.³³⁷

Ultimately, the court also relied upon the UAGA that granted control of Mr. Brotherton’s body to his next of kin, and this right, combined with a right to possess his body as set forth in *Carney*, gave Mrs. Brotherton a legitimate claim of entitlement.³³⁸

332. *Id.* at 478.

333. *Id.* at 480 (citing *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972)).

334. *Id.* at 480 (citing *In re Estate of Moyer*, 577 P.2d 108, 110 n. 5 (Utah 1978)); see, e.g., *Arnaud v. Odom*, 870 F.2d 304, 308 (5th Cir.1989), *cert. denied sub nom.*; *Tolliver v. Odom*, 493 U.S. 855 (1989) (“Louisiana has indeed established a ‘quasi-property’ right of survivors in the remains of their deceased relatives.”); *Fuller v. Marx*, 724 F.2d 717, 719 (8th Cir.1984) (“Under Arkansas law, the next of kin does have a quasi-property right in a dead body.”).

335. *Id.* at 481 (citing generally *Williams v. Williams*, 20 Ch.D. 659, 665 (1882)).

336. *Brotherton v. Cleveland*, 923 F.2d 477, 481 (6th Cir. 1991). See also, Thomas D. Holland, *Since I must Please Those Below: Human Skeletal Remains Research and the Law*, 41 AM. J. L. MED. 617, 632 (2015) (“Most jurisdictions now recognize a survivor’s quasi-property right in the remains of a family member . . .”).

337. *Brotherton*, 923 F.2d at 481–482.

338. *Id.* See also *Whaley v. County of Tuscola*, 58 F.3d 1111, 1117 (6th Cir. 1995). Stating:

Regardless of the legal label the State places on the rights in a dead body it chooses to create, these rights nevertheless exist. Moreover, they closely correspond with the “bundle of rights” by which property has been traditionally

Several years later the Supreme Court of Arkansas, also dealt with an issue relating to the right to an autopsy after an accidental death in *Travelers Insurance Co. v. Smith*.³³⁹ This case turned on the issue of tort law and intentional infliction of emotional distress. However, before the court could reach its conclusion it was necessary to clarify that, “a quasi-property right in dead bodies vests in the nearest relatives of the deceased, arising out of their duty to bury their dead.”³⁴⁰

In 1998, Bradley Gierlich died unexpectedly and an autopsy was performed.³⁴¹ The pathologist asserted he spoke with a relative of the deceased but was unable to contact his father for permission for organ donation.³⁴² Without written consent, parts of Mr. Gierlich’s body were donated.³⁴³ Family members were not notified of the unauthorized donation for several years and subsequently filed a complaint alleging “tortious interference with a corpse, negligent infliction of emotional distress, conversion, civil conspiracy, invasion of privacy, violations of the WAGA, and the Consumer Protection Act.”³⁴⁴ The Ninth Circuit Court recognized “two general approaches to the problem of who may bring a claim for tortious interference with a corpse”³⁴⁵ depending on the qualification of the body. One approach is to base the tort claim in “quasi-property”³⁴⁶ while the other approach avoids the quasi-property issue and focuses on the survivor’s rights to bury a deceased relative.³⁴⁷ The court decided to leave the issue of whether relatives have quasi-property interests in bodies to the states.

Nevertheless, the recognition of a quasi-property right in a decedent’s body was a major impetus for the enactment of the previously discussed UAGA. Without qualifying a cadaver as quasi-property,

defined. For this reason alone, we conclude that Michigan, like Ohio, provides the next of kin with a legitimate claim of entitlement and thus a property interest in a dead relative’s body, including the eyes.

Id.

339. *Travelers Ins. Co. v. Smith*, 991 S.W.2d 591, 595 (Ark. 1999).

340. *Id.* at 595 (citing 22A AM. JUR. 2d, *Dead Bodie* § 3 (1988)). See also *Neff v. St. Paul Fire & Marine Ins. Co.*, 304 Ark. 18, 799 S.W.2d 795 (1990).

341. *Amaker v. King Cnty.*, 540 F.3d 1012 (9th Cir. 2008).

