Perspectives

Conscription of Cadaveric Organs for Transplantation: A Stimulating Idea Whose Time Has Not Yet Come

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Transplantation is now the best therapy for eligible patients with end-stage organ disease. For patients with failed kidneys, successful renal transplantation improves the quality and increases the quantity of their lives. For people with other types of organ failure, transplantation offers the only hope for long-term survival.

Unfortunately, the ability to deliver this medical miracle is limited by a severe worldwide shortage of organs that continues to worsen. Despite recent large increases in the number of organs transplanted from living donors, especially from genetically unrelated volunteers, supply continues to lag far behind demand. The result is a tragic situation in which some patients with end-stage organ disease die not because we don't know how to treat them, but rather because there are not enough organs for all who need them. Compounding this tragedy is the fact that many usable organs are being buried or burned instead of being transplanted. Clearly, something is wrong with our current procurement system for cadaveric organs. What can we do to improve it?

Part of the problem lies in overly conservative selection criteria, which now is being addressed through increasing acceptance of extended-criteria and nonheartbeating donors. But in the United States, the most common reason for lost cadaveric organs is family refusal to allow organ recovery from a recently deceased loved one; about 50% of families say no. Several plans designed to overcome this family consent barrier have been proposed. These include adopting a system of presumed consent or mandated choice, and offering financial incentives to families who agree to donate. Despite growing interest in these proposals, all remain highly controversial. Furthermore, it is extremely unlikely that any of them could come close to achieving 100% efficiency of cadaveric organ procurement that patients with end-stage organ disease desperately need. However, there is another alternative that could approach this lofty goal: conscription of all usable cadaveric organs.

What Does Conscription of Cadaveric Organs Mean?

Under this plan, usable organs would be removed from all cadavers soon after death and made available for transplantation. Consent would be neither required nor requested. With the possible exception of exemption on religious grounds, opting-out would not be possible. Like a draft of mili-

This study was supported by a grant from the Upstate New York chapter of the National Kidney Foundation.

Cambridge Quarterly of Healthcare Ethics (2005), **14**, 107–112. Printed in the USA.

tary recruits, this would be a draft of organs.

This proposal will be quickly rejected by those who believe that consent is an absolute requirement for cadaveric organ procurement. However, the ethical basis for this widely held view has not been well developed, perhaps because the need for consent has long been accepted as obvious and not in need of justification. But a careful look at the relevant issues will at the very least cast doubt on this seemingly immutable tenet of organ procurement and may even convince some that, given the severe organ shortage, conscription of cadaveric organs is ethically preferable to requiring consent.

Advantages of Conscription of Cadaveric Organs for Transplantation

The most important advantage of conscription is that under this plan, the efficiency of organ procurement should approach 100%, which would dramatically increase the number of organs available for transplantation. As previously noted, it is highly unlikely that any other approach could do nearly as well. As a result of the increased availability of organs that conscription would provide, the lives of many more patients with end-stage organ failure could be improved and extended.

Another advantage of conscription is that this system would be much simpler and less costly than other approaches to organ procurement. Under this plan there would be no need to search for the best approach for obtaining consent, no need for expensive, labor-intensive educational programs designed to encourage more people to say yes, no need to train requestors to obtain and document consent, no need to maintain donor registries, and no need for complex regulatory mechanisms to prevent abuse as would be required were financial incentives allowed.

A third advantage of conscription is that because permission from the family would no longer be sought, this plan would eliminate the added stress that devastated families now endure when asked to consider organ donation in the midst of the grief and shock that follow the sudden death of a loved one. Furthermore, delays in organ recovery that result from the current need to wait for family approval, and that jeopardize the quality of organs, would be eliminated.

A final advantage of conscription is that, in contrast to other approaches to organ procurement, it satisfies the principle of distributive justice, which refers to equitable sharing of burdens and benefits by members of the community. Under conscription, all people who die with usable organs would contribute to the cadaveric organ pool—there would be no more "free riders"[1]—and all people would stand to benefit should they ever need an organ transplant. This contrasts with our current system in which people can refuse to donate and yet compete equally for an organ with generous people who choose to give.

