Routine Retrieval of Organs as an Alternative to Xenografts: Moral Considerations of Communitarian Ethics

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Abstract

I offer a critique of how we have gotten to the point of considering xenografts into humans through a kind of moral failure to generate an efficient system of organ harvesting from human cadavers. I consider several proposals for increasing the supply of transplantable human organs, including one recently proposed in detail by James Lindemann Nelson of the Hastings Center for routine retrieval with an opt-out option.

The Gift Exchange Model

In what may be called descriptive ethics, Reneé Fox and Judith Swayze (1978, 1992) have applied Marcel Mauss' work (1958) on gift ethics to voluntary organ donation. (See slide 1 of PowerPoint Presentation.) The Gift Exchange Model of perceived obligations (to give, to receive, and to repay) guided their research into the social relations between live donors of organs, loved ones who permit retrieval of organs from neomorts, and recipients of such organs and their families, and into the Gatekeeper ethics of physicians and other members of transplant teams. (Slide 2.) Their work has yielded a remarkable structure of values, obligations and rules that interplay in the dramas of need and compassion played out in the transplant ORs and recovery wards of the past two decades.

Some aspects of transplant ethics are controversial, such as the representation of unwilling candidates or willing candidates whose motives are "suspect," as histo-incompatible, or contravening the wishes of the neomort who has indicated a desire to be a donor by allowing members of the family to demur effectively. (Slide 3.) The cluster of values expressed in the Gift Exchange Model also turns out to be controversial. For, it is the premise of the Xenograft model of obtaining transplantable organs that Gift Exchange and Required Request have failed to provide an adequate supply of organs, and whenever we have a failure of a social policy, we do well to try to understand the values that make for that failure and to examine carefully the question of whether there are not alternatives to the new approaches we may find attractive.

Gift Exchange Values

I find three values expressed in the Gift Exchange/Gatekeeping strategy for obtaining transplantable organs. (Slide 4.) Prime value is placed on the autonomy of individual donors and donor families, even when respecting that autonomy may result in the death of the potential recipient. Resistance

to the social pressures to donate identified by Fox and Swayze, quite possibly rooted in the first value, and resulting in the factually false excusing of the "psychologically unsuited" candidate as "histo-incompatible." And regarding the donor organ as a precious gift, and its donation as a remarkable act of generosity, even when from a neomort. These values are consistent with a moral and political orientation often characterized as Liberalism, the view that we owe one another nothing except noninterference. And, they arise from the structuring of organ transplantation as a donation. (Slide 5.)

Fiedler (1992) observed that the term "rejection" has two applications in transplantation: it applies, of course, to the process whereby the body identifies as invasive and seeks to destroy cells not recognized as native; it applies as well to the failure of much of our population to respond to the needs of those in or near to organ failure with donated organs. (Slide 6.) He argues that this is rooted in cultural attitudes towards bodily integrity and dismemberment that are remarkable resistant to the sorts of reassurances recently found in a story in the *Buffalo Physician* seeking to debunk the myth that the loved one's body will be disfigured: "Skilled surgeons harvest organs and tissues in such a way that the body is in no way visually marred by the surgery." Zwirecki, 1993)

Fiedler's title and tone suggest that he thinks rejection to donating may be insoluble. It is certainly the case that the number of organs available, even with vastly improved techniques of managing the first sort of rejection, falls far short of the need. One might say that transplantation has met a second and even greater rejection problem, one that requires not a medical but a social solution. We have thus come to look to alternatives to the gift exchange model for organ transplantation. (Slide 7)

Required Request

The preferred alternative just a few years ago was Required Request. The reasoning was this. Families caught in the grief of the loss of a loved one often experience a need to preserve some aspect of that loved one's being. Studies of the social phenomenon of the duty to repay indicated that recipients of donor organs needed protection from relatives of the deceased donor who sometimes became insistent about maintaining contact with the still living remains — particularly if a heart or heart and lungs — of the loved one. Why not require hospital personnel to request that a family consider donation, offering the possibility of bringing something good out of the tragedy, and in effect capitalizing on the powerful notices to keep alive at least part of the whole life that has disintegrated. Required request also aimed at helping hospital personnel overcome the reluctance to intrude upon a family's grief by making the requesting of donation a part of normal routine. (Slide 8)