342. *Amaker*, 540 F.3d at 1014.

343. *Id.*

344. *Id.*

345. *Id.* at 1015.

346. *Id.* (“Under this theory, the decedent’s survivors have the right to bury or otherwise dispose of the body without interference, and the cause of action is somewhat analogous to tortious interference with a contract” (citing *Carney v. Knollwood Cemetery Ass’n*, 33 Ohio App. 3d 31, 514 N.E.2d 430, 434 (1986))).

347. *Id.* (“Courts in other jurisdictions have moved away from this approach and recognized that other close family members generally can bring suits for interference with a corpse under a subspecies of the tort of infliction of emotional distress. Under this theory the claim is not based on ‘a property right in a dead body but in the personal right of the family of the deceased to bury the body.’” (quoting *Carney v. Knollwood Cemetery Ass’n*, 514 N.E.2d 430, 435 (Ohio 1986))).

heirs and family members were prohibited from making voluntary donations. Section 4 of the UAGA underscores the common law quasi-property right in granting next of kin the limited autonomy to donate on the decedent's behalf but only if the donor meets the relationship qualifications delineated in the statute. This qualification shares an uneasy coexistence with the Thirteenth Amendment to the U.S. Constitution outlawing slavery "or the 'condition in which one human being . . . [is] owned by another' during life[;] neither the Thirteenth Amendment nor any other part of the Constitution, speaks to ownership at death."³⁴⁸

5. *Bodies as Assets*

William Shakespeare wrote *The Merchant of Venice* in the late 1590's. The play is based on a contractual arrangement that allows for a young cash-poor nobleman, Bassanio, to court the wealthy Portia.³⁴⁹ Bassanio, without resources, asks his friend, Antonio, to act as a guarantor for a loan from Shylock.³⁵⁰ When Bassanio cannot pay, Shylock refers to the contract and seeks to extract his contractual right to a "pound of flesh" from Antonio.³⁵¹ The amount of the loan was 3,000 ducats, and when it went unpaid, Shylock attempted to seek his redress, severing a part of Antonio's body.³⁵² Was a pound of flesh really worth 3,000 ducats, or were these merchants simply enemies with an opportunity to inflict physical and bodily harm? Could the parties really have contracted for an exchange of money for a body part or does this and should this example live simply in the world of fiction?

Leaving literature behind, in the mid-1800's one English medical school proprietor, facing a shortage of cadaver bodies and a need to incentivize individuals to donate their bodies to medical dissection, proposed a government-sponsored fund that would also collect donations from medical schools and prominent noblemen. The fund would then payout an amount ". . . not exceeding seven pounds to those persons who were willing to contract for the sale of their bodies for dissection."³⁵³ Fortunately, members of the medical community and Parliament saw the folly of the idea and nothing came of it. However, many prominent anatomists and doctors of the time did specifically state that upon their deaths, they wished to be dissected publicly for the purpose of advancing medical understanding.³⁵⁴

348. Piscitello, *supra* note 149, at 1357; *see also* U.S. CONST. amend. XIII, § 1.

349. WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE*. (Barbara A. Mowat, and Paul Westine, eds. 2010).

350. *Id.*

351. *Id.*

352. *Id.* at act I, sc. 3, 11.

353. BAILEY, *supra* note 7, at 32.

354. *Id.*

Assuming a person may possess an abstract ownership right over their body while alive, or alternatively, assuming a dead body can be qualified as a quasi-property, any ownership right can and has been monetized.

