

Using Executed Prisoners as Organ Donors

An ethical analysis concerning organ harvesting from executed criminals

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Revision 1.95

April 31, 2004

117 pages



Outline

- Introduction
- Organ Shortages
- Focus of the Paper
- Using Executed Prisoners– The Chinese Experience
- Why We Need Ethical Debate on This Issue
- Review of the Literature I – United Network of Organ Sharing
- Review of the Literature II – Callender et al.
- Review of the Literature III –Cameron and Hoffenberg
- More Bioethical Issues
- Logistical Issues
- Synthesis
- Future Work
- Notes
- Appendices

List of Figures

Figure 1: Illustration depicting kidney transplantation.

Figure 2: Illustration depicting the various kinds of transplantation procedures available in the USA.

Figure 3: Tissue engineering methods may eventually allow organs to be grown as needed for transplantation.

Figure 4: Public awareness campaigns to encourage more individuals to sign organ donor cards are often advocated as one means of helping the fight the existing shortage of organs for transplantation.

Figure 5. The execution of prisoners is one of many life-and-death themes that appears frequently in literature and the arts.

Figure 6. Mass media images depicting the summary execution of individuals can sometimes have profound international implications.

Figure 7. Texas far outranks the other US states in its willingness to execute offenders.

Figure 8. There are a variety of execution methods in use in the USA, of which lethal injection is the most common.

Figure 9. Execution by lethal injection.

Figure 10. Parody of death by lethal injection.

Figure 11. Photograph of a modern “heart-lung machine” that could be used to allow brain perfusion despite explantation of the heart and lungs.

List of Appendices

Appendix 1 - Presumed Consent and Organ Donation

Appendix 2 - Incentives for Organ Donation

Appendix 3 - More on the Chinese Transplantation Scene

Appendix 4 - Basic Principles for the Treatment of Prisoners

Appendix 5 - Consider Exchanging Organ Donation for Prison Time

Appendix 6 - Night in Jail Cancels Organ Donation

Appendix 7 - Kevorkian to Harvest Patients' Organs

Appendix 8 - Results of an "Illegal" E-mail Survey

Appendix 9 - Draft IRB Request for Project Approval

For every problem, there is one solution which is simple, neat and wrong.

Henry Louis Mencken (1880-1956)

Most people are more comfortable with old problems than with new solutions.

Anonymous

Introduction

On December 23, 1954, a team of medical professionals led by Dr. Joseph Murray of the Peter Bent Brigham Hospital in Boston, Massachusetts, performed the first successful human kidney transplant (Figure 1). The recipient, Richard Herrick, afflicted with end-stage renal disease, was transplanted with a kidney donated by his identical twin brother, Ronald. Because the donor and recipient were perfectly matched identical twins, the immunological reactions (“graft versus host disease”) that would otherwise have occurred did not surface.

Five years later Dr. Murray was successful in transplanting a kidney between genetically different siblings and in 1962, Drs. Murray and Hume performed the first successful cadaveric kidney transplant. In 1990 Dr. Murray was awarded the Nobel Prize for Medicine.

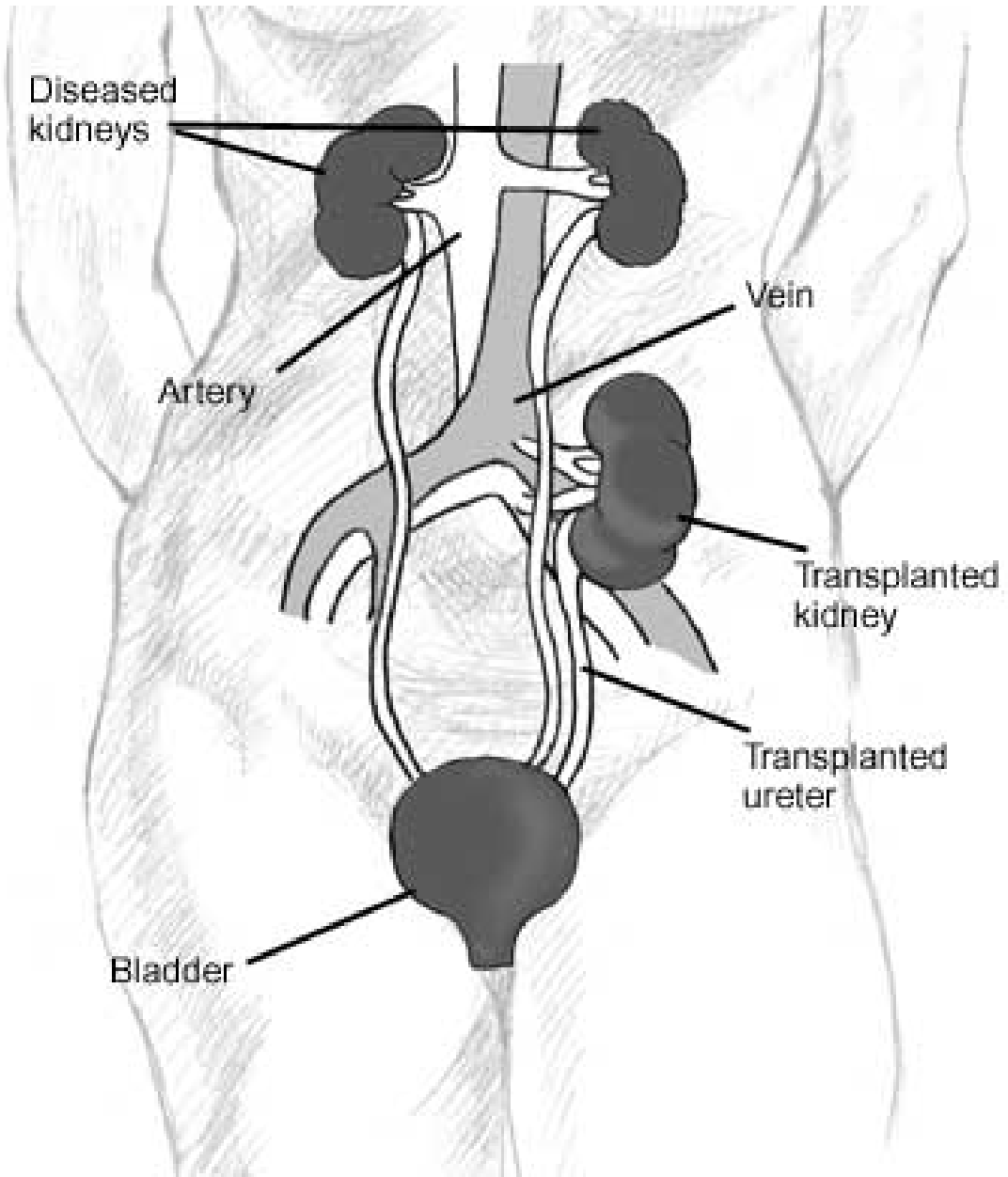


Figure 1: Illustration depicting kidney transplantation.

Image Credit:

<http://kidney.niddk.nih.gov/kudiseases/pubs/choosingtreatment/images/transplant.jpg>

Doyle - Organ Harvesting from Prisoners

Success in renal transplantation was later followed by the successful transplantation of other organs:

- 1966 - first successful kidney-pancreas transplant.
- 1967 - first successful heart transplant.
- 1967 - first successful liver transplant.
- 1981 - first successful heart-lung transplant.
- 1983 - first successful single-lung transplant.
- 1987 - first successful double lung transplant.
- 1988 - first successful liver-small intestine transplant.

While the first successful kidney transplant was a significant clinical development, many clinicians felt that transplantation was but an interesting procedure with little clinical value except between rare identical twins. What was needed was a means to allow transplantation between individuals who were not genetically identical. A number of individuals in the medical research community spent the next decades attempting to solve this problem, leading to the use of immunosuppressive drugs such as 6-mercaptopurine and prednisone. These early anti-rejection drugs offered only limited protection from rejection and greatly increased the risk of infection and other complications. Still, they were often life-saving. Later, with the development of cyclosporine and other current generation immunosuppressive drugs, the problem of organ rejection has been substantially ameliorated. This has led to a proliferation of available transplant procedures which is now substantially rate-limited by the availability of organs for transplantation (Figure 2).

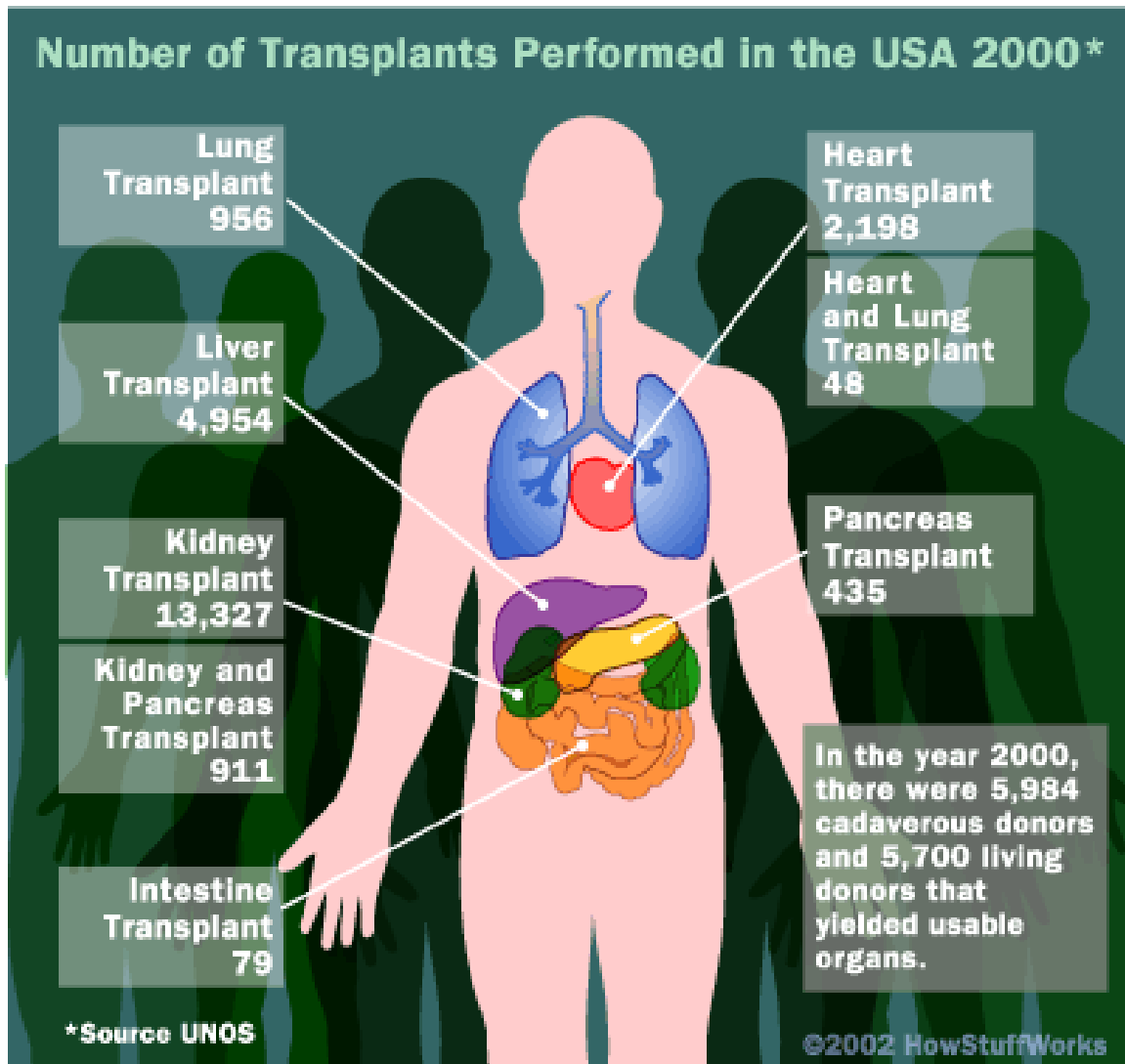


Figure 2: Illustration depicting the various kinds of transplantation procedures available in the USA.

