IJAAR PUBLISHING®
Global Journal of Artificial Intelligence and Technology Development | ISSN: 3027-0502
Vol. 3, Issue 1 (2025) | www.ijaar.org

A DEONTOLOGICAL REVIEW OF ORGAN TRANSPLANT AND DONATION

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Abstract

The gap between organ demand and supply is forever widening. Hence as moral entities, it is our essential responsibility to review ethical facets of organ donation and reception. Ethical reflections of organ donation quandaries can only promote and advance this field in a bioethical manner that can ultimately benefit humanity and the well-being of the society. Due to this, different ethical problems and questions have risen over the years from different bodies, groups and organizations. These questions range from ethical issues regarding the recipient and buying and selling human organs and tissues, the concent from donors - Cadaveric Organ Donors and Living Organ Donors. These and many more rational and moral questions pose a threat to sustenace of life. This work therefore proposes the deontological ethics as a solution and answer to the aforementioned problems and questions. For example, donation of human body parts or organ should be motivated by duty and the intention to save life and not for profit purposes. This work hence is preoccupied with using the Immanuel Kant's deontological ethics as a parameter for measuring the morality of the aforementioned practices.

Keywords: *Deontology, Organ Transplant, Organ Donation*

Okere, Z. C., & Eke, N. (2025). A Deontological Review of Organ Transplant and Donation. *Global Journal of Artificial Intelligence and Technology Development. 3*(1), 58-69. DOI: 10.5281/zenodo.15283172

Introduction

Since the first successful kidney transplant in the 1950s, the modern medical practice of organ transplantation, which began in the 1930s, has advanced by leaps and bounds. The successful transplantation of many types of organs is one of the biggest transplant-related medical advancements in the previous century. The kidney transplant was followed by the transplant of hearts, lungs, livers, and other organs. Because of the rapid advances in surgical practice within recent years, work has been accomplished in the transplantation of organs that would have been considered impossible a century ago. The most notable success has probably been achieved in the transplantation of corneas from the dead bodies to living persons. When there is question of transplanting the healthy kidney of a person who has just died to a living person, or transplanting an ovary from a living woman to the body of a friend whose ovaries are diseased and must be removed, the medical profession seems in general to be skeptical concerning the results that can be expected. The ethicist, however, is not concerned with the success of such transplantations. Successful or not, these practices are being undertaken, and it may be anticipated that there will be more of those practices in the future. It is therefore the responsibility of the moral philosopher to define the conditions under which transplantations are licit (Healy, 1956). This work, hence, is preoccupied with the above assertion using the deontological ethics as a parameter for measuring the morarity of the aforementioned practice.

Man is a social being destined too live, not as a hermit, but as a member of the society. In order to perfect his nature man stands in need of his fellow men. He requires their cooperation to provide for his physical, intellectual, and spiritual needs. Since such is his nature, it is evident that man has an obligation to assist his fellow men in their needs. He can render such assistance in very many ways, one of which might be to sacrifice a part of his body for the sake of another. Ethically, the question now becomes, how far can the individual go in this respect? Since the issue of giving part of the body bothers on organ transplant and donation, the second ethical question becomes. Is it morally right to donate or to receive organs? In answering these questions, this work made use of philosophical exposition, analytic, logical and critical approaches in ascertaining the morality of organ transplant and donation in relation to Deontological ethics.

Explication of terms

Deontology

Deontology, derived from the Greek word "deon" meaning duty, is a moral philosophy that judge actions based on adherence to rules and duties, rather than the consequences of those actions. It is often associated with the philosopher Immanuel Kant. It is a duty-based ethics that is concerned with what people do, other than the consequences of their actions. In contemporary moral philosophy, deontology is one of those kinds of normative theories regarding which choices are morally required, forbidden, or permitted. In other words, deontology falls within the domain of moral theories that guide and assess our choices of what we ought to do (deontic theories) in contrast to those that guide and assess what kind of person we are and should be (aretaic [virtue] theories). And within the domain of moral theories that assess our choices, deontologists—those who subscribe to deontological theories of morality—stand in opposition to consequentialists (Alexander, 2007).

