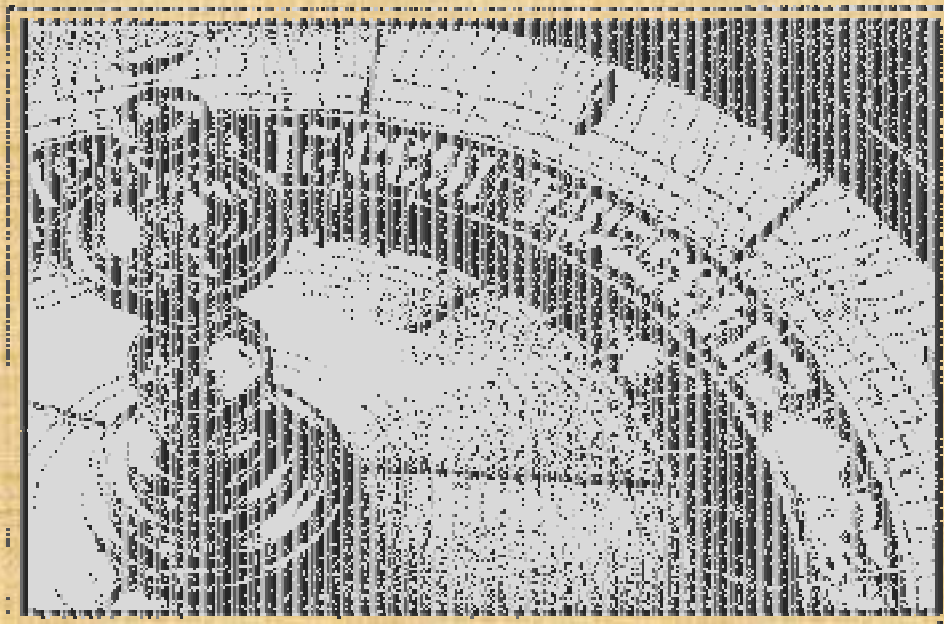


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# Rolling the Bones



**Law, Risk and Body Boundaries**


# Bodily Connections



**“The notion that a man may be bewitched by means of the clippings of his hair, the parings of his nails, or any other severed portion of his person is almost world-wide.”**

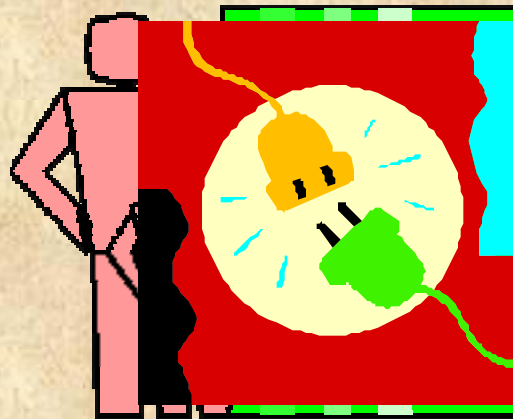
**~ Sir James George Frazer (1922)**

See Frazer, James George, *The Golden Bough*, Chapter 21  
“Tabooed Things,” § 8 “Disposal of Cut Hair and Nails” (1922).

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# Possession & Control

- ✦ Harm may befall us via body parts
- ✦ “Sympathetic Connection”
  - ✦ Control
  - ✦ Transfer / Disposal



See Frazer, James George, *The Golden Bough*, Chapter 21  
“Tabooed Things,” § 8 “Disposal of Cut Hair and Nails” (1922).



# Questions of Personhood

## ✦ Body Boundaries

✦ when, but where ...



✦ Are these still a part of you?

✦ And, if not, when and how does this

change take place?

See, e.g. Bakhtin, Mikhail, "Author and Hero in Aesthetic Activity" (1922-1924) and *Rabelais and His World* (1930-1965).