Image Credit:

<http://static.howstuffworks.com/gif/organ-transplant-statistic2.gif>

Organ Shortages

Now that organ transplantation is no longer considered experimental and is covered by many health insurance plans, it has become the desired treatment for thousands of Americans afflicted with end-stage organ disease. Each year, more than 600,000 Americans receive tissue transplants and more than 22,000 receive organ transplants [Note 1]. Still, there are many more would-be recipients who wait for organs to become available.

According to the United Network for Organ Sharing (UNOS, www.unos.org), an American nonprofit organization that operates the nation's transplant network, two patients needing organs are added to the waiting list for every patient who actually receives one. As the number of patients on waiting lists skyrockets while the donor pool diminishes, clinicians are seeking novel solutions to this dilemma.

While research in artificial organs, tissue engineering and xenotransplantation continue (Figure 3), these technologies are not expected to yield substantial practical gains for some time. Another potential solution is to increase the number of transplants from living donors, but this solution has obvious limitations, especially for cardiac transplantation. Also, a relatively small number of paid donors make one of their kidneys available for purely financial reasons; many of these individuals come from the Philippines and other Third World countries.



Figure 3: Tissue engineering methods may eventually allow organs to be grown as needed for transplantation. This mouse at the laboratory of Dr. Charles Vacanti at the University of Massachusetts is growing an external ear on its back.

Image Credit:

http://tlc.discovery.com/convergence/superhuman/photo/gallery/super_gallery3_mouse_zoom.jpg

Doyle - Organ Harvesting from Prisoners

However, the majority of organs used for transplantation come from cadaveric sources. In almost all such cases, these are patients who have been declared brain dead but are kept on cardiopulmonary life support with the use of ventilators and other clinical technologies until such time as the organs can be retrieved surgically in the operating room. After the organs are retrieved the ventilator is turned off and the brain-dead patient's heart (unless explanted) stops some time after as tissue oxygen levels drop to lethal levels.

In the meantime, new approaches to obtaining cadaveric human organs are being considered. These include:

(1) public awareness campaigns to encourage more individuals to sign organ donor cards (Figure 4),

(2) legislation for “presumed consent” programs, whereby individuals are considered to be potential organ donors unless they specifically opt-out [Note 2, Appendix 1], and

(3) encouraging organ donation through modest honoraria, such as might help with funeral expenses [Note 3, Appendix 2].

(Suggestions that the organ transplantation community has been behind efforts to repeal laws requiring helmets for motorcycle drivers appear to be most uncharitable and are almost certainly without foundation. However, see Note 4).



Figure 4: Public awareness campaigns to encourage more individuals to sign organ donor cards are often advocated as one means of helping the fight the existing shortage of organs for transplantation.

Image Credit:

http://www.transweb.org/news/news/archive/gore1297/ins_card/insert.jpg

Focus of the Paper

The execution of prisoners is one of many life-and-death themes that appear frequently in literature and in the visual arts (Figure 5), as well as in the modern media (Figure 6).

Such executions may be judicially sanctioned or unsanctioned, legitimate or illegitimate, moral or immoral, depending on the particular circumstances involved and on one's philosophical world view. However, the scenario I wish to explore in this discussion paper concerns the death row prisoner who has been found guilty and sentenced following a legitimate judicial process.

In this setting we have a number of possible ethical avenues to consider.

In the situation where the death penalty is considered to be unethical in any circumstance, any organ harvesting associated with the death penalty might also be considered to be unethical, even with the approval of the prisoner. Indeed some individuals might go so far as to suggest that organ harvesting in this setting even to provide organs for relative such as a brother or sister would be unethical no matter how much the prisoner wanted this simply because the death penalty is unethical in and of itself. Others may feel differently even if they object to the death penalty, envisioning a process where “good may come from evil”.



Édouard Manet

The Execution of the Emperor Maximilian

1868, Oil on canvas (Musée du Louvre, Paris)

Figure 5. The execution of prisoners is one of many life-and-death themes that appear frequently in literature and the arts.

Image Credit: <http://witcombe.sbc.edu/modernism/images/manet-maximilian.jpg>



Vietnam Execution (1968)

Eddie Adams

Figure 6. Mass media images depicting the summary execution of individuals can sometimes have profound international implications, as this famous image did in shaping opinion concerning American involvement in the Vietnam war.

Image Credit: <http://www.edelmangallery.com/killer1.jpg>

A more philosophically interesting (and complex) situation is where one has concluded that the death penalty is indeed ethical in a number of well-defined judicial circumstances. Many individuals would say that the death penalty is appropriate when that crime is truly heinous in nature and where there is no reasonable doubt about the guilt of the accused. For example, it is likely that very many inhabitants in the state of Texas would be in favor of the death penalty in such a setting (Figure 7). This is another setting we will consider in this discussion paper.

After reviewing the ethical literature on this topic and adding a number of new elements to the discussion, an attempt will be made to provide a systematic approach to the issue based on an “algorithmic” approach (*vide infra*).

Executed Prisoners as an Organ Source – The Chinese Experience

There is substantial evidence that some organs may be harvested immediately posthumously in some Chinese prisoners who are executed with a carefully placed bullet to the back of head. Perhaps the strongest evidence for this is from Dr Wang Guoqi, who told the US Congress that he had removed skin and corneas from nearly 100 executed prisoners. He also indicated that he had operated on at least one prisoner whose execution had been botched and was still breathing during the procedure [Note 5, Appendix 3].

Texas leads in executions

Since the U.S. Supreme Court ruled in 1976 that the death penalty is not unconstitutional, Texas has carried out hundreds more executions than any other state.

STATES WITH MOST EXECUTIONS

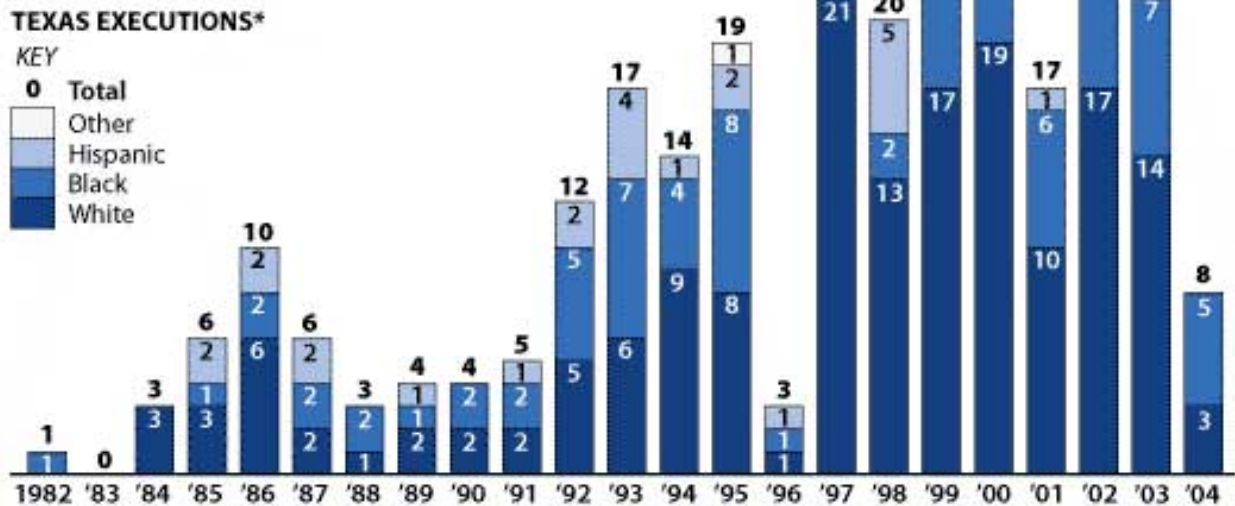
From 1976 to March 10, 2004

Texas	321
Virginia	89
Oklahoma	72
Missouri	61
Florida	58

TEXAS EXECUTIONS*

KEY

0	Total
White	Black
Hispanic	Other



*There were no executions in Texas from 1976-1982. 2004 numbers through March 4.
Sources: Death Penalty Information Center, Texas Department of Criminal Justice

Chicago Tribune

Figure 7. Texas far outranks the other US states in its willingness to execute offenders.

Image Credit: <http://www.texasmoratorium.org/rgraphics/texgraphic.jpg>

Doyle - Organ Harvesting from Prisoners

While this process may also occasionally occur elsewhere, little details are available. Presumably, for some after the resulting head injury the prisoner's heart will usually keep beating, at least long enough to circulate the intravenously administered heparin that would be necessary to prevent the prisoner's blood from clotting and ruining most of the organs.

A healthy prisoner might be able to provide organs for a number of individuals. Organs that can be harvested today include a pair of kidneys, a pair of lungs, as well as a heart, liver, and a pancreas. Indeed, even extremities like arms and legs maybe transplanted experimentally. As well, bones can be harvested for use in orthopedic reconstructive surgery. Corneas can be harvested to help restore sight. Even small intestine is transplanted experimentally, although these patients tend not to do well.

Why we Need Ethical Debate on this Issue

Ethical debate concerning organ transplantation has raged in both the popular press and in the scholarly literature for a number of decades now. With the reports of organ harvesting from executed prisoners mentioned above, this particular issue has risen in the popular press but does not appear to have been thoroughly addressed in the scholarly literature.

For instance, a MEDLINE review of journal articles (as opposed to news reports) in the various indexed bioethics journals came up with nothing on this specific topic. Also, a

Doyle - Organ Harvesting from Prisoners

“hands-on” library search of all available books on the bioethics of organ transplantation also yielded nothing of significance – it appears that this issue has simply been neglected in the scholarly literature. Given that organ harvesting from prisoners is actually occurring, it is surprising that the matter has gotten so little academic discussion. In fact, aside from one paper in the transplant literature and another in the nephrology literature, almost nothing serious appears to have been written on the subject. As a result, while most of the numerous popular accounts thoroughly denounce this practice, the condemnation is not always formatted in terms of bioethical reflection and reasoned analysis, but instead is largely based on feelings of revulsion and disgust. What is needed is reasoned ethical discourse.

The above notwithstanding the transplant community has given some consideration community has given some passing consideration to this issue. The ethics committee of the United Network of Organ Sharing (www.unos.org) has briefly considered the matter, but only to conclude that the ethical issues involved have not been adequately explored. They write “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.”

(Of course, all of the potential ethical concerns with organ harvesting will never be addressed to the satisfaction of *everyone* concerned. There will always be objectors regardless of the result of the ethical analysis undertaken)

Review of the Literature I – United Network of Organ Sharing

While the ethics committee of the United Network of Organ Sharing has not itself formally considered the issue of organ harvesting from condemned prisoners, it has identified some of the potential problems that must eventually be addressed. One issue involves the potential need to separate the act of harvesting from the act of execution. At their web site they write:

“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.”

Another issue they identify is that of informed consent:

“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."

A final concern they identify is the potential impact on the organ donation process:

"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."

Review of the Literature II – Callender et al.

Callender et al. (1996), writing in *Transplantation Proceedings*, appear to be among the first to suggest guidelines concerning organ harvesting from prisoners scheduled for execution. They write:

Doyle - Organ Harvesting from Prisoners

"The prisons are overflowing, with a record 1.2 million people behind bars. Some prisoners are executed, and others die from strokes and other common causes. No surveys have been taken of these prisoners to determine their willingness to donate their organs. Based on anecdotal evidence, I believe many of them would be willing to donate their organs. Death-row prisoners and other prisoners and other prisoners that have written to me to say that they are going to die anyway, they would like to donate their organs to partial atonement for their crimes..... On behalf of those patients at risk of dying while waiting for organs, we should find out whether we can recover suitable organs from this donor source."

