Individuals versus Groups with Lori Gruen and Martin Wilkinson

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Christiane Wisehart (producer): Examining Ethics with Andy Cullison is hosted by The Janet Prindle Institute for Ethics

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Andy Cullison (host): As a group or nation, we like to own pets. We keep people in certain kinds of jails, but Lori Gruen will explain to us why she thinks our current practices of captivity might be problematic, especially when we think about the autonomy and dignity of individuals, including animals in captivity, there's a worldwide organ shortage. As a group, we have an interest in procuring organs of the recently dead. Martin Wilkinson will explain to us how difficult it is to balance that need against the individual's interests. Even after they're dead of particular, interests are reasons we discuss for thinking that the dead could be harmed and continue to have claims on their body long after they're dead. Hello, I'm Andy Cullison. The theme of our show today is individuals versus groups. Most moral issues end up boiling down to attention between an individual and a particular group. Our producers, Sandra and Christiane, are here to give examples from their own lives of this conflict.

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Sandra Bertin (producer): Oh, you know what? You should tell your, the story about when your son was born.

Christiane: So when my second son was born, he was born two months premature. Um, and he's okay, everybody he's fine. But, um, that basically meant that he had to spend one month in the NICU.

Sandra: What's that?

Christiane: It's the neonatal intensive care unit. And it's basically an intensive care unit for babies. And he had to have a lot of medical procedures and we were really scared for a lot of that month, but for some reason, and this is kind of embarrassing to me. The, the thing that I still feel resentful about was this little plastic anklet that he had to wear.

Sandra: What was that for?

Christiane: So this little plastic anklet meant that, say I was really unhappy with the way that the hospital was treating him and I wanted to just leave and I wanted to take him out. If I were to do that, if I were to take him out, the minute I stepped out of the NICU doors, all of the elevators in the entire hospital would stop working. All of the doors in the entire hospital would, would lock

automatically. Nobody could get in and nobody could get out and police would arrive to take my baby back to the NICU. I understood why he had to have this little plastic anklet.

Sandra: Why, why did he have to have it?

Christiane: So the nurses told me that there were a couple reasons. One is just for our own as parents, our own reassurance, that if we left, you know, to go sleep at midnight or whatever, a stranger couldn't come in and just take our baby away. Um, and then the second reason is because prematurely born babies or any baby really who's in the NICU is in need of, you know, intensive care, right? Um, it's the intensive care unit. And so they, um, they need to be protected. And the hospital, um, has decided that they have the final say in their care. And so that's why they needed to stay in the NICU until they were formally discharged. And so like intellectually, I understood that, but emotionally, um, I had a really, really hard time with this little plastic thing, right? Because it meant that I, as an individual mother could not take my kid out of the hospital if I wanted to. And that was a really upsetting thought for me. And so this was an instance in which my individual desires to have control over my child butted up against what was best for a big group of people, right. Babies in need of intensive care. So has anything like that happened to you or, or do you have anything in your life where, you know, you as an individual have kind of butted heads with a group?

Sandra: Yeah, I have. So this story takes place while I'm studying abroad in Aman, Jordan and I was on vacation and I had gone to Israel to check out Jerusalem. So I'm in Jerusalem and I'm going to the Mount of Olives. I wanted to climb the Mount of Olives and that's in east Jerusalem. So–

Christiane: Wait, why does it matter if it's an east Jerusalem or west Jerusalem?

Sandra: Okay. So east Jerusalem is actually Palestinian territory. It's actually the only part, um, of Jerusalem that is occupied by Palestinians, but without this kind of like crazy border system that it fractures the rest of Israel, um, and Palestinian Territories. So I climb up the Mount of Olives and at the top, there's a Palestinian man with a camel and he's trying to attract tourists. He starts saying things to me and my friends like, “Hey, pretty ladies, come take a picture with me.” That kind of thing. So I've been harassed a lot. So at this point I had been in Jordan for five months and harassment or cat calling is just a daily part of my existence in Jordan is just what happens. So of course I do what I've been trained to do over these months is just ignore him. Right? Like, I don't know anybody who thinks it's a great idea to just engage with anybody who cat calls them on the street. He says these things to me, I ignore him obviously, and I continue about my business. And then he yells at me. He immediately becomes angry and he starts yelling at me. He says, did they tell you not to talk to me when you came over here?

Christiane: Who's they?

Sandra: Yeah. So he's talking about, he's talking about Israeli Jews as if they have previously

warned me to not fraternize with Muslims on the east side of Jerusalem. And I got so mad, like a blind rage came over me because, because..

Christiane: I know why you got mad, “Little Miss I know Arabic.. “

Sandra: Yeah. So I've been studying Arabic. I've been in the middle east, north Africa. Like I spend my life learning about Arab culture and Arab issues, but he's, he's treating me like a foreigner as an American. My interest could only line up with the Israeli government's interests.

Christiane: So he sees you not as beautiful individual Sandra Bertin. He sees you as a part of a group that has decided to ignore Palestinians.

Sandra: Exactly. Yeah. It's incredibly infuriating. So I whip around or I just like scream out “ 'ana 'atahadath al-arabiyyah”, which is “I speak Arabic,” but it's, it's, I'm speaking in his dialect and because Georg dialect and Palestinian dialect is identical.

Christiane: So you're not just saying like, how do I go to the bathroom in Arabic? Right?

Sandra: Right. I'm like sending him a linguistic signal through this sentence that like, we're on the same team here. And then he kind of just forgets, he drops his whole anger and he just goes welcome with his arms outstretched. And he's welcoming me and my friends into his bubble, blah, but I'm so pissed. And I'm pissed because he couldn't see me as an individual. He saw me as this collective now that I have, I've been removed from it for a year. I can see that I also didn't see him as an individual. He cat-called me and I automatically put him into a group of people who can't call me thus.