# Researching Body Boundaries



## ✦ In the United States

### Two Goals

#### ✦ (1) Determine body boundaries

✦ Defined by U.S. law

✦ Influenced by biotechnology

#### ✦ (2) Determine regulation

✦ Principles

✦ Forces



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# Research Methods



- ✦ Grounded Theory
  - ✦ 407 appellate-level judicial opinions
    - ✦ Most, but not all, in medical setting
  - ✦ Snowball sampling
    - ✦ Present
- ↓
- ✦ 1872 *Pierce v. Proprietors of Swan Point Cemetery*
  - ✦ “Reverse ethics”

Scully, Jackie Leach, *Drawing a Line: Situating Moral Boundaries in Genetic Medicine* (2001).

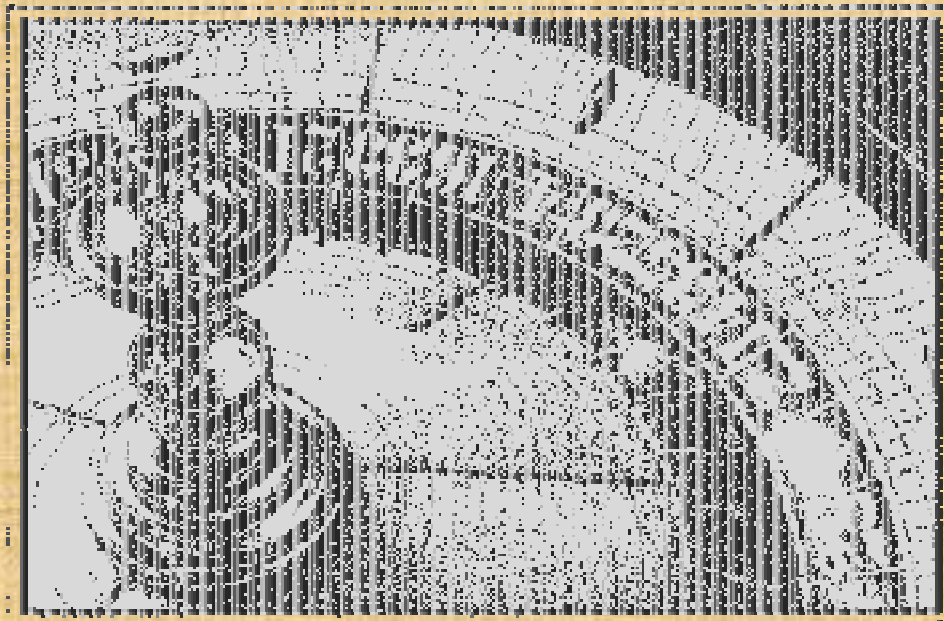


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Goal #1

# Findings



**Determining Body Boundaries**



**No  
Authority**



**Complete  
Authority**



- 'Biowaste'
- Genetic/Medical Info
- Abortion
- Refuse Care (Pregnant)
- Surrogacy
- Cord Blood
- Gametes/ART
- Sterilization
- Organs
- Dying/Refuse Care
- Dead