This next slide identifies some of the values inherent in this new strategy. Required request preserves the voluntary character of donation, seeking to stimulate it through reminding the family of the possibility and assuring that they realize in a timely fashion that a donation is possible. It traded on the social pressures thought to be inherent in gift opportunities while preserving the autonomy of the individuals involved. And, through routinizing an aspect of donation, it took a step away from the precious gift characterization for cadaver donations, replacing it with something of the sense that donation is "normal" or "frequent" if not "expected."

The failure of routine request to generate an adequate supply of

organs came, on at least the analysis of Fox and Swayze (1992), from a surprising phenomenon: the reluctance and often outright refusal of hospital personnel to carry through with the requests. Many, report Fox and Swayze, see routine request to be callous, insensitive, intrusive, even ghoulish. No doubt as well, the phenomena Fiedler finds are still at work. I will suggest something different in a moment, but I want first quickly to review the three other alternatives currently under consideration: commodification, xenografts, and routine retrieval.

Xeongrafts

Efforts to develop the technology of inter-species organ transplantation seek to solve the problem of shortage by the lack of sufficient deaths of cadaver donors. Xenograft goes beyond depending upon the often violent deaths of donors: it includes the killing of donor animals. In a society with a strong animal rights movement, this will be a hard sell.

Respect for life requires justification of its deliberate taking. Even for those of us who regard the use of animals in research, for food, an din other ways as justified when tempered by humane treatment, there is something deeply disturbing about the killing of a baboon or chimpanzee for its vital organs. Before we move to such a “solution” to the need for transplantable organs, we should be sure that its necessity is solidly grounded. We may perhaps hope to justify the necessity of Xenografts as a social policy on its efficacy and positive risk/benefit ration for the patient’s quality of life. (Slide 9.)

My argument in the context of an ethical appraisal of the Xenograft approach is that it is justifiable as a social policy only as a fall-back position after all other ethical alternatives have been thoroughly explored and implemented to the extent possible. There are two candidates for this category of “other ethical alternatives” — commodification, and routine retrieval.

Commodification

Some have suggested that the precious gift characterization is inherent to the failures of gift exchange and required request, and that if we were to replace this characterization with a frank recognition of the value of organs, expressed in market terms, other motives to provide them for transplantation might well be brought into play. Such proposals, to allow market forces and supply and demand economics to set the value of organs, seek to increase supply by accepting autonomy of individual “donor” and family, but substituting for the “duty-to-donate” social pressures, “duty-to-sell” social pressures. In part this alternative seeks to go to school on the experience of organizations that have been able to stimulate donation of blood or blood elements through payment (Slide 10)

Xenograft technology embodies several values not found in other proposed solutions. It partially separates autonomy in donation from supply by identifying organ suppliers whose “autonomy” is not recognized. It may decrease social “duty to donate” pressures by providing the patient with an alternative to an organ from a relative or cadaver. For organs from other species, as with commodification it replaces the “precious gift” characterization of the transplanted organ with a commodified, “harvested crop.” And, to the extent that it offers a viable alternative to human organs, it permits an untempered acknowledgment of the patient’s moral (and

possibly even legal) right to be transplanted by freeing that right from a correlated duty on the part of another human to provide the organ. Thus, some of the complexities of gift exchange duties are entirely avoided.

For many, however, commodification has a dark side. In fact, such organ transplantation carries with it increased morbidity and increased risk of mortality in live donors, and is parasitic on the burden of donation being shifted onto individuals of lower economic status, in effect exploiting poverty. And these worries are further deepened by a frank acknowledgment of the existence of black markets in human organs. Still, bioethicists and others have long argued that this is an alternative worth studying, one with which we already have some encouraging experience, and one which may respond effectively to the plight of those whose need for transplantable organs is desperate and will otherwise go unsatisfied.