Christiane: Equivalent to them. People

Sandra: Who I ignore. Yeah. And he was equally as frustrated by that. Like he wanted to talk to me, that's all. So we're standing there looking at each other and we're both desperate to be seen as the individual, the beautiful tropical fish that we are. And the other person is unable to look past the kind of the group that we belong to. And we can't do it. I can't do it.

Christiane: The reality. And this is, this is why this kind of thing is so hard. The reality is that everybody's an individual, everybody's a part of a group. Right? I think that's where a lot of that tension comes in. You know, and as Andy said, a lot of moral conflicts boil down to tensions between individuals and groups. And today we're gonna look at one particular facet of this tension between groups and individuals. Here's Andy, to explain.

Andy: What's interesting about the focus of this show is that all of the individuals are people or animals that it would be easier to forget about ignore or intentionally discount. Today. I interview two scholars, Lori Gruen and Martin Wilkinson. Both Gruen and Wilkinson grapple with interesting moral issues where the central tension seems to be between an easily forgotten

individual on the one hand and the interest of a larger group on the other. We've decided to group our conversations with Wilkinson and Gruen together on this episode because pets, prisoners and the dead are individuals that it would be easy to forget about when thinking about what you should do. That's all coming up, but first let's hear about our sponsors from Christiane.

Christiane: Oxford University Press has generously provided us with the books that we are discussing on the show today to find out more about Oxford University Press, visit them on the web at globaldotoup.com. Oxford University Press has kindly offered to provide you the listener with a 30% discount on both of the titles we've been discussing on today's show. So to get a link for a 30% discount on *The Ethics of Captivity* edited by Lori Gruen or *Ethics and the Acquisition of Organs* by Martin Wilkinson, visit our show notes page at examiningethics.org.

Christiane: In this segment, Andy interviews Lori Gruen over Skype about her book, *The Ethics of Captivity* published in 2014 with Oxford University Press. Professor Gruen is the William Griffin Professor of Philosophy at Wesleyan University. In this interview, Professor Gruen discusses the ways in which captivity can violate or deny animal and human dignity, but she has a very interesting way of talking about dignity that I think relates to ideas about the individual versus the group. She outlines the concept of what she calls relational dignity and relational dignity is a way of understanding animal and human dignity outside of purely individual considerations. In other words, she helps us to understand how we might begin to think of dignity, not just in terms of the individual, but also in a contextual collective relational way.

Andy: Professor Gruen, thanks for joining us.

Lori Gruen: Oh, it's really my pleasure. Thanks for having me.

Andy: Can you give us a brief overview of the kinds of topics that are addressed in this collection?

Lori Gruen: Uh, yeah. The issue of captivity I think, is under explored in philosophy. And so in this volume, what I thought would be useful would be to present readers with expert analysis of various conditions of captivity in the first section. So there are people who are very familiar with the conditions of captivity for a wide variety of beings, including incarcerated human beings. Um, some of the students that I teach in, uh, prison education project wrote a chapter, also other animals. So experts on chimpanzees, elephants, whales, and dolphins, dogs, and farmed animals are all represented in the first half of the book to give readers a real sense of the diversity of, uh, captive conditions. And then in the second half of the book, uh, there's a variety of essays that explore conceptual and normative philosophical questions about captivity.

Andy: I'd like to talk in particular about your essay in this collection. The title of it, uh, is dignity captivity and the ethics of site in this essay. One of the things you argue is that it's wrong to dress up animals for circus shows, et cetera, put them on display because it violates their dignity. And you note that dignity is ambiguous. So could you tell us how you're defining dignity

to make this argument,

Lori Gruen: Right. It, it is pretty surprising to have, uh, the question of dignity apply to other animals, but I think it's an actually a very useful way of thinking about one particular way in which we can harm, um, or injure other animals. A lot of discussion about other animals in the philosophical literature has had to do either with their capacities to suffer and whether or not causing them to suffer is ethically justified. And then some people have wanted to talk about other animals as having rights. Um, but those arguments tend to be either legalistic, um, in some respects or based on certain kinds of sort of consciousness or sentience that they have. But nowhere in the literature has there been a very robust discussion of their dignity. And for me, there's, I look to the traditional understandings of dignity in the human context and in the human context, it's really quite variable.

What we mean by dignity. Dignity is one of these very hard concepts to get a grasp on, but essentially, um, there's two ways we can think about what dignity means in the human context. One is that we have some capacity intrinsic kernel of humanity and it's that kernel or intrinsic property or capacity that gives us dignity. And a lot of the rights literature ends up focusing on that capacity. And then there's always a further question. Well, what exactly is that? Then there's another way of thinking about it. And that is the way I think that we might think of it as political dignity, which is more of a relational concept. And so what I do in this chapter in the ethics of captivity is try to think about what it would mean for animals to have dignity, not in the first sense where there's a property that animals possess that by possessing it grants them a certain kind of dignity, but rather think about it in a more relational way. Um, and what I mean by that is that there's certain contexts in which we, who are the ones that are attributing dignity or indignity to another might suggest that this particular context is one in which dignity is being violated.

Sandra: So let me break in here for just a second to make sure that I understand what's happening. So is Gruen basically saying that philosophers think that humans and animals possess some sort of core specialness that gives them dignity.

Christiane: Yeah, so, so a lot of philosophers believe that each and every one of us has this special core. Um, that means that we should be treated with dignity or at the very least the special core means that we have dignity. I like to imagine a bunch of animals and humans kind of all in a field together. And we each are emitting our own beam of light. And so we all have this like shining beam of light that says to everyone else I have dignity.

But that's not exactly what Gruen is saying. Um, what I think is so interesting about Gruen’s work is that she's saying let's think about dignity in a slightly different way. Gruen's way of thinking about dignity. Relationally means that sure, we all have shining lights of dignity, but we can also block out each other's shining lights of dignity, where somebody can come along and block off our shining light of dignity. It can be violated or denied by another person.

Sandra: Okay. I think I'm starting to get it. So we might all have a core of dignity, but we also have the capacity to block out other cores of dignity.