Organ Transplant

An organ transplant is a surgical operation in which a failing or damaged organ in the human body is removed and replaced with a functioning one. The donated organ may be from a deceased donor, a living donor, or an animal. In some cases an artificial organ is used. The person who gives the organ is called the donor while the person who receives the organ is called the recipient.

Organ Donation

We have two types of organ donation namely; Cadaveric Organ Donation and Living Organ Donation. Cadaveric Organ donation involves removing organs from a recently deceased donor.

Living Organ Donation: Living organ donation involves the donation of one of a paired organ (such as kidneys) or a portion of an organ (such as a lobe of the liver or lung). The donor's organ system is still able to function after the donation. Living donors are often related to the patient, but that is not always the case.

Cadaveric Organ Donation: Cadaveric Organ donation (COD) is deceased donation. After death, several organs such as heart, lungs, kidneys, liver, small bowel, pancreas, corneas, tissue, bone marrow and others can be donated and transplanted to the patient seeking transplantation

Organ Donation and Transplant from the medical perspective

Altruism:

Organ donation is founded on the pillars of altruism. When the moral values of an individual's action is focused mainly on the beneficial impact to other individuals, without regard to the consequences on the individual in question, the individual's action is regarded as "Altruistic". Altruism can be classified into two types namely: obligatory and supererogatory. *Obligatory* altruism is defined as a moral duty to help others. *Supererogatory* altruism is defined as morally good, but it is not morally required-going above and beyond one's duty.

Ethically, doctors are professionally responsible to adhere to medicine's unique moral obligations. The Hippocratic tradition is the origin of several tenets of medical ethics. One of them is the commitment to nonjudgmental regard. Health professionals are professionally responsible to render care to patients without being affected by any judgment as to the patient's worthiness (Rhodes et al, 2010).

Another medical ethical tenet is *Primum non nocere* or *first, do no harm*. This principle is clearly embodied in the Hippocratic Oath for physicians. This principle of non-maleficence is the most serious ethical concern in living donor transplants, due to the potential of doing medical harm to the donor. Many donors experience significant pain and short-term disability. The risk of surgical complications in living donor surgery is 5% to 10% risk and the risk of death is 0.5% to 1% (Eghtesad et al, 2003).

A doctor has a duty of beneficence that constitutes a professional obligation to benefit patients, placing their good before his or her own. Fiduciary responsibility encompasses use of knowledge, powers, and privileges for the good of patients (Rhodes et al, 2010). This is the

essence of medicine's fiduciary responsibility and commitment to beneficence. That is why in 2012, a statement on ethical and policy considerations in organ donation after circulatory determination of death was structured (Gries et al, 2013). Determination of death can be made after the cessation of circulation and respiratory function for 2 minutes. Underlying ethical principles considered were: (1) acts that promote the opportunity to donate viable organs while respecting the patient's potential interest in becoming an organ donor; (2) the legitimacy of surrogate decision making for critically ill patients whose wishes are unknown extends to decisions regarding organ donation; (3) if real or perceived conflicts arise between the goals of providing optimal end-of-life care and the goals of procuring organs, delivery of quality end-of-life care should take priority. The dead donor rule emphasizes that the recovery of donated organs shall not cause the donor's death.

Presumed Consent:

On the issue of Presumed Consent, World Health Organization (2010) defines presumed consent as a system that permit materials to be removed from the body of a deceased person for transplantation and, in some countries, for anatomical study or research, unless the person had expressed his or her opposition before death by filing an objection with an identified office or an informed party reports that the deceased definitely voiced an objection to donation.