All the same, much of the nobility of human generosity to those in need is lost by commodification. One worries as well that, in a time of already runaway medical costs, of the cost of an organ transplantation is increased by 20% or so (or whatever the cost for organs would be if commodified), transplantation might well fall our of the insurance schemes currently being debated in Washington and various states. If it does, we are likely to see the poor being the transplantable organ pool and the rich being their benefactors, without any leveling of burdens and benefits

One final argument against commodification needs to be considered. If it could be shown that there is a general duty to be an organ donor when doing so is at no personal cost — perhaps a version of the duty to rescue — then proposals to commodify organs to be sold by relatives of neomorts would be analogous to proposals to charge a fee for rescuing a drowning child when all one must do is reach out and pull his head above water. In other words, if we regard it as morally obtuse to bargain to rescue a person when doing so costs us nothing, and if provision of a neomort's organs is analogous to a cost-nothing rescue, then it would be morally otiose to charge for that departed one's organs. Whether such an analogy holds is the question to which I now turn.

Routine Retrieval

You will find in your materials for this conference a copy of the Communitarian Network position paper by James Lindemann Nelson. I must rely on it for the details of the proposal to move to a social policy of routine retrieval of the transplantable organs of neomorts, and to the detailed argument for the analogy between the duty to save when to do so is at no cost to oneself, and the duty to donate one's organs upon one's death, or a loved one's organs upon the loved one's death. (Slide 11.)

Routine retrieval rests upon recognizing that autonomy-preserving values underlying gift exchange, required request, commodificaiton, and xenograting should be replaced by viewing organ donation as a social duty of all members of the society who have no conscientious objection to doing so. A policy of routine retrieval with an opt-out provision involves recognizing a prima facie social duty to donate organs at death, when doing so involves no cost to oneself, while leaving to individuals the right to opt out of that social duty as a matter of conscience — as when one's religious beliefs clash with one's otherwise assumed duty to one's society.

Consider the duty to donate one's organs at death to be analogous to one's duty to serve one's country in time of national emergency. Conscientious objection, validated before one's peers, permits alternatives

to military service to be elected. If the analogy to a social duty to donate one's organs at death holds, then opting out of the donation duty would be acceptable on similar conscientious objection grounds.

Psychologically, we might expect acceptance of a policy of routine retrieval to be patterned after acceptance of the policy of declaring death on confirmation of brain death. I have witnessed from the vantage point of a hospital ethics committee the effects on loving ones of a policy which, instead of asking them if the brain dead patient's respirator can be turned off (invoking images of killing), endorses informing them that the loved one has been declared dead and that the respirator will be turned off (unless there are institutionalized religious objections). Removing that process from the voluntary decisions of grieving relatives has eased their acceptance of the action, while at the same time making exceptions for those who have religiously-based objections of conscience to ventilator termination.

Similarly, a uniform, nation-wide policy, enacted by state legislatures, or routine retrieval of organs would signal the recognition of organ donation as a social duty, just as a similar process brought acceptance by the great majority of the brain death criteria for death of the person.

The proposal for routine retrieval is thus based on a recognition of a duty not to withhold, without deeply held reasons, what we have no further need for from those whose need is critical.

It is, of course, possible that optimism about our ability to recognize a general obligation to donate useful organs at death without the effort to secure such a policy, will make xenografting appear to be the result of a failure of social policy, and condemn it to remain ethically questionable.

It may well be that routine retrieval, particularly if paralleled by other changes in social policy, won't provide an adequate supply of organs. In a strong sense, routine retrieval, required request, gift exchanges all depend on a supply of transplantable organs arising from preventable tragedies brought about by our lax gun control laws, our dangerous automobiles, the lack of helmet laws. Should our social policies regarding these issues change in the direction of minimizing violent sudden deaths, it may be that the need for transplantable organs will continue to exceed the supply, even with routine retrieval. That will leave us with the option of xenografts. For a policy of xenografting to be widely perceived as ethically justified, we have to make every attempt to take care of our own species' needs within our own species' resources, else we be guilty of policies based on our moral failures.

Works Cited

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