Christiane: Exactly. So this creates a problem, um, because it kind of takes away some of the agency of the individual. You don't necessarily have control over your own shining light of dignity in this sense, or at least you don't have complete control over it. Other people can take it away from you. So philosophers often talk about individual agency in terms of this concept called autonomy. So it seems like autonomy or self-governance or individual freedom might kind of clash with dignity. If you think about dignity, relationally, like Gruen is asking us to, so let's get back to the interview. Andy has just asked professor Gruen to talk about autonomy in terms of relational dignity.

Lori Gruen: Yeah. So autonomy and dignity are generally, um, importantly related to one another, but again, autonomy, uh, much like dignity has a variety of different kinds of meanings. And again, if you go back to some sort of Kantian notions of autonomy or dignity, you get a very sort of robust sense of what it means to have autonomy. What it means to be free is to be able to endorse one's reasons for action. That's a pretty high level, um, notion of autonomy. And, and I don't think other animals have that. And unfortunately, I think we don't have that much of a time <laugh>, but that's an important notion of autonomy. I think again, there's a relational, uh, notion of autonomy. And I think it's an autonomy that many of us just think about in our common sense interactions with the world. So when an individual is not being forced to do things, has certain kinds of desires, interests, maybe even beliefs about the world and acts of their own volition to accomplish certain tasks.

Um, we can think of that individual as being autonomous. And if that's the case, then what we end up with is a lot of individuals that are not human, who can act autonomously dog, who decides to eat or not eat a cow that decides to move from one pasture to another. I always like the example of the chicken who crosses the road, why to get to the other side, it's a joke, but there you have it. It's, it's an autonomous action. There's not, uh, they're not being forced to do that. Um, and we see in other animals, a lot of autonomous behavior deciding who they wanna spend time with, who they don't wanna spend time with, what kinds of activities they wanna do during the course of their day. And if we think of autonomy in that way, then we can link it up with dignity because in so far as we're, we prevent them in certain contexts. Again, if we think of it relationally, um, prevent them from doing certain kinds of things that they would have wanted to freely do that can be dignity, uh, denying.

Andy: If I understand the notion of dignity that you think animals deserve, or we ought to protect or not violate a difference between animals and humans, you might think is that with humans, when we do something to them, we do something that they don't want, but there are cases where we might put animals on display, like dogs and circuses, and they might really want to do that, right? They might really, they might really choose in the animal sense to do that. Uh, but there's still something weird or odd about it. And so what we have to say is the notion of animal dignity in your sense is when we do something that conflicts with how they are. And I believe

those are your words. So some people can understand why it would be wrong to go against the desires of human persons and even the desires of animals, but why might it be wrong to do something that merely conflicts with how something is in the case of animals?

Lori Gruen: That's an excellent and really important question. And I think there's a couple of ways of answering it, but I think one important way of answering it. And this is part of why in my chapter, I try to develop what I call an ethics of sight. It, I think that one of the things that is really crucial to understand, I think in both a human case, as well as the non-human case is that sometimes our desires are not the kinds of desires we might have if we had full information or if we had an idealized situation. And sometimes it's important to also recognize that our wants and desires though, very important as a feature of our autonomy, um, often can lead us in ways that are contradictory to both our autonomy and our dignity. And so I think it's important. Again, the relational notion allows us to think of this.

We don't have to have the individual being, wanting, or not wanting a particular action to occur in order to recognize it as an indignity. And this is where the ethics of site comes in. So if you remember those horrible photographs from Abu grave, mm-hmm, <affirmative> for the first thing, what we see is we see American soldiers torturing their prisoners. Now that in itself is involves suffering and that's objectionable. But even with all those arguments held to the side, there's a further question about whether or not those photographs represent an extra injury because of the indignities, and those individuals who are being photographed don't may not even know that other people are looking at those in those images. And so that's partly what I'm trying to get at by this relational idea. So even if someone wants a, let's say a dog is supposedly likes not suffering at all, really seems to like being sort of made to do silly tricks or something like that. Um, there's a sense in which that immediate desire is not the kind of thing that needs to be always followed.

Sandra: Okay. I have to break in again. So she's basically saying that even if a person or an animal wants, wants to do a certain thing, that they still might be allowing their dignity to be violated.

Christiane: Yeah. That's, that's what she's arguing here. And I think this is such a hard idea to accept, right? Yeah. Um, we want to believe that someone's autonomy, like their individual choices, their authority over themselves is kind of linked right up with their dignity. But Gruen says that that's not necessarily the case. So as Andy said before, it, it actually on an intuitive level kind of makes sense. So with the dog example, she brings up a dog might really want and desire to dress up in a silly costume. But when I see that dog, I'm often a little embarrassed for it. So on some level, in a common sense, kind of a way I recognize that that dog, however happy it might be, is having its dignity violated. But when you start to think this way about humans, I think this idea becomes a little bit harder to swallow. Um, so have you ever heard of something called, uh, dwarf tossing or midget tossing?

Sandra: Um, no. That would have to be a no <laugh>.

Christiane: Yeah. I, I had never heard of this before. Um, I read Lori Gruen's chapter in her book, but I guess it's a kind of like a, a bar or a pub game where a little person, um, is dressed in protective gear and then patrons pay to throw the little person against a padded wall or onto a padded surface. What? and I guess some people think this is fun. What?

Sandra: <laugh> so.

Christiane: So in the early nineties, in the early 1990s, a town in France actually outlawed this practice and, and a little person named Manuel Walkenheim appealed this ruling on the grounds that he wanted to make his living this way. This game, this dwarf tossing game is how he wanted to make his living. And the case eventually made its way to the, the council of the, to the judge ruled that dwarf tossing should remain illegal on the grounds that it posed a dignity violation for all little people. Wow. Um, yeah, so, so Gruen then explains that what happened in the French courts is that dignity was being thought of relationally. So the courts were thinking of dignity in, in the relational way that she's thinking of it. So even if Mr. Walkenheim's individual desire was to be tossed or to take part in this game, his individual actions comprised a dignity violation, not just of himself, but of all other little people. Wow. Okay. So let's get back to the interview.