Lacking comprehensive regulation, there is no deterrent to prevent brokers from employing “sleight of hand” tactics when using language to describe what they do and how they make money when they are working with the dying and the family of the recently deceased. Body brokers refer to human remains as ‘tissue,’ not body parts, for example.³⁵⁵ This definition has led to confusion with donors believing they were donating skin when “[t]o the medical community ‘tissue’ means any part of the body – from organ to torso.”³⁵⁶ And they would arguably rather not be referred to as “body brokers; they prefer to be known as “non-transplant tissue banks.”³⁵⁷ They also downplay the underlying business model of the body broker, which is selling donated bodies for a profit.³⁵⁸ Most body brokers insist they do not “sell” body parts but instead only charge “fees” for services.³⁵⁹ “Such characterizations, however, are contradicted by other documents. . . . Reuters reviewed including court filings in which brokers clearly attach monetary value to donated remains.”³⁶⁰

Before brokers accept a body, they typically present the donor or next of kin with a consent form. These documents give brokers the right to dismember the dead, then sell or rent body parts to medical researchers and educators often for hundreds or thousands of dollars.³⁶¹ A Los Angeles Times exposé in 2004, discovered that over the course of six years, the University of California, Los Angeles sold “496 cadavers for \$704,600.”³⁶²

These documents are often written in technical language that many donors and relatives find hard to understand, i.e. using the term tissue instead of body parts as stated above. “To the medical community, “tissue” means any part of the bod—from an organ to a torso.”³⁶³

355. *Id.*

356. John Shiffman et al., *A Business Where Human Bodies Were Butchered, Packaged and Sold*, REUTERS (Dec. 27, 2017, 1:00PM) <https://www.reuters.com/investigates/special-report/usa-bodies-business/>.

357. BAILEY, *supra* note 7, at 32.

358. *Id.*

359. *Id.*

360. *Id.*

361. Shiffman et al., *supra* note 356.

362. Charles Ornstein & Richard Marosi, *\$704,600 Billed for Cadavers: Invoices on UCLA Letterhead Show 496 Corpses Were Sold to a Middleman since 1998*, L.A. TIMES (Mar. 9, 2004) <https://www.latimes.com/archives/la-xpm-2004-mar-09-me-bodies9-story.html>.

363. Grow & Shiffman, *In the U.S. Market*, *supra* note 147.

To a layperson, tissue is often understood to mean skin.³⁶⁴ Thus, the dying person or family of the deceased often do not fully grasp the totality of the donation, i.e., the entire body rather than mere tissue from the cadaver.

Further evidence that bodies and body parts are routinely monetized by body brokers arises from legal documents in bankruptcy cases. In one bankruptcy filing, a body broker cited “all tissue inventory owned by or in [their] possession’ . . . as assets.”³⁶⁵ Another broker “debtor included in their property asset listing, . . . not only cabinets, desks and computers, but also spines, heads and other body parts . . . and valued the human remains at \$160,900.”³⁶⁶

Furthermore, body brokers are acutely aware of the value of their “assets” as both whole and dissected bodies. If brokers decide to sell body parts instead of whole bodies they can dissect or select parts of donated bodies to sell which affects the “[p]rices for bodies and body parts fluctuate with market conditions.”³⁶⁷

Generally, a broker can sell a donated human body for about \$3,000 to \$5,000, though prices sometimes top \$10,000. But a broker will typically divide a cadaver into six parts to meet customer needs. Internal documents from seven brokers show a range of prices for body parts: \$3,575 for a torso with legs; \$500 for a head; \$350 for a foot; \$300 for a spine.³⁶⁸

Finally, the monetary value placed on the bodies and dismembered parts has slipped into the public record on at least one other occasion when Science Care, a body broker, was sold to a private equity firm. Science Care, included “written pledges from more than 100,000 people to donate their bodies to Science Care when they die”³⁶⁹ as assets. Assuming this is an accurate statement, then the asset or body qualifies as a type of property, and it would have to fall under an existing legal category of property: real property, intellectual property, or personal property. The only logical classification based upon the existing definitions of these categories of actual property is personal property. Personal property sales are governed by the Uniform Commercial Code Article 2, Sales, which further defines the personal property as a good.

