

The Ethics of Organ Donation from Condemned Prisoners

Rationale for Deliberation

As the scarcity of suitable organs for transplantation continues to grow, alternative sources for organs have been reported and others suggested. One such suggestion is to recover organs that would otherwise seem to go to waste, such as those from condemned prisoners. Reportedly the People's Republic of China recovers organs from executed prisoners, and recent U.S. news reports have alleged that organ brokers operate in this country who arrange transplantation of the foreign prisoner's organs. This discussion is not restricted to third world countries. In the United States, proposals of this type have come from prominent figures and bodies. While one proposal suggested that prisoners be given the option of donating organs upon their death, another suggests that condemned prisoners be offered the option of trading a kidney or their bone marrow in exchange for a commuted sentence of life in prison without parole.

While it is beyond the scope of the UNOS Ethics Committee to examine the moral and ethical issues encompassing the death penalty, it is worth noting that this topic is both ethically and judicially controversial.

Acknowledgment should at least be made that the death penalty is rarely available or applied in most industrialized western nations, except for the United States. All western European countries, Canada, Mexico, Central and South American, with the exception of Chile, have abolished the death penalty. Recent U. S. data show an inequitable application of the death penalty with a significant evidence of racial bias particularly in the south. The data indicate that blacks are five times more likely to be sentenced to death than whites convicted of similar crimes and that the economically disadvantaged as well are more likely than the wealthy to receive the death penalty.

Any law or proposal that allows a person to trade an organ for a reduction in sentence, particularly a sentence from death to life in prison, raises numerous issues. Application of the death penalty is spasmodic and seemingly discriminatorily applied, which would suggest that these types of proposals would be coercive to particular classes of individuals--minorities and the poor. Would the reduction in sentence apply to the offer to donate, or would it only be honored if the act of donation took place? If the act of donation would exclusively qualify for the reduction in sentence, then the law or policy would discriminate against individuals found to be medically unsuitable to donate organs. Examples include:

- those with common prison infections such as tuberculosis, HIV or hepatitis B
- the prisoners with a single functioning kidney, or on dialysis, or with diabetes or other renal diseases

Were prisoners allowed to trade a kidney to mitigate a death sentence, it may affect the actual imposition of the death penalty. With greater publicity surrounding these types of proposals/laws, potential jurors could be influenced and ultimately impose the death penalty more often with a potential societal benefit in mind. Jurors might hope that the convicted persons would choose to trade their kidney for their life. This would present a gross inequity for those unable or unwilling to donate a kidney and who might otherwise have not received a death sentence.

The proposals that concern organ recovery from executed prisoners unveil another host of problems. One method of execution suggested is the act of organ donation itself. From a utilitarian standpoint this would make sense; the anesthetizing of the condemned and the recovery of organs in the usual manner would produce optimum organs for transplantation. However, the cross-clamping the aorta and the ensuing cardiectomy, followed by the disconnection of the ventilator, create an unacceptable situation for the organ recovery team. It clearly places the organ recovery team in the role of executioner. Many physician groups, including the American Medical Association, have prohibited physician participation in state executions on ethical grounds.

Issues of informed consent of potential donors as well as recipients need to be addressed. Obviously a person condemned to death cannot consider organ or bone marrow donation as a coercion-free option. Even a death row inmate should have the option of refusing an invasive surgical procedure-- although unlikely, given the alternative. Correspondingly a person to be executed, or their next of kin/surrogate, should be able to make an informed decision regarding any donation options, including informed refusal if they so chose. Ultimately the potential organ/bone marrow recipient(s) should be informed that the source of the donation was a condemned prisoner, while maintaining the prisoner's confidentiality. Individuals in opposition to the death penalty might object to accepting an organ from either an executed prisoner or a prisoner who traded their organ for their life.

Consider the effect that such a policy/law could have on organ donation overall. The number of potential organs recovered from condemned prisoners would be small. The conceivable stigma that would be attached to organ donation from its coupling with execution could lead to decreases in donation rates. This may especially be true within certain minority groups. Any notion that particular groups of people were receiving increased numbers of death sentences to provide organs for the rest of society would clearly make it difficult to attempt to obtain consent for altruistic donation from these groups.

Conclusion

The UNOS Ethics Committee has raised a small number of the many issues regarding organ donation from condemned prisoners. The Committee opposes any strategy or proposed statute regarding organ donation from condemned prisoners until all of the potential ethical concerns have been satisfactorily addressed.

These white papers are intended for use by students working on papers, debate materials or speeches, journalists researching stories and those interested in the complexities of medical/bioethics in an age of readily available transplants coupled with donor organ shortages.