Lori Gruen: And so, so the other part of this relational story, I think is that when you treat an individual in ways that that might be dignity denying whether they want to be treated that way or not, there are other relational effects. Um, and so there's a way in which certain attitudes that might keep non-human animals in a position of dignity violation is, are promulgated when you have that kind of example. So I think, I think the relational understanding of dignity provides us with a way of recognizing a dignity violation that goes beyond the immediate desires of the individual whose dignity is being denied. First, by recognizing that you don't have to know that your dignity is being violated in order for it to be violated. And second, because a dignity violation affects those of us who are interacting and perceiving others, and might engage in further attitudes and or practices that treat the particular individuals as undignified.

Andy: Imagine you took the prisoners in Abu Ghraib, and instead of torturing them, the soldiers are really, really nice to them apart from actually having them behind bars. But they're, you know, not, not causing them physical or mental suffering, uh, instead they like dressed them up in costumes and took pictures of them. And maybe they even liked dressing up in the costumes. But the whole point of putting the prisoners in costumes was to create some Tumblr account so that we could just laugh at them or something like that. Put the, and the idea is, even though they're sort of complicit in this, the prisoners are claiming to be liking this activity. Uh, there's, there's something weird and messed up about that even if they want to, and then sort of transfer that over to the dog in the circus, even if the dog wants to be there, if the dog were fully informed and knew what was going on and could understand there's some kind of interesting counter factual, that's true of the dog and true of the prisoners, which makes sense of the dignity.

Lori Gruen: Right. I think that's exactly right. And I think it, and this is what we understand in terms of the context. And that means that an individual may not even know that people are laughing at them or making fun of them. And in that sense, we can still say that their dignity is being violated because it's not a necessary condition to use more analytic terms. It's not a necessary condition to want to preserve your dignity in order for your dignity to be preserved.

Christiane: So we've been talking about the hard question of dignity as it relates to autonomy or individuality, but I wanna make sure we're not leaving out another important part of this conversation, um, which is what Gruen and calls the ethics of site. So the ethics of site is very closely linked to her idea of relational dignity. So Andy asked Professor Gruen to elaborate on this idea of the ethics of site,

Andy: Let's talk about the, um, the, the notion of site, uh, ocean of sight, uh, your discussion concerning zoos and prisons leads to this discussion about the threat to dignity posed by constant surveillance. And you claim that being unable to escape the gaze of prison guards or zookeepers you claim that that is a kind of threat to dignity. Could you explain the relationship between site and dignity for us?

Lori Gruen: Yeah, I mean, I think one of the things that is interesting in thinking about what it would mean in conditions of captivity, cause again, this is the under the notion of sort of the ethics of captivity, um, to think about what it would look like to promote dignity in captivity, I think really does have much to do with the idea of being able to be free from certain forms of interference. If you think about what captivity is, its certainly a type of confinement or, and it's a type of control, but I think also it's important to understand captivity as a condition in which someone other than yourself is providing you with the means of survival. And it's that individual who can have a certain kind of attitude towards you, um, that can be either dignity violating or dignity promoting. And one of the ways in which I think that dignity can be violated is by a, as, as you rightly point out as a, as a way of being constantly under surveillance.

So you're not actually able to imagine yourself in your own space is one way in which site is a problem. Another way in which site is a problem, is that for many people in and I, I think this is true of animals, but I know it's also true of the human prisoners that I've worked with. There's a sense of stress. There's a level of distress as it were when you're, when you're constantly being watched. And in some ways, um, this kind of watching puts the watcher in a position of authority or power and that's the other feature of it that I think can be dignity denying. So when you think, when we think about an ethics of sight, what I'm trying to get at is a way in which the watcher recognizes the relationship they're in to the watched and acts in ways that are more respectful, their gaze, the, their, their vision is done in a more respectful way.

And that can happen in a variety of ways. One it's you can organize the captivity in such a way, imagine zoos where animals can actually escape view. This is something that they've done increasingly in modern zoos is allow animals to sort of hide so that if they're not seen, and this is

a way of, I think, promoting their dignity. Another way of promoting dignity in the human case of captives is to be able to return the gaze of the captive. One of the things that happens. And I have to say, I think it's happening more and more outside of what we normally think of as captive conditions in our police interactions with average citizens. When you have two people who are respecting each other's dignity, this is now in the human case, you will look at each other as equals. If you find yourself as a police officer or as a correctional officer being offended by having your gaze returned, which is often what's happening, that's implicitly, I believe about dignity denial. And so that's part of what I wanted to try to get at in the ethics of sight in this context is that there's ways even beyond practices, even beyond actions. So dressing up in silly clothes as we've been talking about, that's clearly more obviously dignity than I, but there's attitudes and ways of looking that also can serve to undermine the dignity of a captain.

Andy: You know, you just said something in there that I think is a really interesting point about that. That might be good to bring up to skeptics. If someone were skeptical about this issue of constant surveillance, being dignity, depriving, just see how they react when the gaze is returned, right? They don't like it. That should be taken as evidence that there really is something wrong about the staring. If they themselves don't like it. There are also interesting analogies. I think for someone who's skeptical, when it comes to thinking about raising their own children, I actually feel weird about monitors that are sort of constantly letting me know what's going on with my own kids. And I, I feel like there's in some weird way, a violation of them. This might actually explain what's wrong about it, right? This, this surveillance

Lori Gruen: Idea, right? I mean, you raised a really interesting topic. Uh, there's been a lot of stories in the news recently about children who are constantly surveilled, having harder times once they're sort of out in the world. And I think part of that might actually be that they're, they're not feeling the kind of self-respect self-esteem self-confidence dignity, self confidence, dignity that would help them to manage through the world because they've been under constant surveillance. I hadn't thought of that before, but I think that might be really an interesting way of responding and part of the ethics of site.