Later, the authors indicate what they believe would be reasonable conditions:

"Prisoners as donors should be healthy and have given informed consent prior to donating. There must be no element of coercion in those donations.

Multidisciplinary panels, including an ethicist, a public citizen, a prison official, and a neutral health practitioner, should be allowed to establish protocols or act on already established protocols and based on these decide on the appropriateness of the prison donors request".

The authors are also quick to point out that donors would be expected to look favorably on such source of organs:

Doyle - Organ Harvesting from Prisoners

"In those circumstances in which we have asked the community, they have been virtually unanimous in support of giving prisoners the option to donate. Waiting transplant candidates, for example, do not understand why doctors don't allow this potential donor source, and neither do we. They have told us that they want transplants and would not refuse mutable organs donated by prisoners".

Later, the authors reach some conclusions about proper guidelines:

1. "Living related and unrelated donation (organ/tissue) by prisoners should be allowed if there is unequivocal willingness and healthiness on the part of the potential donor."
2. "Recently dead prison donors regardless of cause of death should be allowed to be organ/tissue donors as long as there is unequivocal willingness and healthiness on the part of the donor."
3. "Creative and innovative approaches and protocols can be established to safeguard the rights of society, the prisoners, and the health care professionals, none of whom are desirous of 10 people dying daily because of the shortage of donors."
4. "The protocol now used for non-heart beating donors and its application to prison donors is reasonable."

5. “The creation of a volunteer multidisciplinary panel of four to six people including one neutral health care professional, three neutral public citizens, one ethicist, and one prison official is recommended to be the makeup of this panel, which would decide on the authenticity of the donation requests.”

The authors conclude with a plea for the medical profession to transform their attitude on this matter:

“In this instance, the “nobler than thou” stance of the medical profession may not coincide with the desires of the wider community. Exhaustive efforts to identify if this is the case are necessary now. If this is found to be the case, there is no reason why this donor source (prisoners) should not be looked into carefully from all perspectives and allowed!”

Review of the Literature III –Cameron and Hoffenberg

Cameron and Hoffenberg (1999), writing in *Kidney International*, offer what is arguably the most carefully reasoned analysis of the issue so far. They consider five existing arguments against the notion of organ harvesting from executed prisoners and offer reasoned counterarguments in each case. In this section we summarize their arguments pro and con.

First Argument - *The process of execution would have to be modified with organ donation in mind.*

The authors respond to this argument by arguing that this need not be a problem:

“The important issue is whether the procedures necessary to procure organs might cause an increase of suffering to the prisoner or to his family. This would include the use of preparatory measures, for example, perfusion of organs before execution, psychological torment or loss of dignity through procedures carried out at any time simply in the interests of preservation of organs or their retrieval. Provided assurance can be given about these aspects, the actual details of the execution process are not relevant to the argument. That abuse of organ donation might occur is not an argument in principle, it is an incentive to correct the abuse.”

Second Argument - *Executions might be carried out specifically to obtain organs for transplantation.*

With respect to this issue, the authors write:

“There is no hard evidence that this is the case. Despite probably more than 10,000 judicial executions each year in China (official figures are approximately

half the number), only some 1,600 executed prisoners donate 3,200 organs ...

The limitation on organ availability is not the number of executed prisoners, from whom more than enough organs can be obtained already, but the cost of immunosuppressive drugs.”

Third Argument - *Prisoner coercion is always present.*

In this matter, the authors write:

“Although almost everyone in the West would agree that permission of the individual to be executed should always be sought as part of informed consent essential to organ donation of any type, in the Chinese context, the pressures toward individual autonomy are not so strong, and the family is the unit consulted. [It should be noted that in many westerns countries, this can and is delegated to the "person in charge of the body", such as a coroner (medical examiner) after death from (say) road traffic accidents or murder, to hospital authorities in some countries, or (most usually) relatives, who can give or deny permission for transplantation to proceed.] In China, permission of the family (or in some cases the spouse), usually not the individual prisoner, as those responsible for the body of the executed individual is requested and granted in writing. As noted in the previous section, there are enough executions that coercion to donate is unnecessary to ensure a supply of organs.”

Fourth Argument - *The use of organs from executed prisoners condones and exploits execution.*

Here, Cameron and Hoffenberg write:

“Whatever one's views of the death penalty may be, if it is a statute in operation, then the utility of this process to society should be maximized for the greatest good. One can consider that the prisoner is given the opportunity to help "repay" his or her debt to the society that they have damaged by donating organs. One could argue further that every executed prisoner in all countries practicing capital punishment should donate. The fact that the executed prisoner's organs are going to save the life of another individual or relieve suffering may bring solace to a family making some amends for whatever wrong doing he had committed and for the death.”

Fifth Argument - *Organs of executed prisoners may be sold for profit, an unacceptable situation.*

In this matter the authors write:

“In fact, Chinese law forbids both taking organs from minority groups (non-Han Chinese) or the export of kidneys, corneas, or the very few livers currently obtained for use in foreign nationals... It is not necessarily the act that should be

Doyle - Organ Harvesting from Prisoners

condemned, but the exploitation and abuse that may surround it. If such exploitation and abuse can be prevented or minimized, these objections fall away.”

The authors conclude their arguments with the following discussion:

“Western opinion has been almost unanimously against the use of organs from executed prisoners. Strong emotions are aroused ... but it seems to us that most of the revulsion that this practice attracts is based first on antipathy to the death penalty itself and, second, as a reaction to possible abuses of the situation, such as illegal commercial exploitation. The affront to human dignity and autonomy is not the removal of organs after execution, but the execution under codes currently in force that we have to consider here. We must again ask what the balance of harm may be between death of an individual in renal failure and the obtaining of a kidney from an individual already dead by due legal process. That this process may be part of a faulty and repressive judiciary system that can and certainly has been abused (although these abuses are difficult to document) gives rise to immediate revulsion, but is not directly relevant to the purely ethical argument. ... if a death penalty is in force in countries without widespread availability of regular dialysis or cadaver transplantation, as a stage in development of chronic renal failure programs the use of executed prisoners' organs needs consideration.”

More Bioethical Issues

While the above literature review identifies many pertinent issues, there are several other matters that also warrant consideration. These concern the matter of prisoner consent and the use of prisoner incentives. These are discussed next.

Prisoner Consent, Coercion and Incentives

One question that arises naturally in this discussion concerns the rights of prisoners. Do prisoners have the right to avoid being executed for heinous crimes? If prisoners committing terrible crimes do not have the right to avoid execution, should they have any say over what is done with their bodies after death? While much has been written on the former issue, much less has been written on the latter. While the Office of the United Nations High Commissioner for Human Rights has published a number of documents that may be tangentially germane to the issue [Note 6], they do not address this issue head on. Still, most Western thinkers would argue that even if execution is an acceptable punishment for a serious crime, the punishment is execution, not organ harvesting, and any organ harvesting would require specific prior consent as a necessary condition of being ethical.

However, very many individuals feel that prisoners cannot give true consent to anything simply because they live in a coercive environment. This position has led to the termination of programs involving the use of prisoners for medical research purposes, something that was very common in the period following the Korean War. But would participation in such a program be coercive? Coercion is the use of force or intimidation

Doyle - Organ Harvesting from Prisoners

to obtain compliance or agreement. Based on this definition, some authorities might disagree that the prisoners are always in a coercive environment. Consider what Beauchamp and Childress (Principles of Biomedical Ethics, 4th ed p. 167) write on the topic of coercion:

“When an offer is made in a setting in which it is abnormally attractive – for example, an offer of large sums of money or freedom for destitute prisoners – it may be manipulative but it never coercive, although it does under some conditions manipulatively take advantage of a persons vulnerabilities”.

Finally, it is interesting to observe that when prisoners are admitted to hospital for serious illnesses like appendicitis, informed consent is sought just like with any other patient.

Another related issue is that of providing incentives to donate. Not all prisoners would be agreeable to having their organs harvested posthumously, unless there was something attractive in it for them. While a small member of prisoners, perhaps those that "found God" while in prison, might be willing to donate their organs out of sheer generosity, and while others may wish to donate to a relative or friend in need, in all likelihood, however, most prisoners would want a more concrete incentive.

If such incentives were to be offered it is important that they meet the principles of natural justice. For example, if the death penalty is the appropriate form of justice for an individual, it might be considered to be inappropriate to simply offer a pardon to the

individual following the donation of a kidney as a form of incentive, no matter how appealing this may be to some of the parties involved. Rather, in the case of organ harvesting from condemned inmates, any incentives would have to take the form of treats and privileges made available to the prisoner prior to their execution. Such incentives could variously take the form of special meals, the opportunity to watch newly released movies on video or DVD, or even conceivably a modest delay in the timing of the execution date.

Physician Involvement

Direct physician involvement in the death penalty has long been considered unethical, except possibly to provide a declaration of death. It is apparent that this rule of sometimes violated. For instance, on October 24, 2001, Dr. Kenneth Prager, Chairman of the Ethics Committee at Columbia Presbyterian Hospital in New York, published the following letter to the *New York Times* in response to a front-page article a few days earlier concerning the harvesting of organs from executed prisoners in China (see Appendix 3):

“The current Chinese organ transplant procurement system violates the most basic ethical norms. The organs are taken against the presumed or explicit wishes of the condemned donors and their families. As there is a profitable monetary link between the penal system, which provides the exploited organ donors, and the hospitals which profit from the operations, there is a financial incentive for the state to execute as many prisoners as possible. Legal or prisoner considerations

Doyle - Organ Harvesting from Prisoners

are ignored in the scheduling of executions, which are based instead on when the organs are needed. And there are ghoulish eyewitness accounts of the removal of organs from still moving and breathing bodies. The world medical transplant community should exclude Chinese transplant physicians from professional forums until these practices are corrected.”

Indeed, it is not hard to make the case that Dr. Prager’s concerns are quite valid. In most medical codes of ethics, the procurement of organs from executed prisoners is simply unethical. For instance, the Office of the United Nations High Commissioner for Human Rights writes:

“It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.”

Michalos (1997) goes even farther. He argues that since execution is harm, “participation runs counter to the ethics of the medical participation and cannot be justified even on the basis of relieving pain”.

Similarly, the American Medical Association has recently reaffirmed its long-standing position against physician participation in capital punishment (<http://www.ama-assn.org/ama1/upload/mm/annual02/ccb010a02.doc>):

Doyle - Organ Harvesting from Prisoners

“Whereas, Recent peer-reviewed published studies reveal confusion of physicians regarding the ethics of physician involvement in executions; and

Whereas, Codified medical ethics has totally barred physician involvement in executions; and

Whereas, Physician involvement in executions constitutes a profound conflict of interest with activities not benefiting the patient; and

Whereas, Physicians have been involved at every stage of execution; therefore, be it

RESOLVED, That our American Medical Association strongly reaffirm its opposition to physician participation in execution; and be it further

RESOLVED, That our AMA expand efforts to educate the medical profession regarding this ethic.”

It is of interest to note that this recent reaffirmation by the AMA was issued in 2002 largely in response to two studies by Farber et al. published in the Archives of Internal Medicine. In the first study (Farber et al. 2000) the authors surveyed physicians about how acceptable it was for them “to engage in 8 actions disallowed by the AMA and 4

allowed actions involving lethal injection.” Eighty percent of the respondents “indicated that at least 1 of the disallowed actions was acceptable, 53% indicated that 5 or more were acceptable, and 34% approved all 8 disallowed actions”. The authors also observed that “the percentage of respondents approving of disallowed actions varied from 43% for injecting lethal drugs to 74% for determining when death occurred”. The authors concluded that in spite of medical society policies “the majority of physicians surveyed approved of most disallowed actions involving capital punishment, indicating that they believed it is acceptable in some circumstances for physicians to kill individuals against their wishes” and noted that it was “possible that the lack of stigmatization by colleagues allows physicians to engage in such practices.”