6. *UCC Amendment to Govern the Uniform Commercial Code*

The Uniform Commercial Code (the “UCC”) was initially promulgated in 1951 by the American Law Institute and National Conference

364. *Id.*

365. *Id.*

366. *Id.*

367. *Id.*

368. *Id.*

369. Shiffman & Grow, *How An American Company Made a Fortune*, *supra* note 151.

of Commissioners on Uniform State Law (“Uniform Law Commission”) and has put forth many revisions over the years.³⁷⁰

The UCC is largely the American codification of the law merchant (“*lex mercatoria*”) that centered in commercial business relations between merchants for goods.³⁷¹ Today “some version of the UCC has been enacted, with at most minor variations, in every state except Louisiana, which has extensively modified the provisions on sales.”³⁷² The UCC currently has sixteen provisions that deal with various commercial substantive areas of law. The most relevant for the purposes of this Article is Article 2, Sales, as amended in 2002.

Section 2-105, defines “Goods” under the Article as:

all things (including specially manufactured goods) which are moveable at the time of identification to the contract for sale Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are “future” goods. A purported present sale of future goods or of any interest therein operates as a contract to sell³⁷³

The question that arises herein is whether we, as a moral society, want to enlarge the UCC to include human bodies or, more succinctly, equate the cadaver to ordinary, moveable, fungible personal property like cars, clothing, and computers. This seems to be the easiest question to answer in this Article, because the only answer should be a definitive “no.” The reprehensible qualification of the human body as a good capable of being owned, transferred, or sold, triggers analogies to the dark and inhumane days of slavery when one man could own another and runs afoul of the Constitution as discussed above.

David Chapman, author of *Retailing Human Organs Under the Commercial Code*, states that at least one 1975 analysis showed that “people who would not donate their organs would sell them.”³⁷⁴

370. UNIFORM COMMERCIAL CODE, Uniform Law Commission, <https://www.uniform-laws.org/acts/ucc> (last visited August 7, 2024) Stating:

The UCC is a comprehensive set of laws governing all commercial transactions in the United States. It is not a federal law, but a uniformly adopted state law. Uniformity of law is essential in this area for the interstate transaction of business. Because the UCC has been universally adopted, businesses can enter into contracts with confidence that the terms will be enforced in the same way by the courts of every American jurisdiction.

Id.

371. *Law Merchant*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“A system of customary law that developed in Europe during the Middle Ages and regulated the dealings of mariners and merchants in the commercial countries of the world until the 7th century. Many of the law merchant’s principles came to be incorporated into the common law, which in turn formed the basis of the Uniform Commercial Code.”).

372. E. ALLAN FARNSWORTH, *CONTRACTS*, 32 (4th Ed. 2004).

373. UNIFORM COMMERCIAL CODE § 2-105.

374. David E. Chapman, *Retailing Human Organs under the Uniform Commercial Code*, 16 J. MARSHAL L. REV. 393, 401 (1983) (discussing specifically the sale of kidneys and corneas).

He compares a new market system for body parts to the existing system of blood collection and opines that “[o]ptomistically, the supply and price of organs would be self-regulating.”³⁷⁵ Sales could be conducted through a bargained-for exchange that may include money but may also be compensated by payment of medical bills or funeral expenses. Payment of funeral expenses in exchange for cadavers is straight out of the body broker’s standard operating plan. Chapman goes on to identify three major advantages to commercializing body parts: creating an increased supply source of donated parts while preserving the donor’s lifetime wishes; eliminating uncomfortable friction between families of the deceased and the medical professionals at the time of death, because the “sale” had been pre-arranged prior to death; and increasing the rate of living transplant availability while lowering the risk of using diseased donor organs.³⁷⁶ Chapman further argues that in the event a body broker disclaims a warranty or liability, they would face negative market backlash because the donors would seek contracts with the broker’s competitors.³⁷⁷

Additionally, if the sale of organs and bodies were regulated under Article 2 of the UCC, then the rest of the UCC gap filler provisions would also apply. Notably, the provisions relating to express and implied warranties could also be applicable. In these circumstances, a family who contracted for a body to be used for scientific research could seek a contractual remedy for breach of an express warranty, if the contract stipulated the exact use and description of how the body would be used.

The concept of sales of body organs is fraught with risk and peril ranging from people selling their bodies or organs out of desperation, selling diseased organs, or creating a market that only the wealthy can access. While the enactment of the Uniform Anatomical Gifts Act (“UAGA”) seemingly prohibits these sales, some states have retained laws that expressly prohibit the sale of organs. Logically, if this new market system is embraced where organs can be monetized and commercialized, the sale of entire donor bodies cannot be far behind.

