

Routine Recovery of Cadaveric Organs for Transplantation: Consistent, Fair, and Life-Saving

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Many families deny organ recovery from recently deceased relatives. As a result, valuable organs and some of the lives they could save are lost. Several plans designed to rectify this tragic situation have been proposed, including organ sales. We suggest another approach that we believe to be superior and that is rarely discussed: routine recovery of all transplantable cadaveric organs without consent. Here we show that this plan is ethically acceptable, more equitable than our current opting-in approach, consistent with other mandatory social programs, and life-saving. Based on these considerations, we believe that it is time to eliminate entirely the consent requirement for recovery of transplantable cadaveric organs.

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Transplant candidates and the people who care for them know only too well that there is a severe shortage of acceptable organs. As a result, in the United States alone, approximately 19 people on the transplant waiting list die every day (1). Compounding this tragedy is the fact that many potentially life-saving cadaveric^a organs are not procured (2). Clearly, our organ procurement system fails to meet our needs. Recognition of this failure has led to several radical proposals designed to increase the number of organs that are recovered for transplantation, including legalization of organ sales (3) and offering priority status to people who agree to posthumous organ recovery (4). But before reaching for a new approach, we need to ask first, “What is wrong with our current cadaveric organ procurement system?”

The Need for Consent: Widely Accepted but Sometimes Deadly

We believe that the major problem with our present cadaveric organ procurement system is its absolute requirement for consent. As such, the system’s success depends on altruism and voluntarism. Unfortunately, this approach has proved to be inefficient. Despite tremendous efforts to increase public commitment to posthumous organ donation, exemplified most recently by the US Department of Health and Human Services sponsored Organ Donation Breakthrough Collaborative (5), many families who are asked for permission to recover organs

from a recently deceased relative still say no (2). The result is a tragic syllogism: nonconsent leads to nonprocurement of potentially life-saving organs, and nonprocurement limits the number of people who could have been saved through transplantation; therefore, nonconsent results in loss of life.

In an attempt to overcome this consent barrier while retaining personal control over the disposition of one’s body after death, several countries have enacted “opting-out” policies, sometimes referred to (erroneously, we believe) as presumed consent (6). Under these plans, cadaveric organs can be procured for transplantation unless the decedent—or her family after her death—had expressed an objection to organ recovery. Although there is evidence that this approach increases recovery rates, perhaps by changing the default from nondonation to donation (7,8), the recent Institute of Medicine (IOM) report on organ donation concluded that a presumed consent policy should not be adopted in the United States at this time (8). One of the most important concerns noted by the IOM committee is the results of a 2005 survey in which 30% of the respondents said that they would opt out under a presumed consent law. The IOM report also pointed out that in the United States there seems to be a lack of public support for this approach, that the organ donation rate in the United States currently exceeds that of many countries with presumed consent policies, and that in most of these countries the family of the decedent is still consulted (8). It should also be noted that even opting-out countries do not have enough organs to meet their needs, and for people who remain unaware of the plan, presumed consent becomes routine recovery in disguise.

Given that some people do not want to donate, it is clear that whether we follow an opting-in or an opting-out approach, life-saving organs are and will continue to be lost because of refusals. In other words, the requirement for consent, whether explicit or presumed, is responsible for some deaths. But isn’t this the price that we must pay to show respect for people after they die? We believe that the answer is no.

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^aThroughout the text, we use the term “cadaveric” rather than “deceased donor” to refer to organs that are recovered after death. We do this because the term “donor” implies that one has a choice. Routine recovery would eliminate choice; under this plan, there would be no deceased donors but rather organ sources.

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The view that consent is an absolute requirement for cadaveric organ recovery has long been accepted as self-evident, and few experts in the field have seen the need to justify it. We agree that the premortem wishes of the deceased regarding the postmortem disposition of his or her property should generally be respected. However, we believe that the obligation to honor these (or the family's) wishes is *prima facie*, not absolute, and that it ceases to exist when the cost is unnecessary loss of human life, which is often precisely what happens when permission for organ recovery is denied. Therefore, given the current severe organ shortage and its implications for patients who are on the waiting list, we propose that the requirement for consent for cadaveric organ recovery be eliminated and that whenever a person dies with transplantable organs, these be recovered routinely (9–11). Consent for such recovery should be neither required nor sought. In our opinion, the practical and ethical arguments for this proposal are compelling.