In the second study, (Farber et al. 2001) the authors examined physicians' willingness to be involved in cases of capital punishment by using a survey of 1000 randomly selected practicing physicians. They wished to explore “physicians' willingness to participate in 10 aspects of capital punishment by lethal injection, 8 of which are disallowed by the American Medical Association”. The authors found that “41% of respondents indicated that they would perform at least one action disallowed by the American Medical Association; 25% would perform five or more disallowed actions”. They also noted that “perceived duty to society, approval of the death penalty, and approval of assisted suicide correlated with increased willingness to perform disallowed actions”. Surprisingly, only 3% of the physicians responding to the survey knew of any guidelines on this issue. The authors concluded that many physicians would be willing to be involved in the execution process.

The above discussion suggests that the above noted prohibition of physician involvement in capital punishment would end the question. This may be the case, but there are several reasons why the contrary may also apply. First, not all physicians personally agree with the ethical policies that they are required to follow. Second, some states protect physicians involved in capital punishment by providing strict anonymity. Third, the American Medical Association prohibition (and similar prohibitions) applies only to its members.

Another practical matter is that it is not at all necessary that the organ harvesting surgeons actually be physicians – any experienced large animal veterinary surgeon could do the required surgery, provided appropriate preparation and training is undertaken. This is not to suggest that veterinary surgeons would line up in large numbers to provide such a service (although probably some would indeed be agreeable), but merely to indicate that veterinary surgeons are capable surgeons too.

Logistical Issues

A program of organ harvesting from executed prisoners would involve a number of logistical concerns. These are considered next, starting with the matter of execution by lethal injection, the means of execution in most common use in the USA (Figure 8) and the means believed to be least damaging to the organs to be harvested.

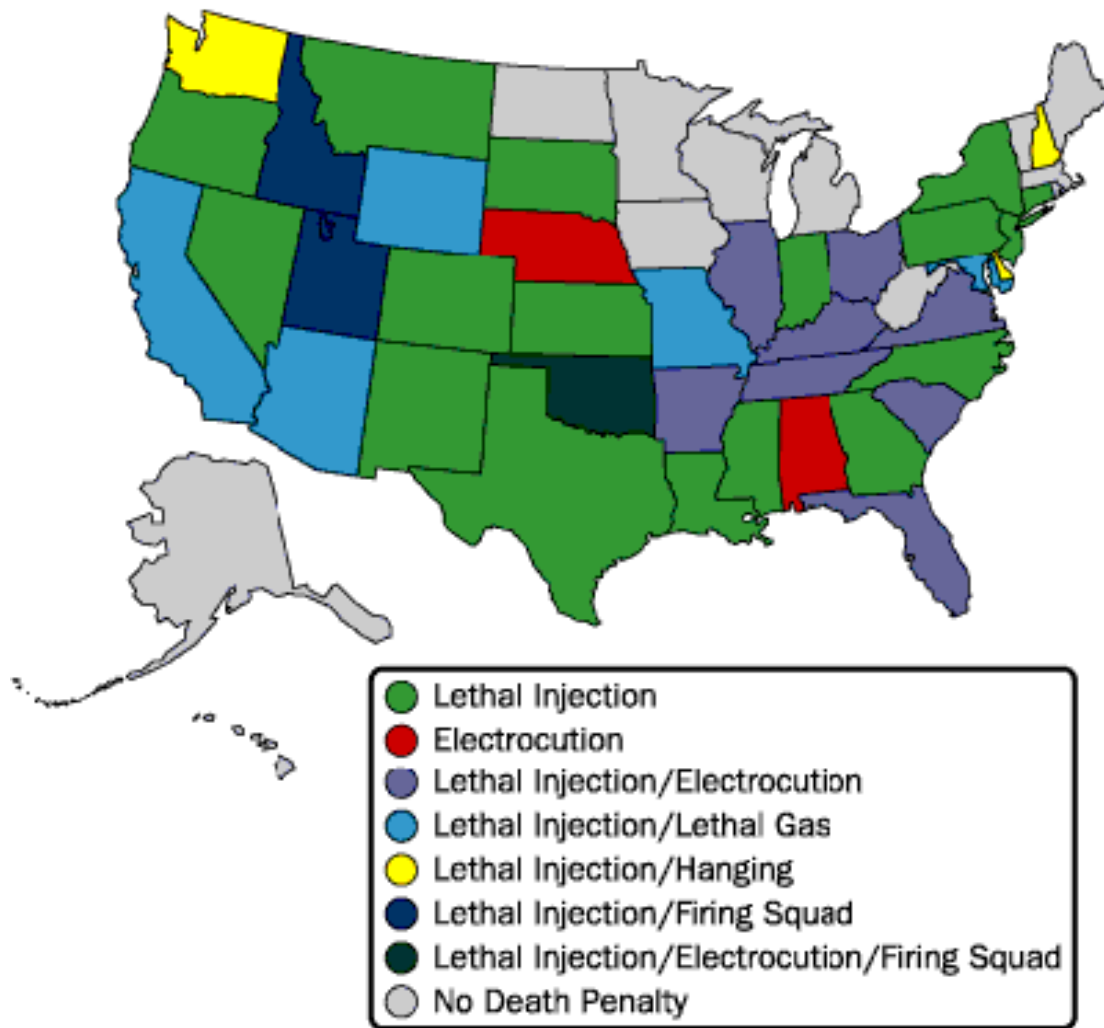


Figure 8. There are a variety of execution methods in use in the USA, of which lethal injection is the most common.

Image Credit:

<http://images.usatoday.com/news/science/stuffworks/images/2001-05-10-lethal-injection-execution-methods.gif>

Methods of Execution

Khan and Leventhal (2002) have written on the medical aspects of capital punishment executions. They note that “between 1976 and the middle of 2001, approximately 718 human executions occurred in the U.S.” They searched available public domain data to obtain specific information for all persons executed in the U.S. since 1976. They found that “of the five methods of execution used (lethal injection, lethal gas, electrocution, hanging, and firing squad), significant differences emerged as measured by rate of complications, duration of time spent by the condemned in the "death chamber," as well as duration of time from the onset of execution procedures to pronouncement of death.” They make the rather surprising declaration that “human executions are difficult to carry out” and also note that such executions “are associated with significant physical complications.”

Logistics of Execution by Lethal Injection

In 1982, the United States became the first country to use lethal injection as a means of carrying out capital punishment. It has increased in popularity in the USA in recent years because it is widely believed to be among the most humane and effective of available methods (Figure 9). Still, the method has its detractors (Figure 10).

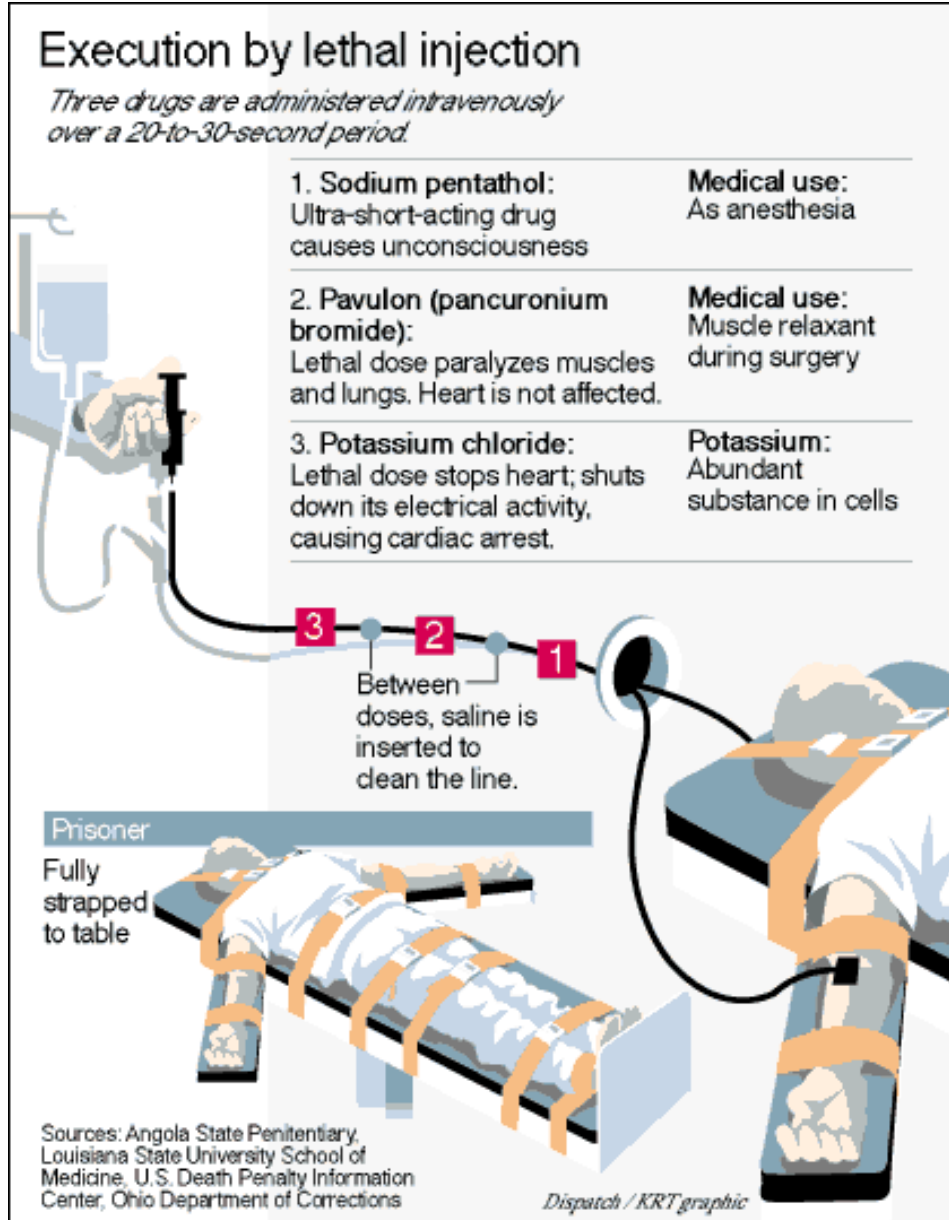


Figure 9. Execution by lethal injection.

Image Credit: <http://www.dispatch.com/news/newsfea99/feb99/berry/INJECT0219.gif>

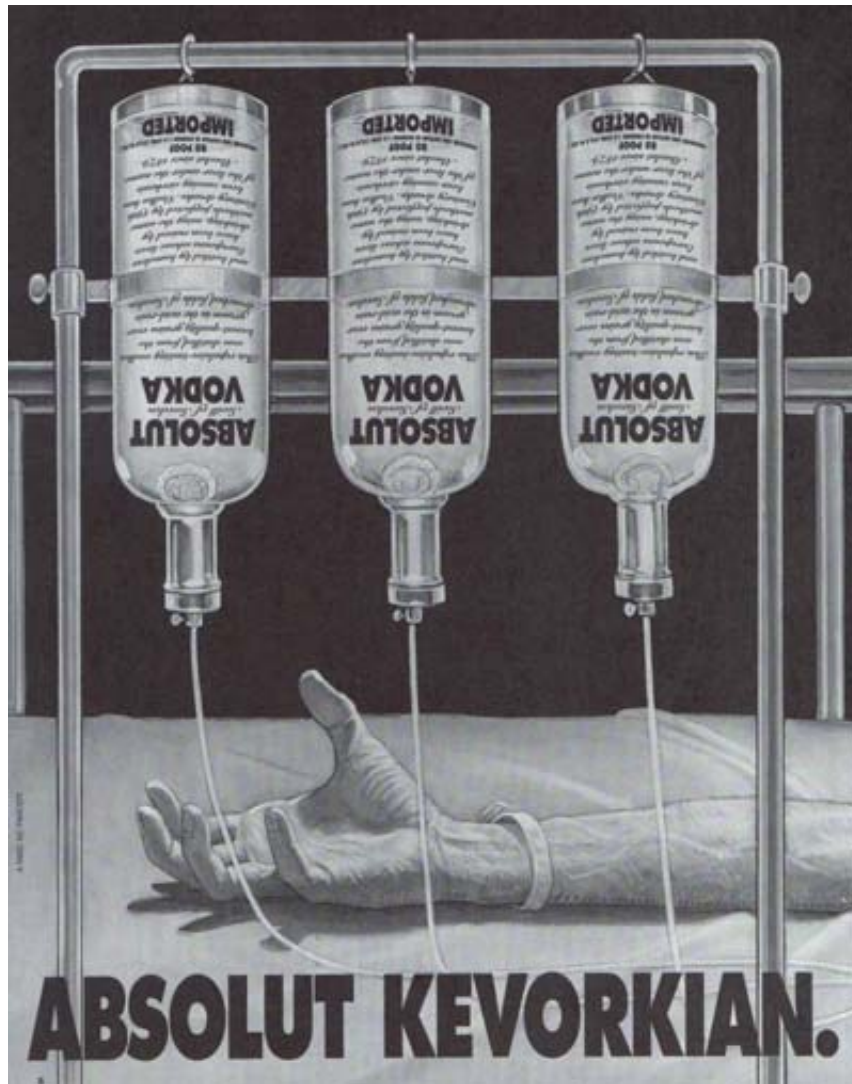


Figure 10. Parody of death by lethal injection.