Barring a new and nuanced definition of a deceased body as a distinct classification of property, the existing UCC contractual landscape cannot be stretched to apply to the sale or lease of bodies by body brokers. However, failing to commodify or classify bodies has not solved the problem regulating body brokers. In fact, it highlights an existing previously discussed problem: body brokers are currently putting prices on cadavers and body parts. Thus, the potential problem of assigning a

375. *Id.* at 402.

376. *Id.* at 403.

377. *Id.* at 412.

remedy under a revised UCC Article 2 is somewhat resolved. While the donor families would have to be qualified as sellers for the purposes of the UCC, Section 2-703 sets forth a series of options and formulas for seller remedies available upon a buyer breach.³⁷⁸

Based upon current pricing practices, it is possible to imagine an application of Section 2-703(e) or (f). Section 2-307(e) allows the non-breaching seller to seek the price of the contract under related Section 2-709. Applying this remedy to the case of misuse of a body would allow the family that “sold” their loved one’s cadaver to the broker to recover the price. If a body broker still had possession of the deceased’s body and no misuse or unauthorized use has yet to occur, the family could employ Section 2-703(f) to cancel the contract and seek return of the body.

However, prior to amending the UCC, the UAGA must be revisited to establish the right to sell body organs or intact donor bodies. Thus, while amendments to the UCC are not uncommon, and the Uniform Law Commission is fairly quick to recognize advancements and changes in law, actual UCC reform requires Study Committees, Drafting Committees, nomination of an official reporter, American Bar Association participation, and a minimum of two years of consideration.³⁷⁹ Amendments to Article 2 of the UCC must also be made to the definition of a “good”.

Notwithstanding the ability to amend Article 2, or even create a new Article or sub-Article, there is no discernable evidence of interest in the legal community to follow this path. Additionally, a review of existing case law relating specifically to the sale of transfusion blood, reflects that application of the predominant purpose test³⁸⁰ reveals that these contracts are qualified as service contracts with an incidental sale of a good.³⁸¹ Thus, if the assumption is that body brokers are,

378. UNIFORM COMMERCIAL CODE § 2-703.

379. *FAQS*, UNIFORM LAW COMMISSION, <https://www.uniformlaws.org/aboutulc/faq>.

380. See generally *Bonebrake v. Cox*, 499 F.2d 951 (8th Cir. 1974).

381. See *Perlmutter v. Beth David Hospital*, 308 N.Y. 100, 104, 123 N.E.2d 792, 794 *reh’g denied*, 308 N.Y. 812, 125 N.E.2d 869 (1954). Stating:

Such a contract is clearly one for services, and, just as clearly, it is not divisible. Concepts of purchase and sale cannot separately be attached to the healing materials such as medicines, drugs or, indeed, blood supplied by the hospital for a price as part of the medical services it offers. That the property or title to certain items of medical material may be transferred, so to speak, from the hospital to the patient during the course of medical treatment does not serve to make each such transaction a sale. “Sale’ and ‘transfer’ are not synonymous’, and not every transfer of personal property constitutes a sale. It has long been recognized that, when service predominates, and transfer of personal property is but an incidental feature of the transaction, the transaction is not deemed a sale within the Sales Act.

Id. (citations omitted). See also Gloria J. Banks, *Legal & Ethical Safeguards: Protection of Society’s Most Vulnerable Participants in A Commercialized Organ Transplantation*

or can be, entering into contracts, the contracts should fall under the common law.