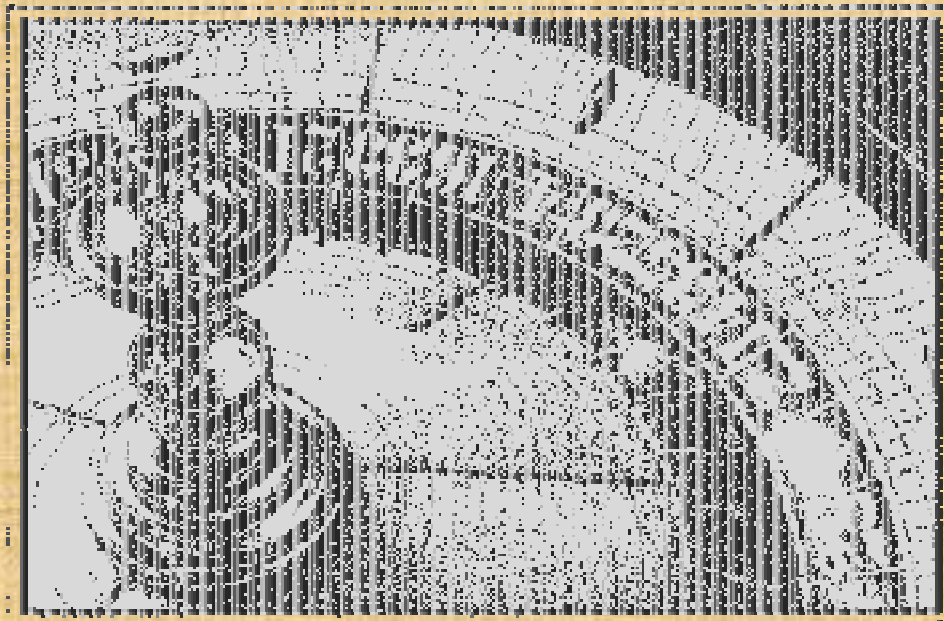


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Goal #2

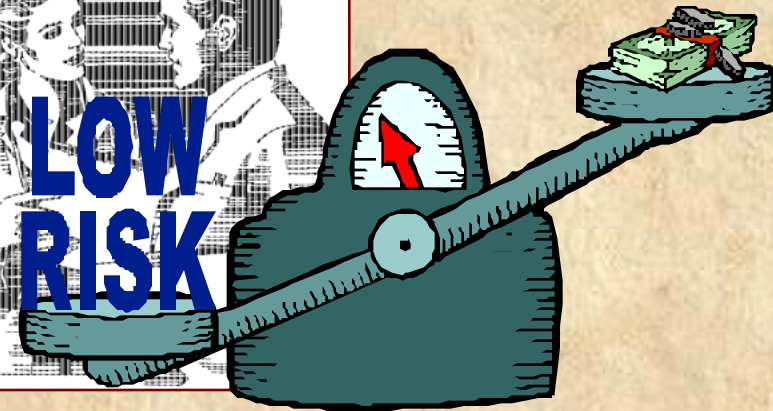
# Findings



**Determining Boundary Constraints**

# Boundary Constraints

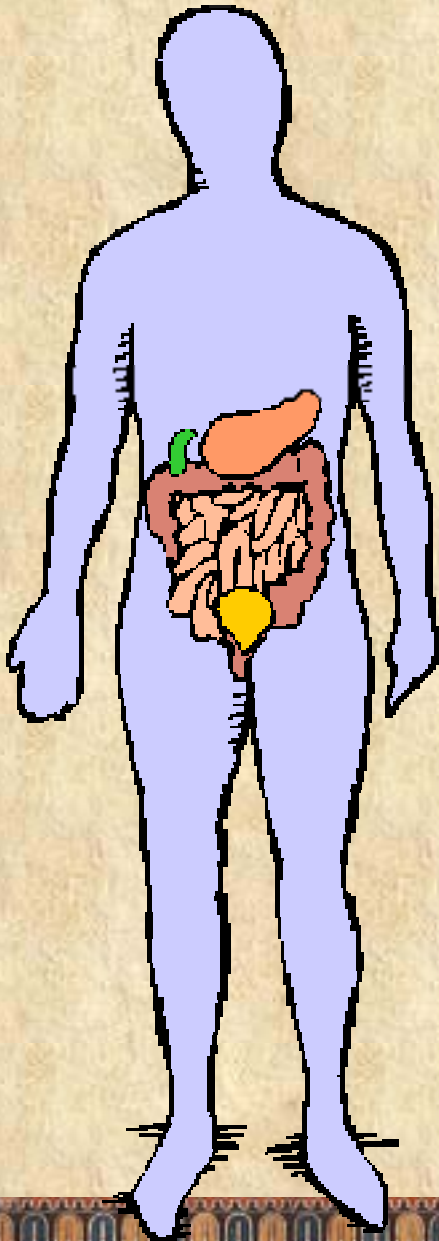
- ✦ Two main “methods”
  - ✦ (1) Professional third parties
  - ✦ (2) R