Routine Removal: Consistency with Other Socially Desirable but Invasive Programs

One of the major reasons for insisting on consent is to show respect for autonomy, a major principle of biomedical ethics. However, Beauchamp and Childress (12) pointed out that as important as this principle is, it “has only *prima facie* standing and can be overridden by competing moral considerations.” One such consideration occurs when society is so invested in attaining a certain goal that is designed to promote the public good that it mandates its citizens to behave in a manner that increases the probability of achieving that goal, even though many of them would prefer not to act in this way. Silver (13) pointed out the legitimacy of this approach in his discussion of an “organ draft”: “The sense behind the coercive power of democratic governments is to move society forward by public decree where individuals will not, by private volition, act in their own best interests.” Examples of such situations include a military draft during wartime, taxation, mandatory vaccination of children who attend public school, jury duty, and, perhaps most relevant to routine removal of cadaveric organs, mandatory autopsy when foul play is suspected. Although some people may not like the fact that they have no choice about these programs, the vast majority of us accept their existence as necessary to promote the common good. Routine removal of cadaveric organs would be consistent with this established approach, and it would save many lives at no more (and we believe much less) cost than these other mandated programs. Furthermore, had we been born into a world where cadaveric organ removal for transplantation were routine, it is likely that few if any people would question the policy, just as few of us question mandatory autopsy today. And while most of us will never need a transplant, nonrecipients would also benefit from the plan in the same way that people who never file a claim benefit from the security of having insurance. It should also be noted here that, as discussed below, a person's autonomy is lost after death.

Recovering Cadaveric Organs without Consent: Life-Saving and Fair

Few would argue against the view that routine removal of usable cadaveric organs would save many lives. Under such a program, recovery of transplantable organs should approach 100%. It is unlikely that any program designed to increase consent rates could even come close. Although the expected high efficiency of routine recovery is its major *raison d'être*, it also has several other advantages. Routine recovery would be much simpler and cheaper to implement than proposals designed to stimulate consent because there would be no need for donor registries, no need to train requestors, no need for stringent governmental regulation, no need to consider paying for organs, and no need for permanent public education campaigns. The plan would eliminate the added stress that is experienced by some families and staff who are forced to confront the often emotionally wrenching question of consent for recovery. Delays in the removal of transplantable organs, which sometimes occur while awaiting the family's decision and which can jeopardize organ quality, would also be eliminated.

A final advantage of routine posthumous organ recovery is that it is more equitable than are systems that require consent. All people would be potential contributors, and all would be potential beneficiaries. No longer could one say, “Thank you,” when offered an organ but say, “No,” when asked to give one; such “free riders” would be eliminated. And concern about exploitation of the poor, as sometimes arises during discussions of organ sales, is not an issue here.

Concerns about Routine Removal of Cadaveric Organs for Transplantation

Opponents of this proposal allege that eliminating the requirement for consent would violate individual autonomy and could cause harm (14–16). But as Jonsen (17) pointed out, “consent is ethically important because it manifests and protects the moral autonomy of persons. . . [and] it is a barrier to exploitation and harm. These purposes are no longer relevant to the cadaver which has no autonomy and cannot be harmed.” Moreover, a policy of routine organ recovery would not violate the autonomy of the living, even if they would object to the posthumous removal of their transplantable organs. Because the existence of the plan would be broadcast widely, autonomy would not be compromised by deceit, and people would be just as free as they were before the implementation of this policy. It therefore would not affect their autonomy at all.

Some authors disagree and have argued that the dead or at least their “surviving interests” can be harmed (15,16). The prime example given of a surviving interest is a wish for bodily integrity after death, an interest that routine posthumous organ recovery would thwart and, it is claimed, thereby harm the decedent.

We strongly believe that the concept of posthumous harm is a fallacy (18,19). Although some people may wish it were not so, as Emson (9) pointed out, dead bodies decay very quickly and cannot remain intact. More importantly, after a person

dies, the person whom he or she was ceases to exist and so cannot be harmed. But even if we are mistaken in our skeptical view of the concept of posthumous harm, this would not change our belief that routine removal of usable cadaveric organs is the way to go. As Harris (10) pointed out, “rights or interests would have to be extremely powerful to warrant upholding such rights or interests at the cost of the lives of others. . . the interests involved after death [be there any] are simply nowhere near strong enough [to maintain the consent requirement for cadaveric organ recovery while potential recipients continue to die].”