Concerns about Conscripting Cadaveric Organs for Transplantation

The major concern about conscription of cadaveric organs is that, because it eliminates the need for consent, it would be seen by some as usurping autonomy. But it does not make sense to talk about autonomy of dead people. As Jonsen points 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."[2]

Not everyone agrees with Jonsen. Those who disagree claim that people may have interests that survive their deaths. Glannon suggests that one example of a surviving interest is a desire for "bodily integrity after death."[3] He and others argue that thwarting this interest, by conscripting organs from the bodies of people who had, while alive, expressed opposition to posthumous organ donation, would harm these people after their deaths. To my mind the concepts of surviving interests and especially posthumous harm are difficult ones and I have yet to be convinced of their existence. But even if they are real, they cannot possibly be as important as the interests of the living. As Harris points out: "[T]here is almost universal agreement that death is usually the worst harm that can befall a human person who wants to live. . . . [R]ights or interests would have to be extremely powerful to warrant upholding such rights or interests at the cost of the lives of others. . . . [T]he interests involved after death are simply nowhere near strong enough [to justify doing this]."[4] Furthermore, it should be remembered, but often is not, that although some people wish to remain intact after death, this is impossible—the body always decays and returns to the "biomass."[5]

The possibility that surviving family members could be harmed is more tangible and concerning. But just as in the case of surviving interests, however much harm conscripting organs would impose on the family, the magnitude of such harm could never be large enough to justify allowing people with end-stage organ disease to die for lack of a transplant—a transplant that could have been performed had organs not been discarded in the name of respecting family wishes. In this regard, Harris argues: "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."[6] Similarly, Emson claims that it is "morally unacceptable for the relatives of the deceased to deny utilisation of the cadaver as a source of transplantable organs. Their only claim upon it is as a temporary memorial of a loved one, inevitably destined to decay or be burned in a very short time. To me, any such claim cannot morally be sustained in the face of what I regard as the overwhelming and preemptive need of the potential recipient."[7] And note that society accepts that a military draft may sometimes be necessary even though the death of young soldiers would be much more traumatic to surviving family members than would be mandatory removal of organs for transplantation from relatives who are already dead.

Another concern is that allowing people to opt out on religious grounds could greatly reduce the efficacy of the program if many objectors would claim this exemption regardless of their religious beliefs. But this is unlikely if a strong burden of proof of religious objection is required of those who attempt to invoke this exclusion, as was true for conscientious objectors to military service. Furthermore, because conscription of cadaveric organs would cause little if any harm, it is likely that for many objectors the benefit of getting out of the program would not be worth the effort required to do so.

A final concern about conscription of cadaveric organs is that it would

generate outrage among the public. Although there likely would be public resistance at the outset, people might become more accepting of the idea once they understood the very favorable risk/benefit ratio of the plan. Supporting this prediction is the observation that there already exist widely accepted coercive practices that are designed to benefit the public and that require participation of all citizens regardless of their wishes. Examples include mandatory autopsy when foul play or contagious disease may be the cause of death, a military draft during wartime, forced taxation, and the requirement to serve on juries. Just as is true of these examples, I suspect that had we been born into a society in which conscription of organs after death were an established practice, seen as serving the public interest at an acceptably low cost, very few of us would ever question it.

Further Justification for Conscription of Cadaveric Organs

There is a general consensus that there exists a moral obligation to rescue when there is little or no risk or cost for the rescuer—for example, throwing a life preserver to a person in danger of drowning. It has been argued cogently that posthumous organ donation is another example of an easy rescue of an endangered person because organ recovery and transplantation are often lifesaving for recipients and entail little if any risk for cadavers. Based on this reasoning, Peters claims that consenting to posthumous organ recovery "is not an act of charity. It is, rather, a moral duty of substantial stringency."[8] Unfortunately, under our current voluntary system, refusal rates for organ donation are high, which indicates that many people do not meet this obligation. Therefore, conscription of cadaveric organs can also be justified as necessary to ensure that people do what they should have done on their own but did not.

I recognize that there is a difference between a moral duty and a legal duty and that the law does not always require us to do the right thing. However, in the special case of easy rescue of an endangered person, where the potential benefit is enormous and the costs and risk of harm are negligible, I believe that our moral duty to help should be written into law. Good Samaritan laws that have been enacted in several states and many European countries provide precedent for this approach.

Synthesis

Careful consideration of the pros and cons of conscription of organs after death leads me to conclude that it is not only ethically acceptable but actually ethically preferable to our current voluntary approach to cadaveric organ procurement. In discussing this issue, Emson goes even further: "It is immoral to require consent for cadaver organ donation."[9] Of course, not everyone agrees, and this issue remains highly controversial. In general, controversies about policy proposals can only be resolved through actual experience. I believe that the arguments in favor of conscripting cadaveric organs for transplantation are strong enough to recommend a pilot study to see how well the system would work. At the same time, I recognize that any plan, no matter how seemingly sound in theory, is doomed to fail if it is widely opposed by the public. Furthermore, attempting to implement policies without public support risks damaging the system we have in place. Therefore, before undertaking a trial of conscription, it is essential to explore public attitudes.

