Should death row inmates in American prisons be allowed to donate their organs upon execution?

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With an ever-growing demand for organs and a critical shortage of donors, some countries around the world are looking for new ways to bridge the gap. China, for example, has been tapping into a significant death-row inmate population to supply much needed organs. In the United States, the number of people waiting for organ donations has also outpaced the number of donors. With most Americans wary of donating their organs, should we consider instituting the Chinese practice of harvesting organs from those on death row? I believe that death row inmates should be a viable source of transplantable organs. However, procuring organs from death row inmates should be done with care. To discourage exploitation of the condemned, the following provision is essential when procuring organs from death row inmates: the prisoner must give free and voluntary consent to donate. Critics of consent-based organ procurement could argue that making the removal of organs a mandatory provision of the death sentence would yield more organs and thereby save more lives. However, the aim of this essay lies not in the effort to maximize the number of lives saved, but doing so in a humane and ethical way that will be both fair to the inmate and beneficial to society.

To maintain the American ideal of organ donation as one that promotes altruism and discourages the commodification of human body parts, death row inmates should be allowed to donate their organs upon death. In discussing this issue, a general overview of the history of organ donation is helpful.

In 1984, Congress passed the National Organ Transplant Act (NOTA). In it are two sections that bear mentioning here. First, NOTA established the creation of the Organ

Procurement and Transplantation Network (OPTN), a private, non-profit organization dedicated to "increasing the efficiency of organ sharing and equity in the national system of organ allocation and to increase the supply of donated organs available for transplantation" (see Data, US Department of Health and Human Services). Also, NOTA made it "unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce" (Palmer, 1999, pg. 35) which effectively outlawed a organ market in the United States.

Since then, the US has been using a donation-based organ supply system. Unfortunately, our altruism-based method has been ineffective in meeting the demand for organs. As of April 19, 2010 there were 106,986 people on the national waiting list for organ transplants compared to the 1,138 donors identified between January 2009 and January 2010 (Data). Even with such a huge shortfall, prisons routinely deny death-row inmates the right to donate their organs. At the moment, every state in the US prohibits the harvesting of organs from death row inmates regardless of consent. But what would happen if it were allowed? China provides an extreme example of what not to do.

The China Daily recently reported that 65 percent of the country's transplantable organs came from condemned prisoners (Macartney, 2009). Officially, the government is required to obtain written consent from the prisoners for permission to remove their organs upon execution. However, a recent story in the UK Times reiterated what human rights groups have observed for years—that for many years the Chinese system of organ procurement "which involves multiple government departments, was open to abuse" and that some officials "simply ignored legal procedures to make a profit" (ibid.). For example, in testimony given to the U.S. House Subcommittee on Human Rights, a Chinese physician named Wang Guoqi revealed that the

hospital he worked for sold kidneys illegally obtained from executed inmates to wealthy patients for $15,000 each (Perales, p. 699). Perhaps worse, executions are often timed to coincide with demand for a specific organ (Palmer, pg. 33). Condemned "donors" in China are executed by a gun shot to the back of the head and in many cases, an ambulance waits nearby to take them away for vivisection (Macartney).

The Chinese case exemplifies the corruption that can take place without transparency. Such a violation of human rights taking place in the United States is hard to imagine. For example, Perales writes that "[i]n China, an execution takes place without public notice or witnesses, and the state cremates the body without an autopsy to further conceal inappropriate practices" (p.701). In the US, inmates are allowed to invite loved ones, friends, or acquaintances to their execution. Also, most capital-punishment jurisdictions permit relatives, friends, or a person designated by the felon to take the corpse (Palmer, pg. 42). And to ensure that profit is not the motive, organs procured from death row inmates would be placed on a national organ donation registry such as the OPTN and not sold to the highest bidder as they are in China.

Given that the integrity of the organ donation process will be much less open to corruption than in China, the United States should consider allowing death row inmates to donate their organs. If they were allowed, organs from dead inmates could save many lives by providing transplantable organs that are hard to obtain.