Image Credit: <http://users.du.se/~h00tholi/bilder/absolut/kevorkian.jpg>

According to the “How Stuff Works” web site (<http://www.howstuffworks.com/lethal-injection5.htm>) the method is rapidly increasing in popularity:

“Of the 38 U.S. states that have a death penalty, 34 use lethal injection as the primary form of execution. The U.S. federal government and the U.S. military also use lethal injection. In 2000, according to the U.S. Department of Justice, 85 people were executed in the United States, and 80 of those died by lethal injection. In 1999, 98 persons were executed, 94 by lethal injection -- of the other four, three died from electrocution and one from lethal gas. The number of states authorizing lethal injection increased from 20 in 1989 to 36 in 2001.”

As indicated earlier in Figure 9, execution by lethal injection in the USA is usually accomplished using three drugs: thiopental, pancuronium and potassium chloride (KCl) administered intravenously.

The thiopental is given to ensure unconsciousness and serves only as a humane measure. The pancuronium paralyzes all skeletal musculature, with the result that the respiratory muscles stop and breathing ceases. The KCl stops the heart by interfering with electrical conduction; some execution protocols skip this step.

It is a common misconception that the lethal injection process would necessarily result in any organs to be harvested, the drugs being “toxins”. However, all three drugs used have

no detrimental effects on organs to be explanted in the concentrations/amounts ordinarily used for lethal injection. Damage to organs occurs primarily because of cellular hypoxia from the lack of lung and heart function, not as a direct result of drug toxicity. (Note that this would not be the case for the toxins such as potassium cyanide, which poison the electron transport chain at the level of the cellular mitochondria.)

In fact, as long as the organs are immediately harvested, flushed and continue to be appropriately perfused after the heart stops (as with cold "Wisconsin" solution, or better yet a hemoglobin-containing solution) they will do fine, within the limits of permissible "ischemia time".

There is, however, a proviso. To prevent blood clotting, the use of the anticoagulant heparin (about 300 to 400 units per kilogram body weight) would have to be given intravenously a minute or two before the lethal injection is administered (although it may not be strictly necessary that it be done exactly this way (or at all); the Chinese likely give the heparin after the shot to the head but before the heart stops).

Is Lethal Injection Humane?

Stolls (1985) points out that even death by lethal injection, which was expected to be the most reliable and effective of available methods, can produce unusually cruel and inhuman death. In *Heckler v. Chaney*, prisoners sentenced to death by lethal injection, as well as members of the medical and legal professions, challenged the Food and Drug

Doyle - Organ Harvesting from Prisoners

Administration's (FDA) refusal to regulate certain drugs used for capital punishment by lethal injection. Stolls notes that “by declining to review the FDA's nonenforcement decision, the Supreme Court also declined an opportunity to reevaluate its standard for determining cruel and unusual punishment, which upholds any method of execution that is no more unusually cruel than existing methods.”

One special challenge with execution by lethal injection is in establishing functional intravenous access, especially in prisoners with a history of intravenous drug use. This is exemplified by summaries of newspaper accounts such as the following that may be found on the internet (e.g., <http://nadp.inetnebr.com/BotchedInjections.html>):

- March 13, 1985. Texas. Stephen Peter Morin. Lethal Injection. Because of Morin's history of drug abuse, the execution technicians were forced to probe both of Morin's arms and one of his legs with needles for nearly 45 minutes before they found a suitable vein. *Murderer of Three Women is Executed in Texas*, N.Y. TIMES, March 14, 1985,
- Texas. Randy Woolls. Lethal Injection. A drug addict, Woolls helped the execution technicians find a useable vein for the execution. *Killer Lends A Hand to Find A Vein for Execution*, L.A. TIMES, Aug. 20, 1986

Doyle - Organ Harvesting from Prisoners

- June 24, 1987. Texas. Elliot Rod Johnson. Lethal Injection. Because of collapsed veins, it took nearly an hour to complete the execution. *Addict Is Executed in Texas For Slaying of 2 in Robbery*, N.Y. TIMES, June 25, 1987
- September 12, 1990. Illinois. Charles Walker. Lethal Injection. Because of equipment failure and human error, Walker suffered excruciating pain during his execution. According to Gary Sutterfield, an engineer from the Missouri State Prison who was retained by the State of Illinois to assist with Walker's execution, a kink in the plastic tubing going into Walker's arm stopped the deadly chemicals from reaching Walker. In addition, the intravenous needle was inserted pointing at Walker's fingers instead of his heart, prolonging the execution. *Niles Group Questions Execution Procedure*, UNITED PRESS INTERNATIONAL, Nov. 8, 1992 (LEXIS/NEXUS file).

Prisoner Selection

Not all prisoners would be suitable to be organ donors, even if they wanted to donate. For example, the rate of HIV infection in the prison population is regrettably high, and HIV-positive patients are generally not suitable organ donors, except possibly to HIV-positive recipients. Similar problems may be encountered in patients who have cancer or positive for hepatitis C. Still, it is very likely that at least one-half to three-quarters of death row prisoners would be clinically appropriate organ donors.

Doyle - Organ Harvesting from Prisoners

In fact, some prisoners are particularly proud of their excellent medical condition and their potential value as a source of organs. Consider the case of David Posman, currently serving a 30-year sentence for armed robbery at the Rhode Island Correctional Institute. In making the case that he would be willing to trade a kidney for a reduced sentence, he writes (see full text in Appendix 5):

“Approximately 1.6 million men and women are incarcerated in federal, state and local prisons throughout the US. Many of them are young and healthy (crime tends to be committed by the young and alcohol and drugs are not as readily available in prison as the public might think). I’m a good example: healthy, with no history of infectious diseases, does not drink or take drugs and I exercise compulsively. For the opportunity of a reduced sentence, I think many prisoners would be willing to consider organ donation. If certain sensibilities could be set aside and only practical matters considered, we might be able to put a curve in what has been an essentially flat donor rate.”

Finally, a less well-known but very important issue concerns the fact that a number of organ transplantation programs will not accept donors who have stayed overnight in jail within the last year. Appendix 6 provides a news report containing more details.

How Might Such a Program Work?

Another logistical issue concerns the organization of a program for organ harvesting from executed prisoners. Such program might be organized as follows.

A man is found guilty in a fair trial and sentenced to death by lethal injection. (For the purposes of discussion I will dispense with the debate about what constitutes a legitimate judicial process and assume that we are dealing with prisoners who have been legitimately sentenced to death and who are indeed guilty of some heinous crime. I am acutely aware that this is a naïve assumption.)

The prisoner is then placed on death row. Later, he is questioned as to whether or not he wished to be tested for eligibility for the program. For agreeing to be tested as potential organ donors, prisoners might be offered a small incentive such as steak dinner. If they were found not to be suitable as organ donors nothing further would happen. If, however, the prisoner was found to be a suitable organ donor he would be given a second incentive to allow their clinical information (blood type, medical history etc.) to be entered into the prisoner organ donor database.

Information in the database would then be made available electronically to transplant surgeons and other health-care workers so that clinicians caring for patients in need of organ transplantation would be able to explore the database to seek compatible donors.

Prisoners who did not want to be entered into the database would have their wishes respected.

Finally, a prisoner advocate would be made available to ensure that the prisoner understood his or her rights, while a panel of individuals would decide on the appropriateness of any prison donor requests.

(As noted earlier, Callender et al. (1996) have also made suggestions about how such a process might work. For instance, they suggested that such a panel consist of “an ethicist, a public citizen, a prison official, and a neutral health practitioner”.)

At the time of the scheduled execution the lethal injection would be temporarily deferred so that prior to the deadly injection, the patient is brought to the operating room, administered general anesthesia, whereupon the organs are harvested. Once this is done the lethal injection is carried out. Alternate arrangements might also be considered. For example, it should be clear that if the heart is harvested that there is no need for a subsequent lethal injection.

Transplant Surgeons as Executioners

Some bioethicists object to the idea of death row inmate serving as a source of organs for transplantation (even with the free informed consent of the inmate) because it makes physicians into executioners in the situation where vital organs are harvested under general anesthesia (which is clinically the most desirable situation).

But this need not be the case. Consider the situation where the patient is placed on a heart lung machine prior to explanting the heart and lungs (cardio-pulmonary bypass, Figure 11). In this state of affairs the brain would continue to function and if the anesthetic were discontinued the patient would awaken like anyone else, but with the body still supported by the heart-lung machine.

Suppose then that following organ explantation with the brain still intact and perfused, that the brain was then destroyed (still under anesthesia) by an executioner who had nothing to do with the surgical team (cutting off the prisoners head with a sword comes to mind). Then the prisoner would die from being beheaded, and not from explantation process.

Some critics would argue that distinctions of this kind are merely sophistry. But moral philosophy thrives on such distinctions, and the use of cardiopulmonary bypass in this case is a technology that allows the issues of explantation and execution to be decoupled.



Figure 11. Photograph of a modern “heart-lung machine” that could be used to allow a limited period of brain perfusion despite explantation of the heart and lungs.

Image Credit: <http://www.davidfary.com/hlm.jpg>

Synthesis

I next consider how to achieve a philosophical “synthesis” of the above arguments. In particular, I would like to develop a systematic approach to deciding the on the moral acceptability of organ harvesting for a particular inmate in a particular setting. Our ultimate goal is to propose an “algorithm” or “flowchart” that can help with issues of this kind. I term this notion an “ethical pathway analysis”. It is a decision tree with a YES or NO answer at each node in the tree. The ultimate path taken will depend on the responses at each node. This is illustrated next.

Ethical Pathway Analysis

[Node 1]

Is capital punishment morally acceptable in this case?

If YES go to [Node 3]

If NO go to [Node 2]

[Node 2]

Can good be obtained from this situation nevertheless?

If YES go to [Node 3]

If NO go to [Node 7]

Doyle - Organ Harvesting from Prisoners

[Node 3]

If consent from the prisoner required in this case?

If YES go to [Node 4]

If NO go to [Node 6]

[Node 4]

Is the prisoner able to provide consent for the proposed action?

If YES go to [Node 5]

If NO go to [Node 7]

[Node 5]

Does the prisoner provide informed consent, free of coercion?

If YES go to [Node 6]

If NO go to [Node 7]

[Node 6]

Proposed action IS morally acceptable.

End of analysis.

[Node 7]

Proposed action IS NOT morally acceptable.

End of analysis.

Ethical Pathway Analysis – Discussion

A particular route or pathway may be established based on the responses to questions at each node. In the context above, 9 pathways exist. These are discussed below.