Andy: Thanks for joining us professor.

Lori Gruen: Oh, it was my pleasure. Thanks for having me.

[music begins]

Christiane: So if you wanna find out more about Lori Gruen and the book we've been discussing, visit our show notes page at examiningethics.org. When you visit, you'll find a link to receive a 30% discount on *The Ethics of Captivity*. If you're listening to the show before November 18th, 2015, you can enter to win one of two copies of *The Ethics of Captivity*. Check out the Institute's Facebook page for details about how to enter the giveaway.

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Sandra: Welcome back to our show. We've already talked about the moral conflicts between individuals and groups. We're focusing today on individuals whose interests are easy to ignore or forget together. In this segment. Andy talks to Martin Wilkinson about his book *Ethics and the Acquisition of Organs*. They discuss how the needs of the collective for more organs conflicts with the rights of the individuals who don't want to donate their organs, they cover other difficult topics, such as individuals who want to donate their organs, but aren't allowed to, they leave us with this question. What do you do when you want to protect individuals' rights? But those individuals are easy to ignore in this case because they're dead.

Andy: Joining me is Martin Wilkinson, Associate Professor in Political Studies at the University of Auckland. He is also deputy chair of the National Ethics Advisory Committee and was chair of the Bioethics Council. His book *Ethics and the Acquisition of Organs* was published by Oxford University Press in 2011 and has just been released in paperback. Welcome to the podcast, Martin.

Martin Wilkinson: Thanks very much for having me. It's a great honor. <laugh>

Andy: So Martin, your book is about the ethics and the acquisition of organs. And you might think this wouldn't be an issue at all if there were an abundance of organs. So could you tell us, is there an organ shortage to be worried about? And is it unavoidable?

Martin Wilkinson: Oh, well, absolutely. There's an organ shortage. I think, uh, I think everyone knows there is one. So, uh, you know, hearts, lungs, livers, kidneys, pancreases, take the, the solid organs. There's, uh, an increasing number of people whose organs fail, uh, particularly cause of diabetes related to obesity in the case of kidneys. And so you have increasing demand, uh, at the same time, the supply, although it's gone up remains kind of nowhere near the amount that it should be to meet the increasing demand. There's all sorts of clever attempts to either cut the demand or up the supply. So, you know, public health programs, but they have their limits on the supply side. There's clever technical ways to try to make sure organs can be stored for longer or that you can take organs that a few years ago would've been rejected because they were say too fatty or too old now clinically they can be used.

Uh, but not withstanding these not withstanding attempts to up donation rates increase the sources. There's a, there's a big gap. And what the gap means is that there are people who have end stage organ failure who are either going to die or have, you know, pretty difficult lives, um, who could benefit clinically from getting an organ. It would even be cost effective organ transplants, although they certainly cost money are well worth it compared with the alternatives. And yet there's, there's not enough. The strange thing about organs by comparison with other expensive medicine is that, uh, whereas with other expensive kind of medicines, there's the problem is there's a shortage of money. The problem, the case of transplants is that there's a shortage of the raw material, the organs to come from other people.

Andy: Given that there is a shortage. This is where I think a lot of the ethical issues are gonna arise. And there are, there are three core philosophical questions that, that are grappled with in the book. And I'm interested in your answers to these questions and how they're, how they're relevant to the issues surrounding organ procurement. So the first question is to what extent do people have rights over their bodies? That's gonna be relevant to, can people be posthumously harmed, harmed after their death and do, and the third is do the dead, have any moral claims on us or rights that need to be honored.

Martin Wilkinson: I said that the problem for medicine or for transplants is that there's a shortage of the raw material and that's the kind of the public policy problem. The ethical problem is that the raw material in question is organs that come from other people's bodies at this point. And it's probably worth, um, just explaining that those people could either be alive or they could be dead. So a lot of the organs come from donors who aren't deceased, but livers, uh, to a certain extent. And kidneys to a substantial extent can also be taken from living donors as well. There's also other complicated bits that don't matter lungs, and even oddly enough, the occasional heart, but, uh, so there's two sources. Now. I think it's very widely accepted that living people have rights over their own bodies. And by which I mean that there are things you simply should not do to living people without their consent to their bodies.

And these are stringent, you know, very weighty considerations. It would be wrong to take the kind of stock philosophical example to murder one person in order to reallocate her organs to save another five people. It's a kind of right. It's a very solid conviction. We have that. We have this right, our own body to prevent that kind of thing happening. And that's why we're alive. And those are what I think of as rights of bodily integrity. And they're, they're quite they're weighty, but they're limited. So it would infringe on your right of Bodi integrity to take your organ against your wishes, but it wouldn't infringe on your right of bodily integrity to turn your offer down. So if you wanted to donate, say a second kidney, because you had a second child who was on dialysis, it wouldn't infringe on your right of bodily integrity.

As I see it to say, no, we, we, we will not do that to you. On the other hand, I also think that we have rights, not just to say, keep off, keep off us, but also rights to do things with our bodies, with other people who agree. So, uh, so for instance, we have a right to engage in sex with consenting adults. And if the state or anyone else said, no, you're not, you're not allowed to do this. That would infringe on our rights. It wouldn't infringe on our right to bodily integrity. We don't have a right to have a sexual partner, but we do have a right to engage in sex with consenting other people and infringe on both our rights to say no, those of, I think of as rights of personal sovereignty.

Sandra: So far Professor Wilkinson has largely been discussing the rights of living individuals with regard to their organs and organ donation. But there's another type of individual to consider when it comes to organ donation, the individual that's dead. Today, it's pretty easy to willfully ignore the rights of the dead. They have no way of calling attention to themselves at all. Wilkinson argues that the rights of the dead should be carefully considered. When we think

about the ethics of organ donation.