The possibility of offending and thus harming surviving family members is more concerning, but even this possibility is not sufficient to reject routine removal of cadaveric organs. Professor Harris again: “If we can save or prolong the lives of living people and can only do so at the expense of the sensibilities of others, it seems clear to me that we should. For the alternative involves the equivalent of sacrificing people’s lives so that others will simply *feel* better or not feel so bad, and this seems nothing short of outrageous” (20). And consider that during wartime the occasional necessity of a military draft is widely accepted even though the death of a young son or daughter would be much more painful for families than would be the drafting of organs from a relative who is already dead. Finally, it should be noted that organ recovery does not interfere with the ability to have an open-casket funeral.

Another objection to routine recovery of cadaveric organs is that it would violate religious or other moral convictions of “conscientious objectors.” This is an important issue. One approach is to conclude that routine removal is so much in society’s interest that no one should have a choice regardless of his or her beliefs. Another possibility is to allow conscientious objectors to opt out (21); but given that this approach could dilute the value of our proposal, we favor not allowing exemptions, as is true for forensic autopsies. On the other hand, it is unclear if the first amendment would require allowing religious exemptions from routine recovery (see below). If not, then it would be up to the public and policy makers to decide how to handle conscientious objectors. But however this issue is resolved, the concern does not justify abandoning the proposal.

Silver (13) discussed possible legal obstacles to routine recovery of cadaveric organs. These include violating freedom of religion, taking private property without just compensation, and infringing on privacy rights. He concluded that only the first of these might pose a problem for an organ draft. It is unclear if the first amendment would be violated without allowing exemptions on religious grounds; but with such an allowance, and perhaps even without it, there should be no insurmountable constitutional barriers to the plan (13).

A final objection is that routine recovery would generate outrage among the public. This is possible. However, we believe that it is likely that given education and time, most of the public would soon recognize the tremendous benefit and fairness of the plan and therefore come to accept it just as they now accept other mandated behaviors designed to promote the public good. Preliminary data suggesting that 30% of the US public would already accept routine removal of cadaveric organs,

without education regarding the value of this approach, provide support for this view (22).

Another Justification for Routine Removal of Cadaveric Organs: Easy Rescue of an Endangered Person

It has been argued cogently that when one can save an endangered person at little or no risk to oneself, rescue is morally obligatory. Given that decedents cannot be harmed and that their organs may be life-saving, we and others believe that posthumous organ donation is an example of an easy rescue. As such, it is not an act of charity but rather a moral duty (23–25). Unfortunately, many people do not fulfill this duty by agreeing to postmortem organ donation. Given this frequent failure, routine cadaveric organ recovery may also be justified as necessary to ensure that easy rescues of patients with organ failure are effected. If our proposal were enacted, no longer would potential organ recipients be allowed to die because of the moral failings of nonconsentors, as now happens frequently.

Conclusions

Some people who have end-stage organ disease and could be saved by transplantation are dying needlessly because of our failure to recover all usable cadaveric organs. Given this tragic state of affairs, society has a responsibility to explore every possible ethical means for increasing the rate of recovery of acceptable organs. Perhaps we will soon be able to generate replacement organs from stem cells and discussions such as this one will become notes in medical history. But for now the source of organs for human transplantation remains human beings. We believe that requiring consent before the recovery of cadaveric organs, although understandable, is misguided. This approach is inconsistent with the widely accepted view that people can sometimes be required to act for the greater good, unfair because it permits “free riding,” and sometimes deadly because it allows life-saving organs to be discarded unnecessarily, an inexcusable but regular occurrence. Routine recovery would avoid all of these problems. We agree with Truog (26), who recently said that, while alive, people’s organs should be considered their personal property, but after death their “organs [should be considered] a societal resource.” When this is considered along with the fact that routine posthumous organ recovery would increase greatly the availability of life-saving organs, we strongly believe that not only is routine recovery ethically acceptable, it is actually ethically preferable to asking for permission. In fact, as Emson (9) argued, it may be immoral to require consent for cadaveric organ procurement because this practice leads to an unnecessary loss of life.