PATHWAY A

[1] YES [3] YES [6] (MORALLY OKAY)

[Capital punishment is considered to be morally acceptable and prisoner consent to harvesting is not a moral requirement - therefore harvesting is morally acceptable; This is the "Chinese pathway", so-called because of the fact that there is strong evidence that the Chinese government carries out posthumous organ harvesting in condemned prisoners without their prior consent.]

PATHWAY B

[1] YES [3] YES [5] NO [7] (NOT OKAY)

[Even though capital punishment is morally acceptable, harvesting is not acceptable because the prisoner does not provide consent.]

PATHWAY C

[1] YES [3] YES [5] YES [7] (MORALLY OKAY)

[Capital punishment is morally acceptable, and harvesting is acceptable because the prisoner provides consent.]

Doyle - Organ Harvesting from Prisoners

PATHWAY D

[1] NO [2] YES [3] YES [4] YES [5] YES [6] (MORALLY OKAY)

[Capital punishment is not morally acceptable, but good can still come from this tragedy; harvesting is acceptable because the prisoner provides consent.]

PATHWAY E

[1] NO [2] YES [3] YES [4] YES [5] NO [7] (NOT OKAY)

[Capital punishment is not morally acceptable, but good can still come from this tragedy; however, harvesting is unacceptable because the prisoner does not provide consent.]

PATHWAY F

[1] NO [2] YES [3] YES [4] NO [7] (NOT OKAY)

[Capital punishment is not morally acceptable, but good can still come from this tragedy; however, harvesting is unacceptable because the prisoner is unable to provide consent.]

PATHWAY G

[1] NO [2] YES [3] NO [6] (MORALLY OKAY)

[Capital punishment is not morally acceptable, but good can still come from this tragedy; harvesting is acceptable because consent from the prisoner is not a moral requirement.]

Doyle - Organ Harvesting from Prisoners

PATHWAY H

[1] YES [4] NO [7] (NOT OKAY)

[Capital punishment is morally acceptable; however, harvesting is unacceptable because the prisoner is unable to provide consent.]

PATHWAY I

[1] NO [2] NO [7] (NOT OKAY)

[Capital punishment is not morally acceptable, and no good can come from this tragedy; thus harvesting is unacceptable even if the prisoner provides consent.]

Future Work

Future work on this matter that might be considered involves obtaining a sample of public opinion via one or more survey methods, such as using e-mail. Hypothesizing that the use of electronic communications might offer a number of advantages over more traditional methods of inquiry, I set off to establish a list of individuals to which I might send an e-mail message requesting an opinion on the topic. Because it would likely be fruitless to send requests to individuals at random not known to have an interest in such a topic, I searched the Internet using the Google search engine (www.google.com) for any Web sites dealing with death row inmates where visiting individuals might have signed the electronic “guest book” or left a message containing their e-mail address . From the several appropriate sites I found, the Web site of Martin A. Draughon (<http://www.fdp.dk/martin/>), an inmate on Death Row in Texas, was chosen for e-mail

Doyle - Organ Harvesting from Prisoners

address “harvesting” on the basis of its rich supply of information. The most recent 49 unique e-mail addresses were then manually extracted and entered into a group mailing list established at Hotmail (www.hotmail.com) specifically for this purpose.

However, upon subsequent discussions it soon became apparent that such a study would likely require Institutional Review Board (IRB) approval and any information gathered to date without IRB approval might not be usable. Appendix 8 provides more information in this matter. The result was that further data collection was stopped and an effort was instead expended at planning to obtain IRB approval, as outlined in Appendix 9.

Once this IRB process is complete, the next phase of this study will be possible.

References

Callender CO, Kelly BS, Rivadeneira DA. Medical utility versus legal justice: a proposal for the ethical use of prisoner-donated organs. *Transplant Proc* 1996;28:374

Cameron JS, Hoffenberg R. The ethics of organ transplantation reconsidered: paid organ donation and the use of executed prisoners as donors. *Kidney Int.* 1999;55:724-32.

Farber N, Davis EB, Weiner J, Jordan J, Boyer EG, Ubel PA. Physicians' attitudes about involvement in lethal injection for capital punishment. *Arch Intern Med.* 2000; 160:2912-6.

Farber NJ, Aboff BM, Weiner J, Davis EB, Boyer EG, Ubel PA. Physicians' willingness to participate in the process of lethal injection for capital punishment. *Ann Intern Med* 2001;135:884-8

Khan A, Leventhal RM. Medical aspects of capital punishment executions.

J Forensic Sci. 2002;47:847-51.

Michalos C. Medical ethics and the executing process in the United States of America.

Med Law 1997;16:125-68

Doyle - Organ Harvesting from Prisoners

Miller RB. Ethics of paid organ donation and the use of executed prisoners as donors: a dialectic with professors Cameron and Hoffenberg. *Kidney Int.* 1999;55:733-7.

Stolls M. Heckler v. Chaney: judicial and administrative regulation of capital punishment by lethal injection. *Am J Law Med* 1985;11:251-77

Notes

[1] Source: <http://www.lifesharing.org/timeline.html>

[2] In a system of “presumed consent”, only those patients who specifically state before death that their organs should not be removed (an “opting out” process) would be ineligible for consideration as an organ donor. Appendix 1, an extract from an article by Lori Hartwell originally published in the December 1999 issue of Contemporary Dialysis & Nephrology, explains some of the issues associated with presumed consent.

[3] Appendix 2 contains an article from the CNN Web site which explains some of the varied issues in providing incentives for organ donation.

[4] The letter below (edited for spelling) was posted to the trauma.org Web site, a clinical resource for trauma doctors. It and other letters on the issue of helmet laws may be viewed at <http://www.trauma.org/archives/helmet.html>

Date: Sun, 15 Jun 1997 10:43:59 +0300 (IDT)

From: Avi Roy Shapira [avir@bgumail.bgu.ac.il]

Why should we fight repealing motorcycle helmet laws? We are consistently short of organ donors, and repealing the law is a sure way to get more of those.

Doyle - Organ Harvesting from Prisoners

Let us applaud the legislators, not fight them. Young healthy adults with severe head injuries are excellent donors. All physicians, particularly transplant surgeons, should join the crusade to get rid of these abusive laws, in all states and countries.

By the way, the same legislators that repeal helmet laws also enforce seat belt laws. Since both laws equally impinge on individual freedom, they must also have the donor issue in mind. After all, it could not possibly be pressure from the automotive industry so that they could delay putting airbags in all cars. I am sure the legislators are beyond succumbing to such pressures. Are you all not?

Let me make a modest proposal that will swiftly improve the law, and make everyone happy: allow riding without a helmet only to those who sign a donor card. This way, people who refuse to donate will not be wasted, and remain protected, while those who agree can ride free as the wind, to the benefit of society at large. Their contribution will offset the added cost for the care of those who will not become brain dead (cost savings will come from removing patients from chronic dialysis treatment, and from avoiding repeated hospitalization for congestive heart failure etc., and indirectly by allowing these patients to return to the work force)

Avi

[5] This information and related stories may be found starting with a search at www.google.com or other search engine. One particularly credible source is the Laogai Research Foundation (see, for instance, <http://www.laogai.org/chinese/news-news-organ-press1.html>). Not surprisingly, the Chinese authorities deny that such activities occur (see,

for instance, <http://news.bbc.co.uk/1/hi/world/asia-pacific/1411389.stm>) Appendix 3 provides more information.

[6] The Office of the United Nations High Commissioner for Human Rights has issued a number of documents regarding the treatment of prisoners. The most important of these are listed below:

- Basic Principles for the Treatment of Prisoners
- Standard Minimum Rules for the Treatment of Prisoners
- Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty

Appendix 4 provides the first of these documents.

Appendix 1

Presumed Consent and Organ Donation

In a system of “presumed consent”, only those patients who specifically state before death that their organs should not be removed (“opting out” process) would be ineligible for consideration as an organ donor. The following extract from an article by Lori Hartwell originally published in the December 1999 issue of Contemporary Dialysis & Nephrology explains the issues. It is taken from her Web site [http://www.lorihartwell.com/html/world_organ.html]

In the strong version of presumed consent, there is no allowance for the donor's family to interfere with the donation process. In state initiatives in Pennsylvania and Maryland, a variant of the weak version is being considered. A weak version of presumed consent requires the permission of the donor's family - if the family can be located - before organs and tissues are removed.

Three years after the approval of the Belgium Transplant law, which implemented presumed consent, kidney donations doubled from only 20 kidneys per million population (PMP) to 40 kidneys PMP in 1989.

The latest statistics from Eurotransplant (January-July 1999) confirm these findings: Austria and Belgium (the two opting out countries in Eurotransplant), again showed a more than 30 percent increase compared to the previous year. Germany and the Netherlands (opting in) again downwards with more than 15 percent.

Spain operates with presumed consent for organ donations and half the transplant coordinators are doctors, said Dr. Marti Manyalich, transplant procurement manager at Spain Transplant Services Foundation. While presumed consent is the norm, families are still asked if their loved ones will be organ donors.

Spain might attribute some of its success to another factor. "Active detection is the key to the Spanish model," Dr. Manyalich said. Active detection in this case means having transplant coordinators visit emergency rooms and the ICU on a daily basis, checking the roster of patients and their status.

Dr. Manyalich reported that Spain has seen its waiting list and waiting time reduced and its rate of donations increase. While its refusal rate from families is significantly lower than that in the U.S., The United Network Organs Sharing (UNOS) sees 21 donations PMP, while last year, some parts of Spain saw donations as high as 39 PMP.

The "pure presumed consent" law means that a person must register at a courthouse and establish that he or she does not wish to be an organ donor. Such registration is the only way individuals can prevent their organs from being removed at death. However, if a person who refused to be a donor ends up needing a transplant, he would automatically be placed at the end of the list. Those who wish to receive an organ must be willing to give one.

Austria practices pure presumed consent. There's also the difference between organs and tissues. In Belgium, they practice the pure presumed consent law for tissues without approaching relatives at all. Although hospitals inform relatives about organ procurement as a routine procedure, they do so to explain the delay between (brain) death and the moment the corpse becomes available for burial.

Appendix 2

Incentives for Organ Donation

The following article from the CNN Web site explains some of the varied issues in providing incentives for organ donation.

Organ Donation - We'll Make It Worth Your While

May 3, 1999

<http://www.cnn.com/HEALTH/bioethics/9905/organ.donate/template.html>

by Jeffrey P. Kahn, Ph.D., M.P.H.

Director, Center for Bioethics

University of Minnesota

In a first-of-its-kind pilot program in Pennsylvania, organ donors may get \$300 from the state toward their funeral expenses. Proposals to pay for organs are not new, but federal law prohibits the sale or trade of organs. Do incentives such as funeral credits violate at least the spirit of the ban on organ sales? Will they provide reasonable incentives to

motivate families who need an enticement, or exploit the families of patients who wouldn't donate organs except that they need the money? Do incentive schemes merely reflect the dire shortage of lifesaving organs? Or do they turn what should be altruistic donations into cheap transactions for body parts?

A seller's market

A legal ban on payment for organs is driven by three concerns -- it could exploit people who need money and wouldn't donate except for payment; it could motivate families to decide to withdraw treatment; it could give rich people the chance to get available organs first. Does payment toward funeral expenses support any of these concerns?

Since this plan would affect only the supply and not the distribution of organs, it wouldn't change access by recipients except by making more organs available. And in that case, all would benefit equally.

Because payment would be for funeral costs and wouldn't enrich relatives, there would be little or no financial incentive to undertreat.

But if the concern is that organ donations be totally voluntary, what may appear as innocent incentives to some will look like irresistible offers to others.

Reasonable incentive or undue influence?

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Three hundred dollars is not much money to many people, but to some it may be the difference between a funeral and none at all. And as the price goes up, more of us will be enticed. We can all envision a dollar figure that will cause us to overlook better judgment, inhibition, or even firmly held convictions and do something we otherwise wouldn't -- whether it's participating in a drug trial, donating blood plasma, giving a kidney or donating our loved one's organs. The only difference is how much money it will take.