Martin Wilkinson: I think every jurisdiction I know of, uh, at least a matter of law says, we will not take organs from people if they have refused, um, after their deaths. But there's a kinda interesting and deep philosophical question about, well, why not? Why not take them? I mean, these people now are dead. So, would we really infringe on their rights of bodily integrity after they're dead? They don't need the organs anymore. And so I, but I, what I, what I'm inclined to think is that rights of personal sovereignty do extend past death as well. I do think that people can be harmed after their deaths. I do think they can have certain interests in what happens after they die. Um, and that when these interests fall within the area of their bodies, they fall under these rights of personal sovereignty. And so they do have a right to certain things happening after they die. There then becomes a complicated question, which a lot of the book is about. So what happens when these rights seem to conflict with the interests of others? But I do think that there's these these rights not to be harmed. Yes.

Andy: So let me see if I have it right, and then you can correct me. Uh, if I'm, if I'm wrong, people do have rights over their body. They have this kind of personal sovereignty. Uh, you have a view that they, these rights can extend to the dead that they can be posthumously harmed. If we don't honor some of these rights, the rights are of course limited. But then when we get down to the, to apply this to the practical question about organ procurement, you might think one of the serious practical questions is why not just take organs from people after they've died. And an answer is well, uh, because people have certain rights over their body, uh, these rights extend beyond their death. And so you've got this prima facie…

Sandra: Sorry. So sorry. What does prima facie mean?

Andy: Oh, sorry. Uh, prima facie means something like at first glance or based on a first impression. So when you say prima facie reason to think, you mean sort of at first glance, what I ought, I think is this. Uh, but that's something that could be over and ridden later after you think about it more. So if you see somebody hit someone in the face, you have prima facie reason to think that they're doing something wrong. So if you learned, uh, that the person they hit was trying to take their handbag, then you know, you had prima facie evidence that they were doing wrong, but now that's been overridden because you've looked at it more. You've thought about it more carefully, you've gathered more evidence. And now you think you come to think, oh, well it looks like they might not have done something wrong after all. Got it. And so you've got this prima facie case that it would just be wrong to, to take the organs, even from a dead person without having obtained some kind of prior consent. Correct?

Martin Wilkinson: That's no, not exactly. So, um, okay. So yes, I, I think so if we were considering a policy of what you might think of as conscription, which I think summarizes what you were suggesting, mm-hmm, <affirmative>, you know, look, there's a terrible shortage of organs. There are people who desperately need them. On the other hand, there are people who are dead, who don't need their egg organs anymore. Let's just take their organs regardless of

what their wishes were. That's the kind of view that I think that runs into people's rights. I said, no, no people have rights over their bodies and you shouldn't do this, but I didn't, I don't want to say that before you may take the organs of someone who's dead first, you must have that person's consent.

Andy: So you might not let me clarify, then you might not need their consent, but there is some kind of right that they have and you need something. If it's not consent, what, what, what Is it?

Martin Wilkinson: I think if people have said no, they've dissented, so either they've formally refused, if it's possible formally to refuse which it is in some countries, then it's a no. If they didn't want to, or we have good grounds to think they didn't want to, even though they never got round to formally refusing, then I also think it's a no, I think if they've consented, formally consented, then it's potentially a yes. Assuming the organs are usable. Um, and I also think if they wanted to, but didn't consent, but we have good grounds that think they wanted to, then it's also permissible to do it.

Andy: Okay. Okay. So then you might think they have a prima facie right to their organs and it would be okay to procure them if we had consent or something. Like we had good reason to think that they wanted to consent. And so we have like a kind of hypothetical consent.

Martin Wilkinson: I wouldn't want to be committed to hypothetical consent, but <laugh> sorry. Sorry. But there is the, there is the, there is a middle group though, between those who either whose views, we know, um, one way or the other mm-hmm <affirmative> and this is the group of people where we just not sure what they wanted. And there could be two reasons for this one is they did want something, but we don't know what it was. And the other is they simply never thought about it or never, never formed thought about it in a kind of way that really resembled a formed desire. Um, I think, I wonder if there's a surprisingly large number of, of such people. I think a lot of people just don't give much thought to what happens to them after they die. And certainly not at the kind of age where they might in fact turn out to be organ donors.

So, so the question arises, what should you do with people when you just don't know what they wanted or you've got no grounds for thinking they wanted anything one way or the other. And these are the kind of cases where I think, well, people's interests are now simply. No, um, we don't, because we don't know, we can't work out what it was that would be in their interests either. Yes. Taking or no, not taking their organs. And I think in those cases it would be permissible to go to a second consideration, which is where, where would we get the most benefit? And here, the answer would be taking the organs. Okay. Which is, you know, because people desperately need them.

Andy: Okay. Okay. So this is making sense. So when it's unclear, what the wishes of the dead are, and that's where the interesting, a lot of the interesting ethical issues start to arise. If we don't know, we, we, you said, as you said, we treat their interest as Noll. We treat it as zero. So it's neither a reason for nor a reason against, and then other kinds of non-right based

considerations can come into play.

Martin Wilkinson (00:46:19): That's the idea I have, again, I have to qualify this. You might wanna know why don't we know, in other words, why did nobody put any effort into finding out? Uh, and so, and so there's kind of there's considerations related to respecting people's rights. Like what kind of mechanism ought you to establish, to try to find out what their wishes were? You know, you shouldn't deliberately design a mechanism so that you can't find out their wishes, so you can then treat them as uncertain. And so then you can take their organs. Right?

Andy: Right. One other interesting part about this. You say that people should be sovereign over their bodies, even after they die. And yet you agree that in practice, the family should have the power to veto someone's wish to donate. And I'm curious, why do you think that and how is that consistent with respect to personal sovereignty?

Martin Wilkinson: So just to make it clear what, uh, happens. In fact, in most places, even if a person has consented or done what passes for consent, which in my country is having donor on your driver's license. Even if the person has done this and then dies, the family still have the de facto power to veto that retrieval. It's not a power that's granted in law. It's not that the law says when a person said, yes, the family may still prevent this. Um, cause the family has that power. It's a medical creation. The doctors simply will not take the organs in cases where the families refuse. Now, as you, uh, as, as you, as you hint in your question here, this looks like it should be outrageous from the point of view of somebody like me, who believes that people are sovereign over their own bodies after they die.