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# Professional Third Parties

- ✦ Enable transfer of “possession”
- ✦ E.g., sperm



**Patient  
retains  
parental  
rights**

**Physician  
acts as  
(1) bailee or  
(2) point of  
transfer**

**Patient may (1)  
retain rights or  
(2) give up rights  
to recipient**

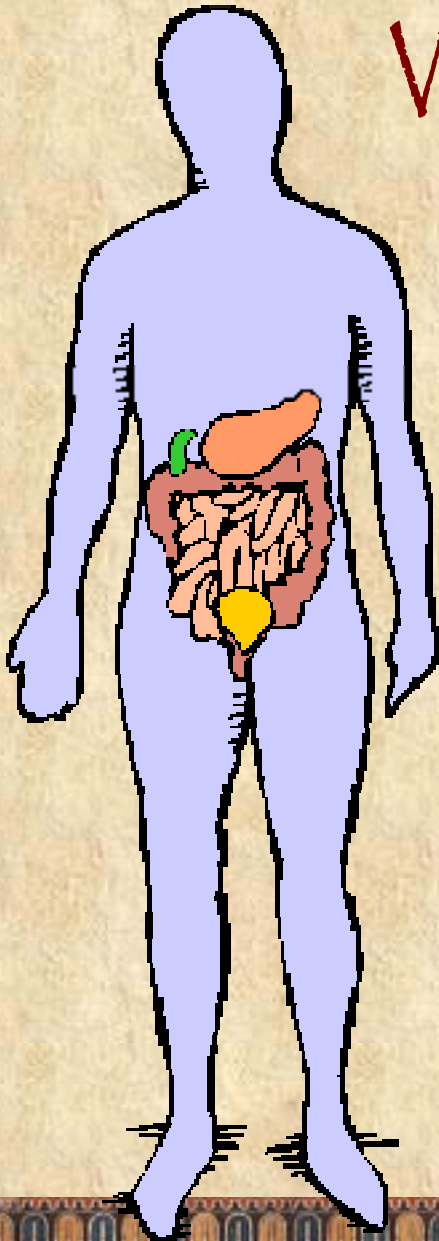


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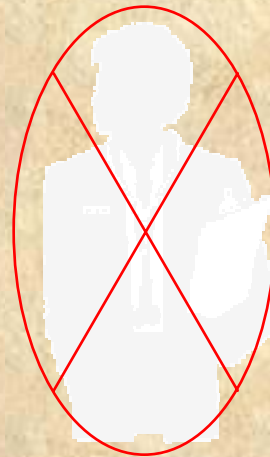


# When the Third Party Is Missing

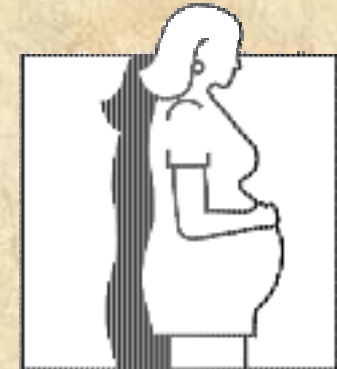
- ✦ No transfer of “possession”
- ✦ E.g., sperm



