

Organ donation as an ethical imperative

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Introduction

Every year thousands of patients die in need of an organ. They die against their will. One reason for their death lies in a practice called “opting-in”. After death of brains organs are removed for transplantation only if the person involved has agreed or the relatives agree presuming that this person would have agreed., This practice is followed by governments in countries like Germany, the United Kingdom, Canada and the United States. In Germany, for example, the figures are the following:

Organs	2001 (given-transplanted))	2002 (given-Transplanted)	needed
Kidney	1964-1940	1882-1865	3.500
Heart	409-374	395-347	900
Liver	662-608	667-610	1.100
Lungs	139-135	198-186	400
Pankreas	212-176	163-154	400

Numbers are better in countries following an “opting-out” approach: After death of the brains organs are removed for transplantation unless the former person had voiced her objection or her family objects at the time of her death. But even then, many life-saving organs are lost because of family refusal. In France, a country with the opting-out solution, approximately 50% of possible organs are lost because of family refusal.

Another reason for a loss of organs consists in the fact that in some countries physicians and hospitals performing organ transplantations face financial problems, e. g. in Germany.

In this article I give arguments from the Hippocratic Oath why every physician and from very famous ethical theories why every citizen should work for an a society in which an opting out regulation is established in combination with incentives for donors as well as physicians and hospitals in order to stimulate more donations, and in which everybody should be. The regulations of Spain in this regard seem to be exemplary. Thereby, the following arguments are based upon three presuppositions.

1. A human being is dead if its brain is completely dead.
2. There is a severe shortage of organs resulting in the death of thousands of people wanting to stay alive.
3. Cadaveric organ transplantation is less controversial than the donation of organs by people who are alive.

The Hippocratic Oath – the famous approach of a lot of physicians

The structure of the Hippocratic Oath is as follows:

§1 Oath formula (cf. §9)

§2 Gains for the teaching physician (profit of the physician)

§3 Benefit of the patient according to medical knowledge (paternalism)

§4 Absolute prohibition of killing

§5-8 Integrity of the physician and related questions

If we take seriously the intention of the oath then there is clear that the benefit of a patient in need of an organ can be better preserved by an opting out solution and incentives for all parties involved than with an opting in solution alone (cf. § 3 and 2). For the physicians, there is an obligation for taking the organs from the dead to benefit the patients if there is no clear former will against it.

But there can be argued that we have to take into consideration the opinion of the relatives. This is not true in the case that the opting out solution is well introduced. “Well introduced” means that it is clear that everybody knows that his or her organs will be taken after death if they have not clearly expressed their dissent. Why should the relatives enter here? We should respect the former will of the now dead persons.

But the Hippocratic Oath only is binding for physicians, not for the non-physicians. Therefore, the decisive question for everybody is: Why should a society establish the opting out regulation and why should every citizen be willing to give her or his organs after death?

The Christian Ethos

The fundamental principle of the Christian Ethos is included in the command: You shall love God and love your neighbor as yourself! That means: You shall live as if Jesus Christ lives in you! Now Jesus gave his life for all of us. Therefore, it is an obligation for every Christian to allow that his or her organs will be removed after death to save or improve the life of a person in need. A society which wants to follow the line of this thought has to establish an opting out regulation. Individually, it is of love not to use the possibility to opt out.

The Four-Principle-Approach (Beauchamp/Childress)

Beauchamp/Childress suggest in their influential work “Principles of Biomedical Ethics”¹ four principles to structure conflicts in biomedicine:

1. Respect for the autonomy of patients
2. Non-maleficence
3. Beneficence
4. Justice

¹ Beauchamp, T. L. /Childress, J. F. 2001: Principles of Biomedical Ethics, 5. Aufl., Oxford.

Taking seriously these principles there is a clear answer to the question if there is an obligation to work for an opting out regulation and to allow that the own organs are taken away after death. This demonstrates the following syllogism:

1. Only living persons can be autonomous.
2. To opt out in order to keep the own organs after death does not equal the benefits of the patients in need.
3. Justice demands from everybody to allow that his or her organs will be removed after death to save or improve the life of a person in need.
4. Therefore, there is an obligation for taking the organs from the dead in order to follow the will of the dead, to save the lives of the patients, fulfill justice and do good.

Utilitarian Approach

The classical utilitarian approach has the aim to maximise the common utility of the beings who can enjoy happiness and who can suffer and to minimise the total harm. Balancing the wishes of all beings involved the syllogism runs as follows:

1. Only living persons can enjoy happiness and can suffer.
2. The wish of the patients to survive have to take into account.
3. The fears of people concerning their time after death have to take into account.
4. The fears and wishes of relatives have to take into account.
5. Balancing the wishes of the patients to get organs in order to survive and the wishes of the person whose organs will be taken after death and the wishes of the relatives concerned, there is a preference for saving lives as condition of possibility for wishes.
6. To maximize utility society should create incentives for the potential later donor in order to prevent her or him from opting out, for the relatives in order to help them to accept this regulation and for physicians in order to stimulate them to save as many organs as possible.
7. Therefore, there are good utilitarian reasons to establish an opting out solution together with incentives for all parties involved in the donation.

Kantian-Rawlsian-Gewirthian Approach

If we develop a ethical approach following thoughts of Kant, Rawls and Gewirth we can establish a three-principle-approach in hierarchical order:

1. Principle of human dignity
2. Difference principle (maximising the life-conditions of the worst-off)
3. Balancing benefits and harm

If we follow this line of thought, there are good reasons for establishing an opting out regulation together with incentives for all parties involved in the

donation. Human dignity is very much linked to a protection of life. The life of everyone whom human dignity is attributed should be protected as far as possible. If we adopt the reasoning of Gewirth² for our question, then we get the following:

- (1) I do (or intend to do) X voluntarily for a purpose E that I have chosen.
- (2) E is good.
- (3) There are generic features of agency, especially life.
- (4) My having the generic features is good for my achieving E *whatever E might be* = My having the generic features is categorically instrumentally good.
- (5) I categorically instrumentally ought to pursue my having the generic features.
- (6) Other agents categorically ought not to interfere with my having the generic features *against my will*, and ought to aid me to secure the generic features when I cannot do so by my own unaided efforts *if I so wish*.
- (7) I have both negative and positive claim rights to have the generic features = I have the generic rights.
- (7') I am an agent → I have the generic rights.
- (8) All agents have the generic rights.
- (9) As a citizen I have a duty for working that the generic rights are preserved.
- (10) The opting out regulation together with incentives for all parties involved in the donation preserves the lives of a lot of persons who need an organ
- (11) Therefore I have the duty to work for such a regulation and such incentives.

The same logic is valid for the second principle, too, because people who are on the brink of death are the worst off who need as much help as possible. And for the last principle the validity was proven in the previous chapter.

Result

If my reconstruction is correct, the Hippocratic Oath and four of the most often quoted approaches in medical ethics demand an opting out regulation together with incentives for all parties involved in the donation. If public policy will implement these kind of regulation to take organs after death from everyone, if this person has not opted out before explicitly the shortage of organs will be reduced dramatically. A further question I do not want to deal with here, is if someone who opts out, excludes him or herself from receiving cadaveric organs or reduces his or her chances to get cadaveric organs if he or she is in need of an organ.

² Gewirth, A. 1978: Reason and Morality, Oxford.

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