There are twenty-five transplantable organs in the human body. With the exception of the kidney and part of the liver, most transplantable organs can only be procured from a dead donor (obviously, a living donor could not give his heart or other vital organ and expect to survive). At the moment, many dead donors are accident victims. Given the random nature of accidents, anticipating when the next organ donor will be available is hard to predict. Also, when a dead

donor is found, organs must be transplanted within a short period of time for the new organ to have any benefit for the recipient. With that said, condemned prisoners would make ideal dead donors because their time of death would be planned in advance. The predictability of when an organ will become available would give an organization like the OPTN ample time to find a matching recipient and increase the likelihood that the organ will be delivered as quickly and as healthy as possible.

Perales notes that "organ donation by a healthy condemned inmate potentially saves at least eight adults by providing two kidneys, two lungs, a heart, liver, pancreas, and small intestines" (pg. 693). In 2009, fifty-two capital-felons were executed in the US (see Death Penalty Information). If we were able to harvest the eight transplantable organs from all fifty-two felons, 416 lives could conceivably have been saved. Of course, this is a best case scenario. In reality, some of those felons would have declined and still some others would have been declared medically unfit to be a donor due to disease or some other condition. But even if just half of those inmates were deemed eligible, 208 lives could have been saved. And even if only a quarter of those men had volunteered to donate their organs, roughly 52 people would still be alive today. Fifty-two lives saved is far better than none.

Some may argue that those on death row are callous monsters who are indifferent to the suffering of others. However, a few past cases indicate that some condemned men on death row are more sympathetic than most of us think. Before his execution in 1998, Texas death row inmate Jonathan Nobles tried to become "the first death row inmate in this country to donate his organs to a nonrelative" but was denied by the Texas Department of Criminal Justice (Perales, pg. 709). Similarly, Indiana death row inmate Gregory Scott Johnson tried unsuccessfully to donate his liver to his ill sister before being put to death in 2005. And beginning last year,

Oregon death row inmate Christian Longo has been trying to get permission to donate his organs and even set up a pro-inmate donation organization called Gifts of Anatomical Value from Everyone or G.A.V.E. (Longo, 2009). Despite the efforts of these men, no death row inmate has been able to donate his organs to a nonrelative.

Sensing a missed opportunity, many legislators have attempted to repeal the prohibition of organ donation from death row inmates in the recent past. In 1998, Missouri State Representative Chuck Graham put forth a bill that would have commuted the sentence of a death row inmate if they donated a kidney. In 2000, Florida State Representative William F. Andrews proposed a bill that would have allowed condemned prisoners to donate their organs upon execution. Arizona State Representative Bill McGibben proposed letting prisoners choose between death by lethal injection or by organ removal (promised to be a painless death in which the inmate would be unconscious while his organs were removed). Similar attempts were made in 1995 by Indiana State Representative Jon Padfield and in 1996 by Georgia State Representative Doug Teper. However, all of these attempts were prevented from becoming law due to a combination of factors, including opposition from organ procurement groups and ethical concerns (Perales, pp. 694-697).

There have been several reasons why critics of organ donation from death row inmates oppose the practice from becoming law. One of the main reasons behind opposition is the risk of transmitting a disease from the prisoner to the patient (ibid., 704). In addition to concerns about passing diseases, some prison officials argue that if the operation goes awry, prison staff would be burdened with the task of keeping a death row inmate alive and that such a scenario might result in a commuted sentence (ibid., pg. 704). And even if a healthy inmate was found, opponents may argue, current methods of execution render all transplantable organs useless.

These are certainly valid reasons, but such obstacles are not insurmountable. For instance, the fear of communicating a disease is overblown. As Perales points out, "the inmates' organs would undergo the same stringent testing as any other organs procured from traditional donors before being transplanted" (pg. 705). Furthermore, he argues that medical personnel at the prison would "know more about their inmates' health than hospital staff receiving an organ donation from a catastrophic accident" (ibid., pg. 705).

As for the dilemma of keeping alive someone who has been sentenced to death, it is a problem that only arises in cases where the prisoner is a living donor. Obviously, this fear becomes unnecessary if the prisoner is a dead donor—that is, if his organs are removed upon death—which is what this essay advocates. This also makes fears that pro-death sentence groups may have about commuted sentences unnecessary.