**Patient  
retains  
parental  
rights**



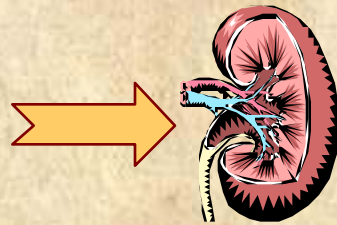
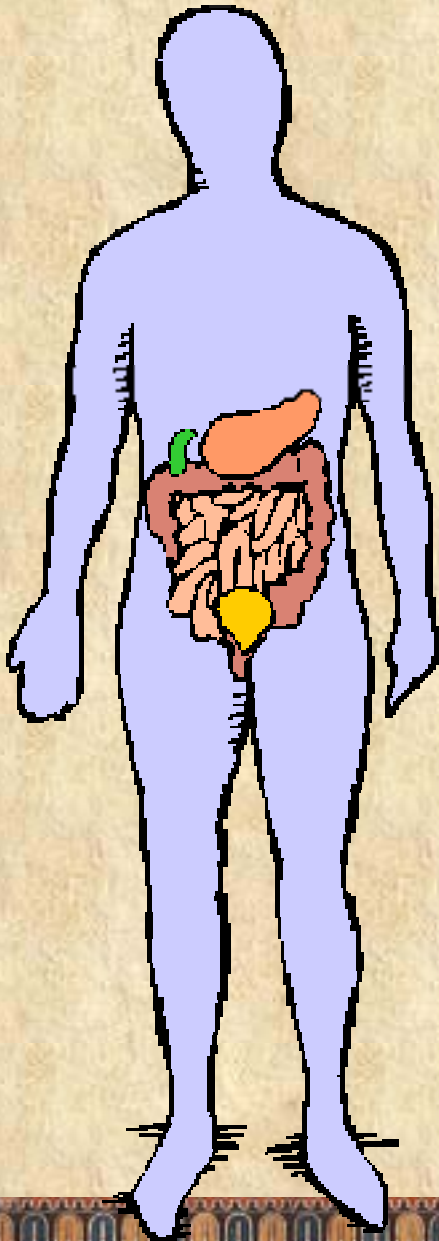
**No physician  
to be either  
bailee or point  
of transfer**



**Patient, not  
recipient, retains  
rights and  
responsibilities**

# Professional Third Parties

- ✦ Enable transfer of “possession”
- ✦ E.g., kidney



Patient  
retains  
MDM  
authority



Physician acts  
as both bailee  
and point of  
transfer



Organ now belongs  
to recipient

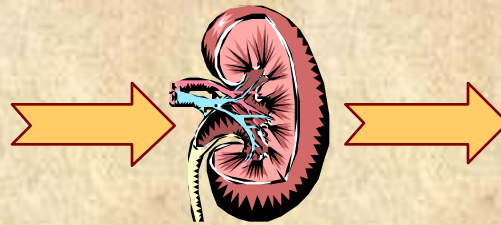
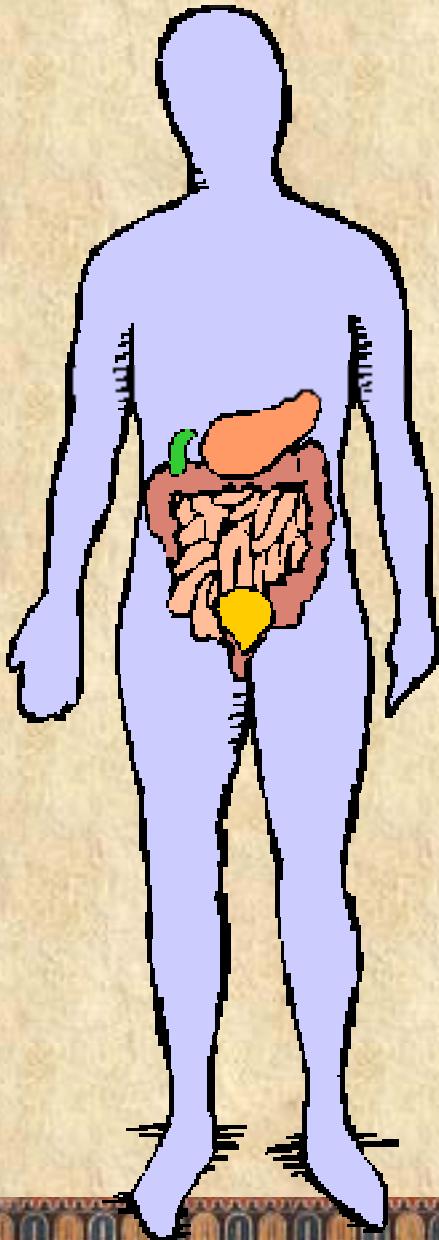


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# When the Recipient Is Missing

✦ Transfer of “possession” to physician?