And it also seems mad. You know, don't, these doctors know there's an organ shortage. What are they doing? Turning down an organ? Uh, actually for a long time, I used to believe both things. I used to think allowing the family, this power infringed on personal sovereignty and was simply inexplicable given the organ shortage. But I changed my mind. Once I talked to some of the transplanters about why they indeed refuse to take organs in the case where the family have said, have said no, or express their express, their hostility. Um, and they have, they have a number of reasons. Some of which are, I think are not good to do with well, the family are important too. I think, well, in that case, no, the individuals write I'm afraid of rise of families, but they had a pragmatic reason and it goes like this. They think, look, Neil Akins come from people who are, are brain dead.

Hardly anybody understands the idea of brain death and people who are brain dead. Don't look like they're dead. You know, they're pink, they're ventilated. Their chest are going up and down. Their deaths have usually come as a tremendous shock to a family. Family find it very hard to believe that actually their loved one is dead. So the doctor will say, well, I'm afraid she is. And we'd like to tear the organs. But what they're terrified of is if the family say no, and the doctor say, well, she was a donor, so we're gonna do it anyway that the family will then go to the media. And the family will say they took her organs, even though she was not dead. And this would have terrible publicity effects. Um, and the result of the terrible publicity effects would be

that there are fewer organs overall. Now I, uh, in a sense, this is the truth of this factual claim, which is if you override the family, you'll get fewer organs overall.

The truth is factual claim is not something that can be definitively established. Um, there's kind of grounds for thinking it to do with various similar cases where things have looked bad and so on. So, but my, my, my thought is this, if the factual reason is correct, then that's good enough. From the point of view, even of respecting personal sovereignty. We have a right to make an offer of our organs after we die. We don't have a right to have that offer accepted. If for instance, I said, yeah, I would like to take my liver after I die. And it turns out I've wrecked by, you know, excessive drinking or something. It doesn't infringe on my right of personal in sovereignty. If in effect the doctors say, no, thank you. Your organ is not usable. Uh, and I think it doesn't infringe on our right of personal sovereignty.

If I say, please take my organs after I die. And they say, no, thank you. Your family has said no. And we simply cannot risk the bad publicity because that would lead to fewer organs overall. So given that kind of pragmatic reason, I think in that case, there's a pragmatic reason that does not infringe on the right of the deceased to allow the families to have this veto. On the other hand, if we, we end up having good grounds for thinking, the reason is false. And in fact, you could override the family in a case where the deceased has consented. Then I think in that case, it might be permissible to override the family, but you'd have to be careful that you you've got it right. What the dead person actually wanted. You'd have to be sure the dead person wanted to donate no matter what his or her family thought, those kind of cases are probably very rare.

Andy: You might have a right to donate a lot of money, but if the donation of that money is gonna create some kind of scandal, uh, that might cause less donation later on down the road of money, it'd be perfectly acceptable for organizations to say, no, we're not gonna accept that money. We, we appreciate the offer, but, uh, we're not gonna take it. And that's sort of the similar reasoning that's being applied here.

Martin Wilkinson: Right? It's exactly that kind of reasoning. So that's, that's, that's the, that's the transplant as pragmatic reason. My last point though is also making this, which is, I think when people get very worked up about the family vetoing, a dead person's wish to donate, they have a kind of picture in mind. They have a picture in mind of your person's died and then comes in some gly estranged relative who hasn't seen the person in years who then calls a halt to the whole proceedings. Uh, but actually we don't really have, when people have said they're willing to donate, we don't really have good grounds to think that they wanted to donate no matter what their families thought, no matter how upset their families would be. So the kind of cases that would be the problem cases would be the cases where somebody wants to donate no matter how upset her, his or her family was and their family would refuse anyway.

But in fact, if people are adamantly, um, inclined to donate, they're probably have told their families and their families wouldn't say, no. The families tend to say no when they're not sure

what the dead person wanted and people who die often don't want it to upset their families either, or wouldn't have done when they're alive. When we get onto the question of what difference to the numbers would it make, if we leave aside the pragmatic point that it could cause this scandal and so on the number of cases where a person is adamantly want to donate and the family would adamantly say no, and we'd be inclined to override the family. Those cases would be very small. I think a colleague of mine estimated the case in New Zealand, you get an extra nor 0.6 organs a year.

Andy: Some proposals concerning organs would be to make organ donation, mandatory phrase you used earlier conscription. So are there additional reasons to be worried about conscription? Or can you go into any more detail about what's problematic about certain kinds of conscription proposals?

Martin Wilkinson: Let me wait. One point at the, at the start about your use of the word donation, which is very interesting. Uh, I mean the word donors is used and donation, the donation model kind of permeates our thinking about transplantation and, and, and organ acquisition actually in a way that I think is wrong, but it's, it's definitely wrong in this case, because if you are taking organs from people, whether they wanted you to or not, they're not donating, they're not giving when it comes to conscription, there's, there's, uh, two kinds of proposals. One of which I think should be taken seriously. And the one of which should not be taken seriously, the one that should not be taken seriously is the idea that you should conscript organs from living people. This pops up in philosophers thought experiments every so often, you know, look, uh, everyone, or pretty much everyone has two kidneys they can get by on one.

Why don't we just simply force 'em to hand over one of their kidneys? Uh, I think this runs into the right of bodily integrity, which I think is solidly rooted in our intuitions. Occasionally philosophers, uh, seem to try and give the idea of conscriptions from the living a bit of a run for its money. Uh, but in the end, uh, often they simply wobble on it and, and don't clearly come out in favor in any case. I just think it's an absolute, non-starter both philosophically and certainly politically then there's conscription from the dead. This is probably also a non-starter politically, but it is. I think it's definitely should be taken seriously when we think about ethics. And I think that the occasional dismissiveness one sees of conscription from dead people is, is, I mean, it's just excessive because after all you do have on the one hand people with organ failure, these are people who are either gonna die soon or are having very difficult lives and they could be made much better off by having an organ.