It is true that current methods of execution make the organs of prisoners unsuitable for transplantation. The five methods currently employed by death sentencing jurisdictions are: firing squad, hanging, lethal injection, electrocution, and lethal gas (Palmer, pg. 87). In a death by firing squad, the prisoner's organs are obliterated by bullets. When hanged, asphyxiation often causes "prolonged deprivation of oxygen" which damages many transplantable organs. Lethal injection causes "cardiopulmonary cessation" damaging the heart, lungs, kidneys, liver, and other internal organs. Electrocution, as one might imagine, literally fries all internal organs and the skin. In the gas chamber, cyanide deprives the body's cells of oxygen, thereby killing the organs (Palmer). For organ donation from death row inmates to become a reality, an alternative method of execution must be used.

The most practical method is the one proposed by Representative Bill McGibben: execution by organ removal. In this method, "the act of removing organs from the condemned

prisoner would serve as the vehicle for death" (Perales, pg. 714) and the organs would not be harmed in the process unlike death by firing squad, hanging, lethal injection, electrocution, and lethal gas. However, Perales notes that "death by organ removal creates ethical dilemmas [for physicians] by violating the dead donor rule, the Hippocratic Oath, and the American Medical Association's (AMA) prohibition of physician participation in executions" (pg. 714).

However, with a minor variation on the "death by organ removal" method, physicians can be allowed to remove preserved organs and still comply with professional ethical standards. Physicians would not violate any professional code of conduct if organs were removed after inducing brain death with anesthesia. The process of anesthesia-induced brain death would work like this: sodium pentothal is intravenously injected into the condemned prisoner, knocking him unconscious, then the prisoner is given a sufficiently large dose of anesthesia to cause clinical brain death. Physicians would not perform this procedure and so would not violate the Hippocratic Oath. Instead, technicians trained in venipuncture and prison staff would inject the inmate with sodium pentothal and anesthesia—which is how it is currently done (Lethal Injection). After brain death is pronounced, doctors may remove the transplantable organs. If this procedure sounds objectionable, keep in mind that such procedures are currently used to procure organs from brain-dead patients outside of prison walls (Perales, p. 718). In fact, anesthesia-induced brain death may be much more humane than current modes of execution because it would not cause any pain to the inmate.

Removing organs after anesthesia-induced brain death would not violate the dead donor rule, the Hippocratic Oath, or the AMA code of medical ethics. The dead donor rule no longer applies if the inmate is pronounced dead by a trained prison staff member. Also, the physician will not violate the Hippocratic Oath because it is the state that sentences the felon and carries

out the execution. Furthermore, the AMA has decided that physicians are allowed to participate in organ procurement from death row inmates if the following conditions are met:

> (1) the decision to donate was made before the prisoner's conviction, (2) the donated tissue is harvested after the prisoner has been pronounced dead and the body removed from the death chamber, and (3) physicians do not provide advice on modifying the method of execution for any individual to facilitate donation.

The first provision was put in place to prevent coerced consent; it is clearly incompatible with the premise of this essay if the death row inmate gave no notice of his decision to be an organ donor prior to his conviction. But given that no one would profit financially from the organs, revising or omitting that provision in the future is not out of the question. Even the fact that the AMA has reached an opinion on limited physician participation in organ procurement after capital punishment shows that physicians are at least open to the idea of procuring organs from death row inmates.

Physicians should not regard anesthesia-induced brain death and subsequent organ procurement as just a loophole to bypass their professional ethics codes. Instead the procedure should be viewed as something beneficial to all the parties involved. Physicians would play a role in giving condemned prisoners a painless death while procuring their donated organs to save numerous lives. The death penalty continues to persist, and as long as it does, why shouldn't we give capital felons the opportunity to give back to society?

Harvesting organs from death row inmates is morally justified by granting them the freedom to voluntarily donate their organs. Also, stringent testing of inmates and their organs will ensure that diseases will not be transmitted. As for the viability of organs after executions, anesthesia-induced brain death will put the inmate to death in a humane way while preserving

the health of his organs. This will also allow physicians to take part in procuring the organs without breaching ethical codes of conduct.

While the ethical issues involving procuring organs have been addressed, some may still be wondering: why go through all the trouble of legalizing a practice that will not solve the organ shortage problem? The answer is that by allowing death row inmates to give life, we can derive some measure of solace from an otherwise morbid institution. Lets give this humane proposal a try. If at the end only a handful of lives were saved, we will still look back and see that it was a moral undertaking.

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