So one question is how likely \$300 is to meet many people's price. And can we prevent it from being the only reason to decide to donate? The bottom line is that a decision to donate must remain voluntary and altruistic, rather than forced and mercenary.

For some, any compensation for donating organs takes away the altruism in the act, and they should be free to refuse any payment. But in offering incentives, the risk we run is that society comes to share the view that organ donation is no longer about altruism but about less virtuous motives.

Offering to defray funeral costs does not create incentives for families to hasten the death of a loved one. And so long as recipients are not bidding up the price to entice donors or their families, fair access to donated organs can continue without regard to ability to pay. But a policy for any kind of payment for organs walks a fine line between useful incentive and turning organs and their donors into commodities. We need more organ

Doyle - Organ Harvesting from Prisoners

donors, but incentives that are too high for too many people turn donors into sellers, so that instead of making a gift, they end up making a score -- a situation we can't afford.

Appendix 3

More on the Chinese Transplantation Scene

<http://www.laogai.org/chinese/news-news-organ-deathrow.html>

New York Times on the web

October 18, 2001

CHINA

On Death Row, China's Source of Transplants

By **CRAIG S. SMITH**

SHANGHAI, Oct. 17 — Sitting in a dimly lit Russian hotel room last month, Huang Peng, a Chinese prison official who had fled across the border just hours before, spoke matter-of-factly about the supply of human organs for the vast majority of transplants in China.

"Executed convicts are basically the only source for transplants," Mr. Huang said, explaining how hospitals and government detention centers work with courts to coordinate the killing with life-saving operations so that organs are transplanted fresh from the condemned.

Doyle - Organ Harvesting from Prisoners

The practice is so common and demand for organs so pressing that few checks exist to ensure that the executed are even dead before their organs are removed. One Chinese doctor claims to have witnessed the removal of a prisoner's kidneys while the man was still breathing.

The Chinese government denies involuntary harvesting organs. But credible and detailed accounts from Mr. Huang and others interviewed sketched the outlines of a vast system in which kidneys, livers, lungs, corneas and other organs are stripped from executed prisoners and then transplanted into wealthy patients in operations that bring Chinese hospitals tens of millions of dollars a year.

There were more than 5,000 reported kidney transplants last year in China, where such an operation costs about \$6,000 for Chinese residents — a tenth of the price in the United States. Foreigners are charged anywhere from \$10,000 to \$50,000.

Mr. Huang did not have a direct hand in turning prisoners into unwilling donors, but he worked with people who did. He said the practice was common knowledge among people in the police and the penal system of Liaoning Province, where until last month he was an official at the province's largest penitentiary, Shenyang No. 2 Prison.

He left China because he feared arrest for his role in falsifying documents to help another person leave the country. He is now in Russia hoping to find a safe haven in the West.

Doyle - Organ Harvesting from Prisoners

While there is no evidence that the high number of death sentences handed down by Chinese courts are linked to the high demand for organs, the organ supply is growing.

China executes more prisoners each year than all other countries combined, and by some estimates 10,000 people will be put to death this year as the government pursues one of its most intense crackdowns on crime in the last 25 years.

Many of those who die and become unwitting donors may be innocent, human rights groups say, because they are convicted after hurried trials based on confessions extracted under torture.

Families are rarely told that their loved ones' organs may be removed, and prisoners are not asked for their consent, Mr. Huang says. Voluntary donations are rare in China, because of a lack of public education about organ donations as well as traditional beliefs that say the body must be kept whole after death.

"Definitely, there is no family willing to have their loved ones' organs taken," Mr. Huang said. "And there is no such thing as a prisoner who volunteers."

Once organs have been removed after an execution, the body is cremated immediately, before the family has a chance to see what has been done.

Doyle - Organ Harvesting from Prisoners

That is what appears to have happened to Zhao Wei and Wan Qichao, executed in the central Chinese province of Henan in August 1999 for the murder of Mr. Zhao's estranged wife 10 months earlier.

Mr. Zhao's mother, a frail white-haired woman with horn-rimmed glasses and an educated air, said court officials had visited both families and asked for consent to use their sons' organs, but that the families had refused. The executions took place months later without warning. "It was like a knock on my head," Mr. Zhao's mother wrote later of the shock when a friend called to say he had just seen her son in the back of a truck bound for the execution ground. "How could it be that I wasn't notified?"

Lu De'an, a friend of the condemned men, rushed to the execution ground on a sidecar motorcycle with his wife and saw Mr. Zhao's body and Mr. Wei's being loaded into a white van. A third body was put into an ambulance. Both vehicles had white paper covering their license plates, Mr. Lu said.

He drove alongside the ambulance and van as they crept toward the local crematory. He could not see into the ambulance or the van's side windows, which were covered. But through the van driver's window he could see men and women wearing surgical gloves working in the back.

"I didn't know what they were doing," he said, recalling the scene in an interview this month. "I saw one man, stripped to the waist and pulling off surgical gloves. His face was

Doyle - Organ Harvesting from Prisoners

big and swarthy and sweating profusely, and the driver gave him a towel to wipe the sweat away."

Later, when Mr. Lu returned to a spot on the road where he had seen things being thrown from the van, he found bloody cotton wool, an empty box of surgical gloves and several empty plastic bags. His wife gave him a tissue to pick up one of the bags. It was labeled "kidney preservative fluid."

"Now I know their kidneys were taken," Mr. Lu said.

The prison official, Mr. Huang, says that families of the condemned are often asked in advance whether they want to claim their family member's body after the execution, but that many decline because they are told that they would have to pay large fees.

That makes the harvesting legal under central government rules that allow organs to be taken from executed prisoners whose bodies are not claimed.

Military and paramilitary hospitals dominate the harvesting and transplanting, because they have close ties to the prosecutors and court officials who supervise executions. The hospitals obtain the organs almost free, usually by paying court officials a nominal sum, and charge thousands of dollars per transplant.

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It is a boom industry. The number of transplant operations has soared in the last decade, and modern new transplant centers have opened around the country. One center established earlier this year in Hangzhou, south of Shanghai, specializes in multiple organ transplants for individual patients.

Less attention is given to the procurement side of the equation. China has never developed clear guidelines for determining brain death, and in the rush to remove healthy organs from executed prisoners, all standards are often ignored.

Wang Guoqi, a former Chinese paramilitary doctor who gave his account to American Congressional investigators in June, said he had twice attended executions at which kidneys were cut out before the condemned donor stopped breathing.

While his accounts come from the early and mid-1990's, there is no evidence that China has taken any steps to reform the system.

Standing outside the restaurant at a New Jersey mall where he works as a sushi chef these days, Mr. Wang spoke nervously in August of the dozen executions he had attended and the dozens more times he had visited crematories to collect prisoners' skin for grafts.

In Tianjin, a major port southeast of Beijing, an official from the High Court would notify the hospital of pending executions, and Mr. Wang said he would go to the court and pay the official 300 yuan, or about \$45, for each cadaver.

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He said he had collected blood samples from condemned prisoners at Xiaoxiguan Prison in Tianjin to find suitable donors for waiting kidney patients. The prisoners did not know the purpose of the blood sampling, he said.

On at least one occasion Mr. Wang went to death row before an execution to give a condemned donor an injection of the anticoagulant heparin, which is necessary to procure transplantable organs. The prisoner was told it was a tranquilizer.

Timing was everything, Mr. Wang said, because the quality of kidneys, in particular, degrades quickly after the heart stops beating.

He and others were supposed to move the body into a waiting ambulance within 15 seconds after an execution, which was almost always performed with a gunshot to the back of the head.

The kidneys were to be extracted within two minutes and soaked in ice-cooled, 0.9 percent saline solution. The operating room would then be telephoned and told to start anesthesia on the transplant patient, and the kidneys would be rushed to the hospital under police escort.

After eyes or other organs were taken out, Mr. Wang, who worked as a burn specialist at the General Brigade Hospital of Tianjin's People's Armed Police, would go to work skinning the corpse.

Doyle - Organ Harvesting from Prisoners

"We cut the skin from the upper limbs, the lower limbs, the chest and the back," Mr. Wang said. "Skin on the head, neck, hands and feet was generally discarded."

In August 1990, Mr. Wang said, he watched as a court bailiff and a prison guard "half carried, half pulled," a condemned man shackled in handcuffs and leg irons from the bed of a truck toward his execution site on a hillock surrounded by barbed wire outside of Tianjin. Another bailiff raised a semiautomatic pistol to the back of the prisoner's head and pulled the trigger.

Mr. Wang and a colleague rushed the body on a stretcher to a waiting ambulance, where, as the doctors began cutting into the abdomen, he heard one of them say, "Look, the heart's still jumping, and the guy's still breathing."

On another occasion, in October 1995, Mr. Wang attended an execution in Luannan, a small town about three hours from Tianjin, at which the executed man wriggled on the ground after being shot. He was carried anyway into the ambulance, where Mr. Wang watched as the man's kidneys were removed while he was still breathing.

China's government has denounced Mr. Wang as a fraud. But his identity and educational credentials have been confirmed, and some people in Luannan recalled the October 1995 execution as he described it.

Doyle - Organ Harvesting from Prisoners

"I remember — a lot of people went to watch," said a woman surnamed Yue at a small teahouse near Luannan's Public Security Bureau. "It was a big event here."

American transplant doctors who have reviewed Mr. Wang's account find it credible, and similar accounts suggest that the incidents may not have been unusual.

In an article carried on the People's Daily Web site earlier this year, one prosecutor said four men from a hospital in Nanchang, the capital of Jiangxi Province, had rushed to take a condemned man's body before he was dead.

The head of the execution team insisted on shooting the prisoner again before releasing his body.

The reporter who wrote the article has since been fired and barred from working in the news media.

Appendix 4

Basic Principles for the Treatment of Prisoners

Office of the United Nations High Commissioner for Human Rights

http://www.unhchr.ch/html/menu3/b/h_comp35.htm

Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives

Doyle - Organ Harvesting from Prisoners

and its fundamental responsibilities for promoting the well-being and development of all members of society.

5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.

7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.

9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

10. With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

11. The above Principles shall be applied impartially.

Appendix 5

Consider Exchanging Organ Donation for Prison Time

David R. Posman

Nephrology News and Issues February 1999

Mr. Posman is serving a 30-year sentence for armed robbery at the Rhode Island Correctional Institute in Cranston, R.I.

Recently, I read an article in the Providence Journal Bulletin of Rhode Island concerning a man who donated a kidney to his brother. From what I understand, more than 30,000 people are waiting for a kidney transplant and 4,000 to 5,000 people die in the US each year because they cannot find a kidney donor. I may have a solution to that problem.

Approximately 1.6 million men and women are incarcerated in federal, state and local prisons throughout the US. Many of them are young and healthy (crime tends to be committed by the young and alcohol and drugs are not as readily available in prison as the public might think). I'm a good example: healthy, with no history of infectious diseases, does not drink or take drugs and I exercise compulsively. For the opportunity of a reduced sentence, I think many prisoners would be willing to consider organ

Doyle - Organ Harvesting from Prisoners

donation. If certain sensibilities could be set aside and only practical matters considered, we might be able to put a curve in what has been an essentially flat donor rate.

The basic philosophy behind my idea is not as strange as it might sound. Until a few years ago, Rhode Island prisoners could earn 10 days “Good Time” for donating a pint of blood.

The benefits of a program that offers reduced sentence time for donating a kidney, I believe, are substantial. Start with the 4,000 to 5,000 lives saved each year. Also, society at large would benefit. Consider the possibility that a prisoner, who has few opportunities to make amends while languishing in his or her cell, might undergo a complete change in attitude given a chance to contribute. Attitude is the key ingredient in many rehabilitative programs. And, finally, consider the money. If my sentence was cut in half to 15 years, taxpayers would save \$35,000 year – more than a half a million dollars over 15 years. That money could be given to the taxpayers or to my victims (who get little or nothing from my incarceration), or help pay for the transplant operation itself, bailing out an overburdened health care system.