7. *Common Law Contract Formation*

As previously noted, if the elements of contract formation can be proven, a legally binding relationship comes into existence, and courts will enforce the associated rights and obligations of such. The Restatement (Second) of Contracts (the "Restatement") is a secondary source of the law of contract compiled by the American Law Institute.³⁸² The Restatement creates a framework for understanding and interpreting the common law as applied to contracts. It includes reference to case law and statutory law from American jurisdictions as well as comments and illustrations. Historically, contract common law applies to real estate contracts and various types services contracts.³⁸³

Assuming that the granting of a body for medical or scientific research in exchange for free cremation services could qualify the arrangement as a service is the first hurdle to common law contract enforcement. Some families do not engage directly with body brokers. Those who give their loved one's cadavers to medical or scientific institutions have historically and legally made donations. If a body is not needed by the institution, it is then sold to a body broker, but the family members lack privity to this contract. In fact, the deceased's family likely never knew that the body had been sold. If a body broker's "[m]isuse of the body, such as selling a body to a non-medical research project against the express wishes of the donor, would amount to breach of contract. Yet, next of kin would face nearly insurmountable hurdles in bringing a breach of contract case against a body broker."³⁸⁴

Under the paradigm where the body broker and deceased party or their family members have entered into a contract, representations can and should be included that set forth assertions as to the exact manner of use of the donated body. The more representations made by the body broker, the more protected the family member of the deceased is, because a representation works essentially as an assumption of risk. The party making the representation, in this case, the body broker, assumes the risk that if anything they have represented is untrue, they will be liable for breach of the representation.

System, 21 AM. J. L. & MED. 45, 73 (1995) ("The commercial transfer of regenerative tissue viewed by state law as the provision of a service instead of the sale of a good because such tissue is considered incidental to the provision of the medical services.").

382. RESTATEMENT (SECOND) OF CONTRACTS (A.L.I. 1981).

383. *G-W-L, Inc. v. Robichaux*, 643 S.W.2d 392, 394 (Tex. 1982) ("The Legislature thus far has not included real estate transactions within the scope of Chapter 2.").

384. Schiefer, *supra* note 160, at 389.

In other words, if a representation proves to be untrue, the non-breaching party, the deceased's family, will have a contractual claim for a misrepresentation.³⁸⁵

Regarding the issue of the availability of damages in the event the family of the deceased is successful in proving a breach, recovery of emotional distress damages would seem the most fitting and logical type of contract damage. When considering this category of remedy, courts typically apply the legal damage element of foreseeability.³⁸⁶ However, in situations of death and the handling of dead bodies, mental suffering can and should be reasonably foreseeable in the event the contract is not properly performed.³⁸⁷

By allowing for a cadaver to be qualified as "quasi-property" or property for the purpose of contract law, family members of a deceased whose body has been misused may have a legal avenue of redress. However, the family must still overcome several hurdles. The family must understand the difference between a donation or gift of the deceased's body and contract for the sale of such and must have knowledge of how the body is eventually used. With combined improvements and amendments to existing laws, statutes, and the UAGA, it is possible to create a process for contractual relationships governing cadavers.

E. PROMISSORY ESTOPPEL

If considering the grant of a body as a contract is anathema, or repugnant to the idea of altruism and the betterment of society as a whole, other possible legal avenues may also be explored to provide protections to the deceased and their families. Promissory estoppel as an equitable vehicle allows courts to enforce a gratuitous promise if the promisor should have reasonably expected the promisee to rely on the promise, acted or refrained from acting, and the promisee justifiably relied upon the promise to his detriment.³⁸⁸

385. RESTATEMENT (SECOND) OF CONTRACTS § 159 (A.L.I. 1981) ("A misrepresentation is an assertion that is not in accord with the facts.").

386. *Damages for Mental Suffering resulting from Mistreatment of a Cadaver*, 1960 DUKE L.J. 135, 136 (1960).

387. *See generally* Spiegel v. Evergreen Cemetery Co., 117 N.J.L. 90, 186 A. 585 (1936).

388. *See* King v. Trustees of Boston University, 420 Mass. 52, 647 N.E.2d 1196 (1995); *see also* Katz v. Danny Dare, Inc., 610 S.W.2d 121 (Mo. Ct. App. 1980) (holding that the plaintiff could enforce a promise made by the defendant to pay him a pension for life because the criteria necessary for promissory estoppel: a promise; detrimental reliance; and an injustice that could only be avoided through enforcement of the promise all existed); *see also* Hayes v. Plantations Steel Co, 438 A.2d 1019 (R.I. 1982) (coming to the opposite determination than the Katz court because Hayes had already decided to retire before he was offered a retirement pension, meaning he did not rely on the promise of a pension).