Attitudes Toward Conscription of Cadaveric Organs for Transplantation among the U.S. Public

To investigate public attitudes toward conscription of cadaveric organs for transplantation, I contracted Harris Interactive, a national polling organization with many years of experience, to conduct a telephone survey about this issue. One thousand fourteen adults living in the continental United States, all at least 18 years of age, were interviewed in September 2003. The subjects were chosen by a random digit dialing technique that reaches people with listed and unlisted phone numbers. The responses were weighted to known proportions for age, geographic region, sex, and race among the U.S. adult population. This method is designed to produce a sample of respondents that is representative of the general public. The maximum margin of error for the response rates was plus or minus 3%. The introduction and questions were written by the author, reviewed by Harris to minimize the likelihood of bias, and pretested for understanding on 10 members of the lay public. The relevant sections of the introduction and the question are reproduced below. (Another question that asked about the acceptability of a nonfinancial incentive to donate was included in the survey; because the arguments for and against that proposal differ so greatly from those of conscription, the results for that question will be reported in a separate publication.)

> ***Introduction:*** "Transplantation is a highly successful life-saving treatment for people with failing organs. Most transplanted organs come from people who have just died. Unfortunately there are not enough of these organs for all who need them, in part because many families say no when asked for permission to take organs from a loved one who has just died. Several plans have been suggested in the hope of making more organs available. One of these . . . is to allow hospitals to remove organs from people who have died without asking for permission. Like a military draft, this would be a draft of organs after death except for people who objected on religious grounds. What do you think about these ideas? As you answer, please keep in mind that the doctors who determine that someone has died are not the same doctors that remove organs for transplantation."
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> ***Question:*** "In view of the tremendous shortage of life-saving organs, would you be willing to accept a policy that allows trustworthy medical teams to remove organs from people who have died without asking for permission, unless they had objected on religious grounds?"

Participants could choose from the following possible responses: yes, probably yes, probably no, no, don't know, or refuse to answer.

Thirty-one percent of the respondents said they would likely accept a policy of cadaveric organ conscription; 19% definitely would and 12% probably would. Sixty-six percent said they would oppose conscription; 53% definitely would and 13% probably would. Three percent said they didn't know or refused to answer. Responses were similar among males and females and among blacks and whites, although the percentage of blacks that supported conscription was slightly higher than the percentage of supportive whites. College-educated participants were less supportive of conscription than were less educated groups, and younger respondents were more supportive of the plan than were older respondents. Among those aged 25–44, nearly 40% would likely accept conscription.

I recognize that surveys of the public may not always provide a valid representation of how the public would act when faced with a real situation. However, this is of greatest concern when one of the choices is more socially desirable than the others or when the issues are misunderstood. In the present study none of the choices was clearly socially desirable and the question was pretested for understanding. Furthermore, even if the results do not portray precisely how the public would respond if actually faced with the possibility of conscription of cadaveric organs, they probably represent the best estimate we can provide.

Conclusions

The results of this survey indicate that most of the U.S. public would oppose conscription of cadaveric organs for transplantation. This is not surprising given the individualistic nature of our society and the fact that so many families refuse to allow organ recovery when asked. Therefore, any attempt to implement a trial of conscription would probably not succeed at this time. On the other hand, the arguments in favor of conscription are compelling and a large minority of the public, especially young adults, would likely support it. Furthermore, only about half the respondents were definitely opposed. Therefore, I believe that it would be a mistake to conclude that conscription of cadaveric organs is not worth pursuing. On the contrary, it is possible that educational programs (aimed at professionals as well as the public) that outline the virtues of conscription, combined with attempts to understand and address concerns of the public, could increase levels of support to more than 50%, at which point a trial of conscription could perhaps be undertaken.

Notes

1. Jarvis R. Join the club: A modest proposal to increase availability of donor organs. *Journal of Medical Ethics* 1995;21:199–204.
2. Jonsen AR. Transplantation of fetal tissue: An ethicist's viewpoint. *Clinical Research* 1988; 36:215–9, at 219.
3. Glannon W. Do the sick have a right to cadaveric organs? *Journal of Medical Ethics* 2003;29:153–6.
4. Harris J. Organ procurement: Dead interests, living needs. *Journal of Medical Ethics* 2003; 29:130–4, at 132.
5. See note 4, Harris 2003. Also see Emson HE. It is immoral to require consent for cadaver organ donation. *Journal of Medical Ethics* 2003;29:125–7.
6. Harris J. *Wonderwoman and Superman*. *The Ethics of Human Biotechnology*. Oxford: Oxford University Press; 1992:100–3, at 101.
7. See note 5, Emson 2003:126.
8. Peters DA. A unified approach to organ donor recruitment, organ procurement, and distribution. *Journal of Law and Health* 1989–90; 3:157–87, at 168.
9. See note 5, Emson 2003:125.