They could live where they would die, or they could live longer with a higher quality of life. And on the other side, you have people who simply do not need their organs anymore as organs. And I think, you know, you should take seriously the needs of the people for these organs in the end. I don't favor conscription to dead people, but I think there's a lot that needs to be said. And it's not enough to say as I, as I may give the impression so far, well, there's the needs of the living, but they're outweighed by the rights of the dead, the dead simply beat that you have to, you have to give a sense, well, why do the rights beat the needs of the living? You can imagine

emergency cases where for instance, the only way you could save someone's life would be to in some philosopher, think some of the example, throw the dead body on a flame and put the fire out.

Wouldn't that not be right? Mm-hmm <affirmative>. Now the example I think of is, um, suppose that you have a plane that's flying over a hospital and it loses it, loses control. All the pilot can do is steer. Either the pilot can crash into the pediatric wing of the hospital and kill children. None of whom cared about what happened to their bodies. After they die or it can crash into the mortuary that contains only dead people who wanted to be buried intact. It seems obvious in that case that the pilot should crash into the mortuary. So you have plenty of examples where it seems to think, well, actually, you know, the needs of the living do outweigh the claims of the debt. Uh, and I, so I think there has to be a lot of argument against that kind of view. Um, and in the end, uh, you know, the argument I have is a, is a somewhat complicated one.

And it, in essence, it goes like this. We shouldn't think of the need for organs is a kind of emergency case. Of course, in individual cases, it's urgent, but we know there's going to be a persistent shortage of organs. It's feasible to give people the chance to opt into a scheme, like an insurance scheme, where they're willing to donate, um, and they're willing to receive, or to opt outta the system altogether in this kind of case, this would dominate a system would be better than a system where you simply take everyone's organs. It would give people who have rights over their bodies, the chance to decide whether they want to pay the kind of access price to organs or not. Uh, and so it's more, you, it treats it more like a system of buying, um, health insurance or buying insurance against fire or catastrophic injury or something like that. And then people can opt in, opt out and that better respects people's rights over their bodies, I think, than a system of mandatory, right. Retrieval, uh, you know, conscription,

Andy: Do you think selling of organs should be permitted? And if so, well, under what kinds of conditions.

Martin Wilkinson: A lot of places, uh, uh, make selling of organs illegal. And so it's a criminal offense to sell organs. It's a criminal offense to buy organs. It's a criminal offense to act to some kind of intermediary, their only kind of quasi exceptions. Iran has run a kind of, um, system of generous state funded compensation, and some places don't exactly buy organs, but they're willing to give the state are willing to give compensation to people who are living donors, but it's very, very low compensation, you know, in no sense, is it a kind of a, a generous reward for this? So a lot of places make it illegal. And in the process, what they do is they criminalize the people who are, who who'd like to sell their organs. Now, I think that's wrong. I think that that infringes on the right personal sovereignty over our own bodies.

And so the criminal prohibition of selling is infringement of our rights, but there's plenty more that one could do to discourage a market without using criminalization. Um, and there's plenty, plenty variations in allowing a market. So for instance, you could allow sale from dead people, but not living people or living people, but not dead people you could allow sale, uh, with, from

within one country's borders only, or across countries, you could set maximum prices, minimum prices, fixed prices. Uh, you could restrict the kind of organs that are allowed to be sold. So make it only kidney, or maybe you could allow liver, um, lobes as well, although that's riskier. So there's lots of, there's lots of potential variation here on, on the prohibition side or the trying to discourage side, you could refuse to make contracts enforceable as opposed to making the sale illegal. You could just say, no, no, we won't uphold any contracts.

Uh, or you could simply have the guild of surgeons saying, we forbid our members from engaging in this practice. And that would, that would certainly in some places like, um, small countries like mine would effectively end the practice, if there were one, without having to make it illegal. So when you ask, do I think the sale should be permitted? I certainly think that the criminal law prohibiting it should be repealed, that, I think, infringes on our rights. That's another question to what extent, which you're trying to encourage people to sell their organs. One thing it hinges on of course is what it would actually do to the supply of organs. Um, as a matter of, of armchair theory, if you allowed the sale of organs, the supply could either go up or it could go down or it could stay the same. You know, you can tell stories, any number of ways it could be, the price is zero. Now there's a price. People say, I'll sell, I'll get more money or it could be people think, well, I'm not gonna give my organs because that's just something that people who are desperate for money do, or that's something that only money grubbers do, or the whole thing's corrupted and then refuse the armchair level. You simply can't say, all you can do is look at so far nearby cases and you could try some pilot experiments and so on.

Andy: Thank you for joining us.

Martin Wilkinson: Thank you very much. It's been a real pleasure.

Sandra: If you want to find out more about Martin Wilkinson and the book we've been discussing, visit our show notes page at examiningethics.org. When you visit, you'll find a link to receive a 30% discount on *Ethics and the Acquisition of Organs*. If you're listening to the show before November 18th, 2015, you can enter to win one of two copies of *Ethics and the Acquisition of Organs*. Check out the Prindle Institute's Facebook page for details on how to enter the giveaway.

Christiane: That's it for today's show. If you like today's topic, follow us on Twitter for an extra story about individuals versus groups. Our Twitter handle is @examininethics. Be sure to check out the show notes for this episode@examiningethics.org. Thanks for joining us. And we'll see you in one month.

Sandra: Examining Ethics with Andy Cullison is hosted by The Janet Prindle Institute for Ethics. Sandra Bertin and Christiane Wisehart produced the show. The photograph in our logo was taken by Cynthia Odell. Our music is by Cory Gray, Lachte Swing and Podington Bear, and can be found online at freemusicarchive.org. Thanks to Oxford University Press and the Prindle Institute for supporting the show.