Promissory estoppel is a legal concept grounded in equity. It occupies the area outside of contract or tort law but within our jurisprudence built on the foundation of equity. Promissory estoppel essentially involves a series of judicial steps or determinations. In law school, students are first introduced promissory estoppel within the context of gifts, donations, or charitable subscriptions which fail to form contractual relationships often for the lack of consideration or another agreed upon exchange.³⁸⁹

The legal footing for the elements of promissory estoppel are found in both case law and the Restatement (Second) of Contracts § 90.³⁹⁰ It is historically based on the premise that a gratuitous promise is made without the requisite bargained-for exchange, i.e., it is a one-way promise.³⁹¹ Under contract law, the lack of bargained-for consideration is a fatal blow to the validity of the contract. However, if a party reasonably relied upon the promise and changed their behavior in detrimental reliance upon such, they should have an avenue for enforcement or remedies.³⁹²

A successful promissory estoppel claim requires satisfaction of four elements: (1) A promise that the promisor must reasonably foresee the action in reliance on his promise, or it must be so inevitable that any reasonable man in the position of the promisor would have foreseen it; (2) the action in reliance must be definite and substantial; (3) the action must be actually induced by the promise; and (4) an injustice or injury cannot be avoided by any method other than enforcement.³⁹³

In the application of promissory estoppel to the body broker and deceased's family relationship, there must be an initial promise. If a body broker contracts with a medical or scientific institution for excess or unnecessary cadaver inventory, then the previous problem of privity arises again along with the factual problem that the family members have no knowledge that the donated body has been sold. However, assuming changes in legislation or regulation require body brokers to communicate directly with the family of the deceased, a promise can be proven or manufactured. If a body broker promises to use the donated body for specific purposes, with the expectation that the donor or donor's family will agree, the first criteria of promissory estoppel is met.

389. See generally *Hoffman v. Red Owl Stores Inc.*, 133 N.W.2d 267, 275 (Wisc. 1965) (citations omitted) ("Originally the doctrine of promissory estoppel was invoked as a substitute for consideration rendering a gratuitous promise enforceable as a contract.").

390. RESTATEMENT (SECOND) OF CONTRACTS § 90.

391. FARNSWORTH, *supra* note 372, at 95. See also *Kirksey v. Kirksey*, 8 Ala. 131 (1845); *Hamer v. Sidway*, 27 N.E.2d 256 (N.Y. 1891).

392. RESTATEMENT (SECOND) OF CONTRACTS § 90.

393. *Id.*

When a family gives possession of the donor body to the body broker, it is done in reasonable reliance on the prior promise that the cadaver will be used in the manner promised. This detrimental reliance is measured reasonably on the promise and the definite and substantial nature of such. These events satisfy the second and third requirements of promissory estoppel.

If the body broker does not, in fact, perform as promised, i.e., he misuses, abuses, sells, or otherwise fails to adhere to the promise made, his actions may lead to an injustice or injury to the promisee, donor, or donor's family. This fourth criteria triggers the right to seek an equitable remedy. While the traditional remedy for promissory estoppel is reliance damages, equity is a broad and giving hand.³⁹⁴

V. CONCLUSION

Medical schools and scientific research facilities undoubtedly need human cadavers to advance medical diagnosis, medicines, and medical techniques. However, the price for advancement cannot be so high that basic human expectations of respect and dignity in death are sacrificed. Donated bodies are necessary to each medical student's training in human anatomy. The more medical schools that arise, the greater the need for cadavers. Individuals and families make the decision to donate a cadaver for a myriad of personal reasons. Independent of an individual's wishes, society must also exhibit ethical, moral, and compassionate treatment of those who make body donations. The court in *Louisville & Nashville R.R. Co. v. Wilson* believed as much and eloquently reminds us,