Implicit consent:

Implicit consent according to Saunders (2010) is consent without some specific move denoting consent, and inaction is itself a sign of consent. An example would be when the chairperson of a board meeting announces a motion carried unless there are any objections. It is important to emphasize that implicit consent is still real or actual. Those attending the meeting are aware that their silence will be inferred as consent, unless they specifically object (Simmons, 1979). Many ethicists believe that actual consent is not essential for organ donation (Estlund, 2009). The default position should be that one would want to donate organs as it is for the good of the society (Gill, 2004). They also believe that it is immoral for an individual to decline consent for donation of his or her organs (Saunders, 2010).

Explicit consent:

WHO (2010) defines explicit consent is defined as a system in which cells, tissues or organs may be removed from a deceased person if the person had expressly consented to such removal during his or her lifetime. Explicit consent policies require an individual to "opt-in" by proactively stating their wishes to be a donor such as signing a donor card or clearly accepting a donor status on a driver's license. Any person 16 years age and above, may consent, in writing with a signature at any time. Verbal consent is also permissible in the presence of a least two witnesses during the person's last illness. The consent has to specify that the person's organs can be used post-mortem for therapeutic purposes, medical and scientific education or research purposes (The Canadian Legal Information Institute, 1990). Explicit consent is recorded as advanced directives on state registries, by the issue of donor cards, and on the driving license. If one does not explicitly consent to donate on the form, the default setting is that one has not consented at all. Many people, however, do not record their decision to donate. Unfortunately, many organs are buried rather than donated. This is because potential donors and their families believe that the organ distribution system is unfair and potential donors may receive less aggressive medical care (Bard, 2012). In the United States, African Americans, Catholics and Hispanics are less likely to be registered as organ donors (Callender, 2001).

Organ Donation and Transplant from the Religious perspective

From the Deceased:

In general it is seen as praiseworthy to will one's body or parts of one's body for the benefit of others after one's death. In 1956s Pope Pius XII summed up his view by stating that a person may will to dispose of his [or her] body and to destine it to ends that are useful, morally irreproachable and even noble, among them the desire to aid the sick and suffering. One may make a decision of this nature with respect to his own body with full realization of the reverence which is due it....this decision should not be condemned but positively justified (Ashley & O'Rourke, 1989). Furthermore, the Pontifical Academy of Sciences (1985) while taking into consideration the important advances made in surgical techniques and in the means to increase tolerance to transplants, holds that transplants deserve the support of the medical profession, of the law, and of people in general. During the donation of organs, in all circumstances, the last will of the donor should be respected, or at least the consent of the family present (MacNeil, 1986). Such a donation can greatly benefit others and cannot harm the donor who is dead. Not to offer such a donation can be a sign of indifference to the welfare of others. To donate, however, is not considered obligatory. Transplantation is against some people's consciences for religious or other reasons (Law Reform Commission of Canada, 1992). Consideration for the sensibilities of the survivors may also make some people hesitate to sign over their bodies.

In any case proper respect should always be shown human cadavers. Although they are by no means on par with a living human body/person, they once bore the presence of a living person. The probably dying potential donor should be provided the usual care that should be given to any critically ill or dying person. Because of a potential conflict of interest, it is widely agreed that the transplant team should be different from the team providing care for the potential donor, who is not to be "deprived of life or of the essential integrity of their bodily functions.... No organs may be removed until the donor's death has been authenticated by a competent authority other than the recipient's physician or the transplant team."(Catholic Health Association of Canada, 1991) Various parts of the human body can often be kept in good condition for transplant purposes after the death, irreversible cessation of all brain functions, of the donor (Jonsen, 1983).

The German Bishops' Conference and the Council of the German Evangelical Church (1988) consider the transplant of reproductive glands as unethical, since it intervenes in the genetic individuality of the human being. This does not seem to exclude transplanting all sexual body parts, but the gonads. Any child that resulted following an ovary or testicle transplant would have the dead donor and not the living recipient as its biological mother or father. This would violate the rights of the child.