✦ E.g., kidney



**Tissue is the patient's?  
Or is it abandoned?**

**May the physician convert this tissue as part of the commons?**

**No recipient**



# What Defines Bodies?



**Body  
Boundaries  
(Cultural)**

**Decision-Making  
Authority  
(Permissible Uses)**

Physical Connection  
Synthetic Connection

*defined by*

**Intent**

weigh  
+

**Risk**



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# Defining & Weighing



## ☀ Risk

☀ Positive vs. negative

☀ Each party involved and in relation to society

☀ Degree of certainty

## ☀ Intent (social values and context)

Philosophy/Biases



Intent → Risk → Law → Boundaries



# Research on Frozen Embryos?



Intentions

weigh

Risks Involved

Potential  
treatments for  
diseases

Medical need?

Innocent 3<sup>rd</sup> party?

Inhumane?

Whether Acceptable:  
Utilitarianism?  
Personhood?  
*Parens patriae?*

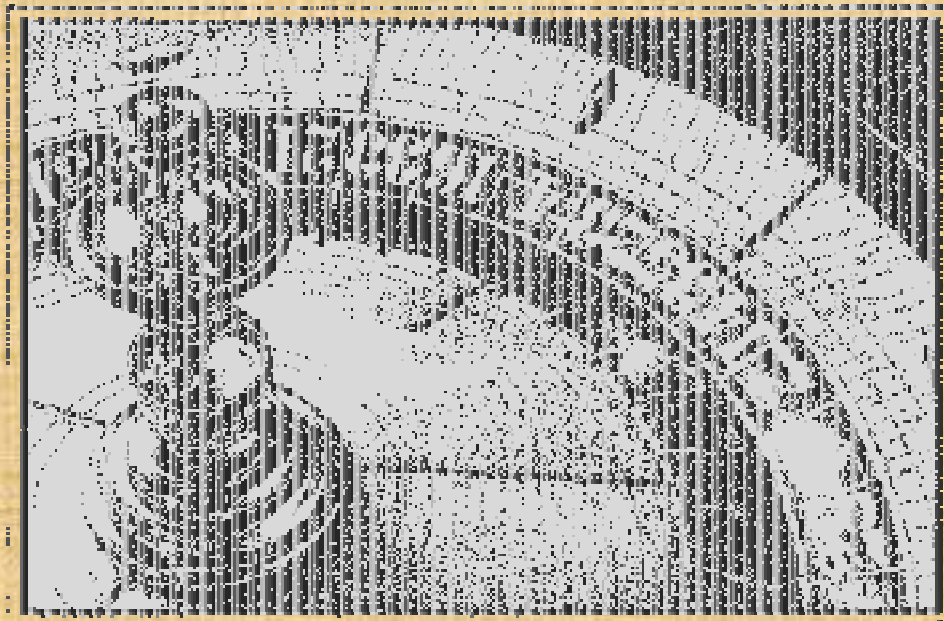
Alternative tissues?

State of research?



Recommendations

# Conclusions



**For Bioethicists, Legislators, Judges**

# Recommendations

'Biowaste'

Genetic/Medical Info

✦ (1) Better risk calculations, better science

Abortion

✦

(2) Truthful about philosophical biases

Refuse Care (Pregnant)

Conflicts of interest?