If we can mandate an autopsy in certain settings, and if we can conscript a person into the military at the risk for death, then surely we can conscript an organ from a dead person, where the risk to that person is zero and the benefit can be life-saving. As Monaco (27) said, “We need a bold, new approach to increase the available [organ] pool.” We submit that routine removal of transplantable cadaveric organs is the an-

swer. Unfortunately, this plan is rarely taken seriously in discussions of potential solutions to the critical organ shortage. In our opinion, this is a bad mistake. It is time that we start debating routine recovery of cadaveric organs openly and intensively. The stakes are too high not to.

Disclosures

None.

References

1. US Department of Health and Human Services. Donate Life. Available at: <http://www.organdonor.gov>. Accessed September 27, 2006
2. Sheehy E, Conrad SL, Brigham LE, Luskin R, Weber P, Eakin M, Schkade L, Hunsicker L: Estimating the number of potential organ donors in the United States. *N Engl J Med* 349: 667–674, 2003
3. Friedman EA, Friedman AL: Payment for kidney donors: Pros and cons. *Kidney Int* 69: 960–962, 2006
4. Landry DW: Voluntary reciprocal altruism: A novel strategy to encourage deceased organ donation. *Kidney Int* 69: 957–959, 2006
5. US Department of Health and Human Services. Organ Donation Breakthrough Collaborative. Available at: <http://www.organdonationnow.org>. Accessed September 27, 2006
6. Veatch RM, Pitt JB: The myth of presumed consent: Ethical problems in new organ procurement strategies. *Transplant Proc* 27: 1888–1892, 1995
7. Johnson EJ, Goldstein D: Do defaults save lives? *Science* 302: 1338–1339, 2003
8. Childress JF, Liverman CT, eds. *Organ Donation: Opportunities for Action. A Report from the Institute of Medicine*, Washington, DC, National Academies Press, May 2006, pp 205–228
9. Emson HE: It is immoral to require consent for cadaver organ donation. *J Med Ethics* 29: 125–127, 2003
10. Harris J: Organ procurement: Dead interests, living needs. *J Med Ethics* 29: 130–134, 2003
11. Spital A, Erin CA: Conscriptio of cadaveric organs for transplantation: Let's at least talk about it. *Am J Kidney Dis* 39: 611–615, 2002
12. Beauchamp TL, Childress JF: Respect for autonomy. In: *Principles of Biomedical Ethics*, 4th Ed., New York, Oxford University Press, 1994, p 126
13. Silver T: The case for a post-mortem organ draft and a proposed model organ draft act. *Boston University Law Review* 68: 681–728, 1988
14. Giordano S: Is the body a republic? *J Med Ethics* 31: 470–475, 2005
15. Glannon W: Do the sick have a right to cadaveric organs? *J Med Ethics* 29: 153–156, 2003
16. Hamer CL, Rivlin MM: A stronger policy of organ retrieval from cadaveric donors: Some ethical considerations. *J Med Ethics* 29: 196–200, 2003
17. Jonsen AR: Transplantation of fetal tissue: An ethicist's viewpoint. *Clin Res* 36: 215–219, 1988
18. Callahan JC: On harming the dead. *Ethics* 97: 341–352, 1987
19. Taylor JS: The myth of posthumous harm. *Am Philos Q* 42: 311–322, 2005
20. Harris J: Human resources. In: *Wonderwoman and Superman: The Ethics of Human Biotechnology*, Oxford, Oxford University Press, 1992, pp 100–103
21. Kreis H: The question of organ procurement: Beyond charity. *Nephrol Dial Transplant* 20: 1303–1306, 2005
22. Spital A: Conscriptio of cadaveric organs for transplantation: A stimulating idea whose time has not yet come. *Camb Q Healthcare Ethics* 14: 107–112, 2005
23. Hester DM: Why we must leave our organs to others. *Am J Bioethics* 6: W23–W28, 2006
24. Howard RJ: We have an obligation to provide organs for transplantation after we die. *Am J Transplant* 6: 1786–1789, 2006
25. Peters DA: A unified approach to organ donor recruitment, organ procurement, and distribution. *J Law Health* 3:157–187, 1989–90
26. Truog RD: Are organs personal property or a societal resource? *Am J Bioethics* 5: 14–16, 2005
27. Monaco AP: Rewards for organ donation: The time has come. *Kidney Int* 69: 955–957, 2006