From Living Persons (Adults, Mentally Disabled and Minors):

Transplants between living persons raise the question whether it can ever be ethical to mutilate one living person to benefit another. As concerning as this is, it can be distinguished between parts of the body that can regenerate (e.g. blood and bone marrow) and parts that do not regenerate. Regarding the latter some are paired (e.g. kidneys, corneas and lungs), whereas others are not (e.g. heart). Before the advent of oragan transplants (such as kidneys), many Catholic theologians considered this unethical between living persons. They thought it violated the Principle of Totality which allowed the sacrifice of one part or function of the

body to preserve the person's own health or life (i.e. a part could be sacrificed for the sake of the whole body), but did not allow one person to be related to another as a means to an end. When such transplants began in the early 1950's moral philosophers gave the problem closer study.

Basic to medical ethics is the Principle of Free and Informed Consent. To be properly informed, the potential living donor should be given the best available knowledge regarding risks to him/her, the likelihood of success/failure of the transplant and of any alternatives. In some cases there is much pressure to donate (e.g. from family members if one is a good match). The courts have rightly refused to compel such donations. Motivated by charity, which includes a properly ordered love for others and oneself, one could decide not to offer an organ (Ashley & O'Rourke 1989, Catholic Health Association of Canada, 1991).

The distinction of ordinary and extraordinary means is also applicable to transplants. The Catholic Church teaches that one is obliged to use ordinary means to preserve life, but not extraordinary means, that is, means that are very burdensome (very painful, expensive, inconvenient, risky, or even very psychologically burdensome) or do not offer reasonable hope of benefit, or are disproportionate (SCDF 1980, section IV; Ashley & O'Rourke 1986, Catholic Health Association of Canada, 1991). Some forms of organ and tissue transplant from a living donor, especially those involving invasive surgery, involve considerable burden to the donor. If means are available that do not involve such burdens, such as a matching organ from a deceased donor, these are certainly to be preferred.

The above principles would be allowed in some cases such procedures as "transplanting part of the liver from a living adult donor into a child recipient, where after the adult donor's liver regenerates within a month and the child's new partial liver develops as the child grows", or donating one's heart if one were to simultaneously receive a heart and lung transplant (Garrett et al., 1993). Hence, a competent adult can give free and informed consent to be or not to be a living donor, but an incompetent person cannot. This raises a serious ethical question like; can a guardian ethically consent for a legally incompetent person, such as a severely mentally disabled adult or a minor, to be a living donor? Concerning this issue some distinguish, for example, between a young child and a mature minor's ability to comprehend the implications of donating. Regarding medical decisions, an incompetent person's guardian is to act for their benefit or best interests and, as far as possible, their wishes, if known and reasonable. Some think children and the mentally disabled should never be living donors. An argument against their being a living donor of an organ such as a kidney is that an alternative such as renal dialysis is often available until a suitable deceased donor can be found. Others argue that in some cases the psychological benefit to the donor (e.g. a child's sibling lives) could outweigh the risks (e.g. of donating bone marrow), (Law Reform Commission of Canada, 1992). Furthermore, "Organ or tissue donation by minors may be permitted in certain rare situations." Hence the question; can it be ethical to have another child for transplant purposes (e.g. for a bone marrow transplant)? Conceiving and having a child for this motive alone would involve treating him/her as a mere means to another's benefit. This would violate the great dignity of a person, created in God's image, who should be loved for his/her own sake (Catholic Health Association of Canada, 1991., Garrett et al., 1993)

Concerning the whole issue of living donors, the German Bishops' Conference and the Council of the German Evangelical Church posits that no one is obliged to donate tissue or an organ; therefore no one can be forced to do so. The decision to donate one's organs while still alive can only be made by the individual concerned personally. Not even parents are allowed

to decide on an organ donation by their child; they are allowed to give their consent only for a donation of tissue (e.g., donation of bone-marrow). The doctor in this case has a special responsibility because no one can control whether a donation is truly voluntary. When a living person donates an organ as a result of a personal decision, then the organ's transplant is to be carried out with due attention, and post-operative medical care of the donors as well as the recipients must be provided. Further, consideration must be given so that no problems develop in the relationship between the donor and the recipients (dependence, excessive gratitude, and guilt feeling).