Surrogacy

✦

(3) Define third parties' roles

Cord Blood

(3a) Safeguard interests re: testing

Gametes/ART

✦ Especially when interests overlap

Sterilization

(3b) Redefine abandoned tissues

Organs

✦ E.g., when third party has a profit motive

Dying/Refuse Care

Dead



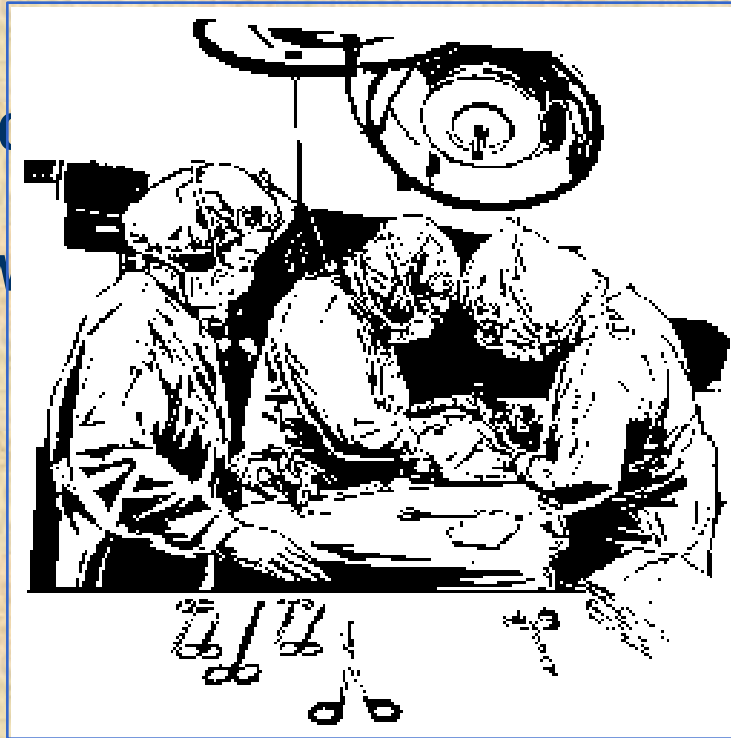
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# Property in the Body?

✦ Focus on legal **Biotrust** relations, not property

✦ Medical **Priority**

✦ Power



See Gottlieb, Karen, in R.F. Weir's (ed.) *Stored Tissue Samples* (1998) and Dickenson, Donna, *Property in the Body* (2007).



# Attentive Watchdogs

✦ Policy makers must recognize:

✦ Building “Trust”

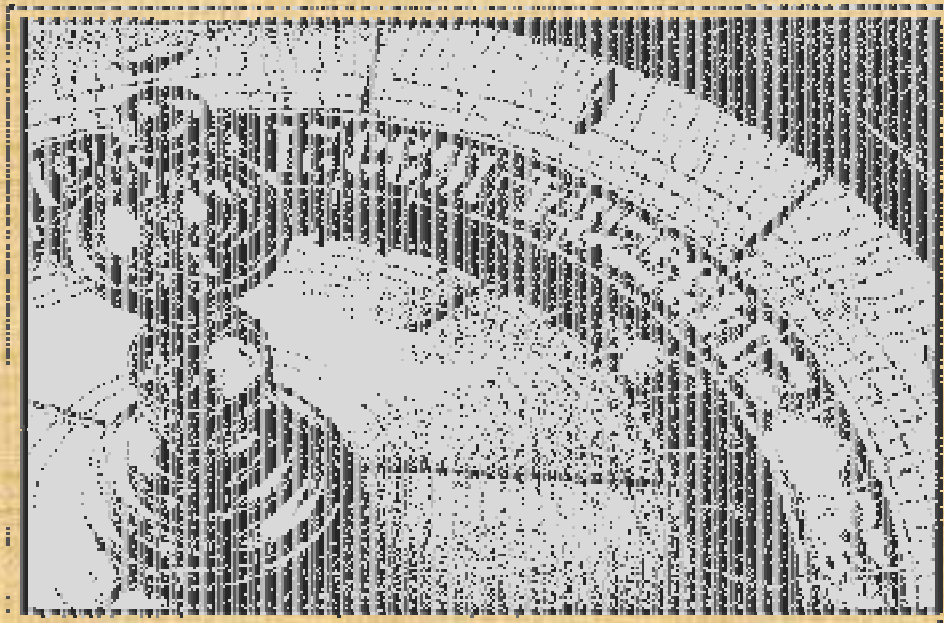
✦ Supporting the Health Care Professions



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Questions?

# Rolling the Bones



**Thank You!**