It is not surprising that the law relating to this mystery of what death leaves behind cannot be precisely brought within the letter of all the rules And yet the body must be buried or disposed of And the law, in its all-sufficiency, must furnish some rule, by legislative enactment or analogy, or based on some sound legal principle, by which to determine between the living questions of the disposition of the dead and rights surrounding their bodies. In doing this the courts will not close their eyes to the customs and necessities of civilization in dealing with the dead and those sentiments connected with decently disposing of the remains of the departed which furnish one ground of difference between men and brutes.³⁹⁵

We, as a modern society, must act. Early criminalization statutes created additional cadavers for anatomy schools, when the supply for

394. *Tour Costa Rica v. Country Walkers*, 758 A.2d 795 (Vt. 2000). See generally, Mary E. Becker, *Promissory Estoppel Damages*, 16 HOFSTRA L. R. 131 (1987).

395. *Louisville & N.R. Co. v. Wilson*, 51 S.E.2d, 25 (Ga. 1905).

actual human bodies was necessary to understand the foundations of medical science. Out of that demand, grew unscrupulous Burkers and resurrectionists who took it upon themselves to make corpses out of the unsuspecting living. As we have moved into the modern world, our lack of sufficient legislation and regulation has proven no deterrent to modern day body brokers. These opportunistic individuals and entities prey on the poor, undereducated, and unsuspecting, weaving tales of creating a lasting legacy in the deceased's name through the advancement of science. These body brokers, while certainly not murderous or graverobbers, are not much better than their predecessors. They have rebranded themselves as legitimate businesses and then profit off of donated bodies; they deceive the families of the use of the donated bodies, and they sell them for profits. They are modern grifters, or snake oil salesmen profiting from operating in a Wild West devoid of any unified legal supervision or oversight that acts as a deterrent.

The time has come to stop pontificating on how to take concrete measures to address the body broker business. Several legal options exist. Congress should act on the proposals and vote them into law. If the congressional foot dragging is due to questions about implementation of new legislation, then Congress can easily rely on the structure and policies of the American Association of Tissue Banks as a blueprint or starting point in creating mandatory registration and reporting obligations to a federal regulatory agency.

Congress should pass languishing legislation that specifically addresses body brokers and creates a regulatory and supervisory regime that is uniformly enforced and monitored throughout the states and requires body brokers to register and comply with transparency rules and regulations. The NCCUSL can revise, once more, the UAGA to specifically address the body broker business and curtail the disinformation, out-right lies, negligent disclosures, and exploitative selling tactics.

Additionally, with the recognition of quasi-property status in cadavers, private law remedies can be expanded. This can be accomplished through amending UCC, Article 2 to include human cadavers under the classification of "goods," thus creating a contract with respective rights and obligations. This may alternatively be accomplished by acknowledging that the donations to body brokers are actually common law contracts, also capable of being enforced and sued upon for remedies. Finally, we should revisit the cornerstone of contract law: equity. It is possible to expand the principle of promissory estoppel to include promises made by body brokers as enforceable under equity.

This Article started with a lengthy historical examination of body stealing and donations, and it is appropriate that it concludes on an

1872 statement or recognition of the problem from *Pierce v. Proprietors of Swan Point Cemetery*:

The very origin of equity in Rome and in England was that there was a wrong for which there was no remedy, or no adequate remedy at law And we cannot but approve the language of Lord Cottenham “I think it the duty of this court to adapt its practice and course of proceeding to the existing state of society; and not by too strict an adherence to forms and rules established under different circumstances, to decline to administer justice and enforce rights for which there is no other remedy If it were necessary to go much further than it is, in opposition to some highly sanctioned opinions, in order to open the door of justice in this court to those who cannot obtain it elsewhere, I should not shrink from the responsibility of doing so.”³⁹⁶

Doris Stauffer and David Saunders and all of the other decedents who have left this world wishing to perform one last altruistic act must be granted the peace they deserve. We must honor those whose bodies were used for the advancement of scientific discovery by not only ensuring that discoveries are made possible but by ensuring that no unscrupulous body broker profits from their sacrifice.

396. *Pierce v. Properties of Swan Point Cemetery*, 10 R.I. 227, 14 Am.Rep.667 (1827).