From Human Fetuses:

Is it ethical to transplant brain or other tissues from human fetuses to benefit others (e.g. those suffering from Parkinson's disease)? If the fetus has died of natural causes, the ethical issues would be similar to other transplants from the deceased. When the fetus has died or will die as a result of procured abortion, however, other ethical issues arise. The Catholic Church considers direct abortion (the intentional killing of an innocent human being) to be gravely immoral. Some argue that to use tissues from a fetus killed by abortion could be done without approving direct abortion (using tissues or organs from a murder victim). Such use, however, could "justify" abortion (i.e. to benefit others) for many women who otherwise are unsure about having an abortion. “A good end though does not justify an evil means”. The timing of the abortion may be influenced as well. The widespread usage of electively aborted fetuses would establish an institutional and economic bond between abortion centers and biomedical science (The Catholic Health Association of Canada. 1991). Hence, some scholars argue that transplanting fetal brain tissue would require the fetus to be still alive, that is, the tissue would not be good for transplant purposes after the fetus has experienced total brain death (Duncan, 1992).

Another issue involves consent. Anyone involved in procured abortion would not qualify as the fetus' guardian since they hardly have his/her best interests at heart. The Catholic Health Association of Canada (1987) concludes that, "Transplantations using organs and tissues from deliberately aborted fetuses are ethically objectionable."

Ethical Issues Regarding the Recipient

It is worthwhile to note that nobody (no potential recipient) has a claim on organs or tissue of any person, living or dead. Owing to this, the sick should thus accept the tissue and organs freely offered by others as a gift, (German Bishops' Conference and the Council of the German Evangelical Church, 1988). This position is widely accepted. Another moral issue involving the recipient is free and informed consent. A competent person who could possibly benefit from receiving a transplant should be adequately informed regarding the expected benefits, risks, burdens and costs of the transplant and aftercare, and of other possible alternatives, so should the guardian(s) of an incompetent person. A legally incompetent person who can understand things relevant to their condition should be informed of these in an appropriate way. Guardians should respect the wishes, if known and reasonable, of incompetent persons in their care. No unfair influence should be put on someone to be a transplant recipient. Potential recipients and their families can be tempted to pressure, blackmail or bribe a potential living donor to donate or a health care professional to give them a privileged position on the waiting list. Such practices are unethical because they fail to properly respect the freedom of the donor or they violate other potential recipients' rights regarding access (Garrett et al., 1993) Recipients should also avoid any unethical cooperation

in any abuses (e.g. the organs or tissues have been procured immorally/illegally) that are sometimes associated with transplantation (Catholic Health Association of Canada, 1991; Ashley & O'Rourke, 1986). This is in line with Kant's deontological ethics because we as humans are duty-bound to treat others even ourselves as ends and not means to ends.

A potential transplant recipient and/or their guardian(s) could also consider their decision in light of ordinary and extraordinary means of preserving life .The competent adult Jehovah Witness who refuses a life-saving blood transfusion, for example, because this is against a tenet of their religion, can be understood to be refusing means that would be "very burdensome" for them. Courts, however, sometimes override the decision of natural guardians including parents when this is judged clearly against the best interests of incompetent persons including a child (e.g. to allow a life-saving blood transfusion to the child of Jehovah Witness parents). This issue is more difficult when the child begins to develop his/her own value system, but is still considered legally incompetent. Proper safety measures should be followed to protect transplant recipients from receiving AIDS and hepatitis viruses, etc (Law Reform Commission of Canada, 1992; Garrett et al., 1993).

Buying and Selling Human Organs and Tissues

Some argue in favour of allowing human organs and tissues to be bought and sold to increase the supply and to respect people's autonomy. Others argue against such saying that to treat the human body and its parts as commodities violates human dignity (Law Reform Commission of Canada, 1992; May, 1977) Human tissues and organs are in fact being sold in some places and countries. For example, a French pharmaceutical firm buys placentas from 110 Canadian hospitals to manufacture vaccines and other blood products (Aikenhead, 1993), and some living poor people in countries such as India sell one of their kidneys for $700 or so. In Bombay, for example, there have also been some cases of kidnapping where victims regain consciousness to find that one of their kidneys was removed while they were drugged (Wallace, 1992; Rinehart, 1993). In countries like Nigeria, Kidnappers harvest human organs and sell to ritualists and equally to rich individuals with organ issues.

Concerning this whole issue some distinguish between human waste products such as placentas, body parts that regenerate such as blood, and non-regenerative human organs such as kidneys. Many distinguish profit making from covering the donor's expenses. Paying for organs can constitute unjust moral pressure on the donor. It could invalidate any free consent or a contract. Some also fear that the buying and selling of organs and tissues, if it became widespread, would undermine "giving motivated by love" (which is purely deontological) and social bonding now associated with transplants. It could also lead to organs going to the highest bidder. Equity would be violated with ability to pay rather than medical need determining the distribution of organs. Some others, however, argue that this could be controlled by regulating sales, and that totally forbidding the buying and selling of human tissues and organs would drive the market underground. Because of the controversy and ethical problems surrounding the buying and selling of human body parts, some say that other alternatives should be pursued to increase the supply (Law Reform Commission of Canada, 1992; Garrett et al., 1993). Be it as if may, selling of human body parts or organ should be motivated by duty and the intention to save life and not for profit purposes. That is what makes both the donation and receiving deontologically moral. That is why the World Health Organization resolution in 1989 that was eventually supported by more than 151 nations in part called upon member states to take appropriate measures to prevent the purchase and sale of human organs for transplantation" (Law Reform Commission of Canada, 1992).

Conclusion

Having discussed organ donation and transplant from different perspectives and views; medical perspective, organ donation and transplant from the religious perspective, ethical issues regarding the recipient and buying and selling human organs and tissues, our enquiry concludes strongly that there are two major individuals in this scene which we cannot overlook, they are the organ donors and the recipients. While reflecting on the deontological ethical implications of organ donation and transplantation, what is common to these two set of people is the value of human life and the bases on which it can be sustained through giving and receiving organs.

Therefore in our intellectual exercise concerning the rightness or wrongness of the organ donation, transplant and how the organ should be donated and transplanted, we should always recall the maxim of Immanuel Kant in his categorical imperative which says "Act in such a way that you always treat humanity whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end". This is Kant's deontological maxim and should be used as a parameter for measuring the rightness and the wrongness of both organ donation and receiving. This formulation can only influence man positively in all spheres of life. Therefore, anything that could be done to protect man and is in line with duty based ethics should be encouraged especially if it is motivated by love of giving (duty based) in the case of organ donation.

Recommendations

- The Principle of Non-maleficence -*Primum non nocere* or *first, do no harm*. Which is clearly embodied in the Hippocratic Oath for physicians should be placed side by side with the deontological ethics in dealing with organ donation and receiving.
- Since doctors have a duty of beneficence that constitutes a professional obligation to benefit patients, that is; placing the good of the patient first, the doctors' moral duty-based instinct should always be active and should come into play often.
- Proper moral consent (be it implicit, explicit or informed consent) should be gotten from the donor's family members as the case may be before donation and ascertaining that the donation was made out of duty to humanity and motivated by love.
- Both in the case of donation and receiving, a legally incompetent person who can understand things relevant to their condition should be informed of the implications in an appropriate way. Guardians should respect their wishes.
- No unfair influence should be put on someone to be a transplant recipient.
- No organs may be removed until the donor's death has been authenticated by a competent authority other than the recipient's physician or the transplant team. This is unethical and should attract serious penalties.

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