I do recognize, however, that there will be arguments against my proposal. The public's view will certainly be that “Criminals must pay for their crimes”. I felt the same way not that long ago. But "criminals must pay for their crimes" is a bit of a platitude, rather than a hard and fast axiom. Secondly, people might legitimately wonder why I, or other prisoners, don't donate a kidney for "free", so to speak, and then throw ourselves upon the

Doyle - Organ Harvesting from Prisoners

mercy of the court and accept whatever sentence reduction the court sees fit to hand out. Well.....Maybe. But again, without a detailed arrangement; I'm afraid I have to say I trust the justice system just about as much as the justice system trusts me. I could be wrong, but I would sure hate to find out I was not. Finally, I am sure that security concerns would be paramount in the hospital setting. A central, secure location where all kidney transplants would take place could be established, and prisoners could be flown in on the federal prisoner air transport system.

Prisoners are the best, maybe the only group of donors readily available right now, and with halfway houses, parole officers etc., we would still be monitored once out of prison. If my sentence was cut in half today, I would still serve about another five years.

The basic philosophy behind prisoners donation is not that strange, and I believe the pros far outweigh the cons. The legal logistics? Well, it has been my experience that prosecutors and judges have a fair amount of leeway and discretion in sentencing and sentence reductions, so a change in state laws might not be necessary except as protection for the prisoner's basic rights and protection for the doctors against litigation. Prisoners can be - though not always - a bit litigious.

I strongly believe this is a rational proposal. I look at it this way: I've got a partially torn A.C.L. in my right knee, five old cracks in the bones of my face, no tonsils, no adenoids, no appendix - what's a kidney to me when I know I can live fine with just one? I'm like

Doyle - Organ Harvesting from Prisoners

an old Dodge Dart - my body may have a ding here and there, perhaps a little rust, but the engine is running like a dream.

Appendix 6

Post-Tribune Mon Aug 26 13:12:00 EDT 2002

http://www.post-trib.com/cgi-bin/pto-story/news/z1/08-26-02_z1_news_05.html

Night in jail cancels organ donation

Aug. 26, 2002

By Jeannine Athens-Virtue

Post-Tribune correspondent

No one expected Brett Rosenkranz to die at 25.

And no one who knew him expected his organs to be buried with him.

When Rosenkranz died unexpectedly on July 13 of an unknown and undetected heart defect, his mother immediately started the organ donation process at Porter Memorial Hospital — something her son had always wanted.

She soon learned, however, that a night in jail had disqualified him from helping save the life of another.

“I mourn not only for my son, but for the people he could have helped,” Nancy Rosenkranz said.

“It would have given his life some meaning.”

Brett Rosenkranz of LaCrosse was a plumber in Crown Point, his mother said, a longtime 4-Her and an altar boy in his youth.

Other than his heart, she said, a coroner’s report found the healthy organs of a 25-year-old man.

More than 700 Indiana residents are awaiting transplants. Each year approximately 4,000 people in the United States die while waiting for a transplant.

The little-known rule, said Sarah Pullins, a transplant coordinator for the Indiana Organ Procurement Organization, is established by the Federal Drug Administration and the American Association of Tissue Banks.

Doyle - Organ Harvesting from Prisoners

One day spent in jail within a year prior to death is an automatic disqualifier, she said.

“These two governing bodies feel that there is a likelihood that someone could have contracted hepatitis or HIV,” Pullins said.

“Organs are a life-saving gift to someone,” Pullins said. “We want to do everything to support being an organ, tissue or eye donor but unfortunately, there are a couple disqualifiers.”

It’s a rule that angers Nancy Rosenkranz.

“If this is policy, then I think we need to change policy,” Rosenkranz said. “It was in his heart and in his wishes to donate his organs.”

The week prior to his death, Brett gave blood during a local Red Cross blood drive. No one disqualified him from that act, his mother said.

“He had a big heart,” Rosenkranz said. “If he could give someone something, he would.”

Hospital officials, under state mandate, notify the Indiana Organ Procurement Organization of deaths or imminent deaths of organ donor candidates.

Doyle - Organ Harvesting from Prisoners

Last year Porter Memorial Hospital coordinated seven tissue and three organ donor referrals, said hospital spokeswoman Jeni Bell.

A person at Porter Memorial Hospital sat down with Rosenkranz to discuss her son's organ donation and conduct a medical and social history questionnaire.

Rosenkranz initially wanted to answer "no" when asked if Brett spent a night in jail within the past year. She felt it was no one's business to ask that question.

Instead, she answered truthfully but now she regrets her honesty.

"We hit that question and that was it, we were done," Rosenkranz said. "I've spent nights just really worried, thinking I should have never said 'yes.' "

"This is what Brett wanted. A piece of him could have lived on," she said. "It's such waste."

Appendix 7

Detroit Free Press

October 23, 1997

<http://www.freep.com/news/extra2/qkevo23.htm>

Kevorkian to harvest patients' organs

Donations second phase of his plan

BY BRIAN MURPHY

Free Press Staff Writer

Dr. Jack Kevorkian said Wednesday that he will harvest organs from one of his future patients and make them available at his attorney's office on a "first-come, first-served basis."

Speaking publicly for the first time in more than three months, Kevorkian said donating kidneys and livers from consenting assisted-suicide patients is the second phase of a three-part plan he outlined in his 1991 book, "Prescription: Medicide."

"We've achieved Phase 1, which is helping people end their suffering," Kevorkian said. "The second phase is getting some benefit back to save other people's lives. Death is totally negative. Here's a case where we can end suffering and give organs back to save lives."

Kevorkian's proposal was unveiled to reporters during a national conference call to discuss an HBO documentary about him that will air next month. His attorney Geoffrey

Doyle - Organ Harvesting from Prisoners

Fieger provided few details on how the procedure would work, but he said he will likely hold a news conference within the next month -- with the medically preserved organs at his side -- to announce the first case.

"The organs will be harvested appropriately," Fieger said. "They will be kept in appropriate fluid. The donors will be cross-matched. There will be appropriate testing so that communicable diseases don't exist," said Fieger.

The plan was quickly denounced by the Transplantation Society of Michigan.

Tammie Havermahl, public education director for the Ann Arbor-based society, noted that donors' hearts must be stabilized, to ensure that the organs are oxygenated. She said many of Kevorkian's patients die from heart failure brought about by either carbon-monoxide poisoning or poisonous injection.

"Those organs would not be able to be transplanted," she said.

Dr. Jorge Reyes, a transplant surgeon at the nationally renowned University of Pittsburgh Medical Center, called the idea "totally unrealistic and almost fantastic."

Kevorkian and Fieger, though, challenged the legal and medical community to embrace the concept.

"There will be patients begging doctors for the kidneys and the livers that I have available in my office," Fieger said. "Let's see if the authorities and the physicians allow a patient who would otherwise live with these organs to die because they don't like the fact that they came from Dr. Kevorkian."

Doyle - Organ Harvesting from Prisoners

Reyes said that under ideal conditions, a kidney can survive outside the body for up to 60 hours, and a liver for 24.

Those organs would have to be removed quickly after the organ donor has died, Reyes said. In cases where a person suffers a serious injury and is brain dead, but the organs survive, doctors wait for the heart to stop and then begin harvesting the organs 10 minutes later.

The retired pathologist who has acknowledged helping more than 70 people die since 1990, said Phase III of his campaign would allow patients who want to end their lives to be placed under "irreversible" anesthesia and be experimented upon by doctors before dying.

Staff writer Raja Mishra and the Associated Press contributed to this report. Staff writer Brian Murphy can be reached at 1-248-691-2400.

Appendix 8 - Results of an “illegal” e-mail survey

(To protect the anonymity of the respondents, the names of all respondents have been changed to “X”. Spelling and grammatical errors in the responses have been left intact.)

ORIGINAL REQUEST

Request for commentary and opinion

Re: Organ harvesting from executed prisoners

I am in the process of researching the ethical issues concerning organ harvesting (organ explantation) from executed prisoners. In particular, I am interested in the situation where the full consent of the individual to be executed is obtained prior to the execution, and where the organs are used for medical transplantation purposes.

Please note that this situation is quite different from the prisoner organ harvesting reported to be carried out in China, where there is considerable evidence that consent of the executed individual is not obtained. I am interested in the situation where the prisoner is truly in favor of the organ harvesting, for example, in order to provide a needed

Doyle - Organ Harvesting from Prisoners

organ for a relative or for simple magnanimous reasons.

There many issues involved for which I would appreciate your comments. For example, is it ever really possible to get true consent in individuals in this setting? Would it be acceptable to provide death row prisoners with small incentives (for example, special meals or movie privileges) in order to encourage their participation? Given that physicians are generally not allowed to participate in executions, and given that the best clinical results would likely be obtained by harvesting organs under general anesthesia with the heart still beating, what would be the logistical issues involved? What, if anything, should the organ recipients be told about the source of their organ? Would programs of this kind of lead to an increase in the number of executions? Would it shorten the time that prisoners spend on death row? A final question is whether individuals who are against the death penalty as a matter of principle might still be in favor of organ harvesting "so that some good might come from an evil situation."

Your comments on the above and other related questions are appreciated.

Doyle - Organ Harvesting from Prisoners

Sincerely,

D. John Doyle

PS Your email address was obtained from the Web site of Martin A. Draughon, an inmate on Death Row in Texas. Your opinion is appreciated.

REPLY 1:

I find your questions to be equal to your level of education and an example of the educational system you are a product of.

You sir, are on the wrong track to be asking a limited and opinionated population such questions that cannot be answered intelligently as the limited public you have approached with pre established attitudes can answer your questions no better than yourself.

Your polling style is unscientific and prejudicial by it's very nature. You sir are a fool if you think a paper

Doyle - Organ Harvesting from Prisoners

driveled from this type of amateurish research will further your education outside the boundaries of your pitiful home states educational system. Please remove me from your email list.

MY REPLY:

Dear X

I am sorry to have troubled you. This is not a scientific study or a even a formal poll, but merely a means to get some opinions for me to consider in the eventual development of a philosophical position paper intended to examine all sides of the matter. While I am also in the process of writing to a number of bioethicists on this matter, I see no harm in also seeking opinions from more "ordinary" individuals who might have something to say. Again, I am sorry to have troubled you.

Sincerely,

John Doyle

PS I am still interested in your opinion.

Doyle - Organ Harvesting from Prisoners

REPLY 2:

I think it is unethical unless the inmate in question opts to be a donor. You cannot just remove their organs and then give them to someone else. These inmates are people's husbands/ fathers/ sons/ daughters/ wives/ mothers and they have family who may want their remains to stay intact - for religious beliefs as well as their own peace of mind. Just because they are inmates does not mean they are there to be farmed. If it is their final wish to help someone else, so be it, but if it isn't it should not be done. Also, surely if you pump even poison through someone's veins to kill them, it renders the organs unusable??? I would say that also applies when you electrocute someone (a practise which is still used in 2 or 3 states).

I seem to recall reading something a long time ago that organs can retain 'memory' and that people who have had, say a heart transplant, have often found themselves liking things the deceased person liked, did, experienced etc. If this is the case (and I am not saying it is), I would say that organs harvesting from executed inmates would not be a good idea - would we really want someone having flash backs of the previous 'owner' strapped to a table, having poison

Doyle - Organ Harvesting from Prisoners

pumped through their veins? I think not. I also thing if you are going to give someone the organ of an executed inmate you need to tell them. Not everyone may want it.

I have circulated your email to the activist groups I belong too. Hopefully you will get more responses.

[This individual forwarded my question to activist groups with the following preface:

I received this this morning and replied to the guy. He seems perfectly civil and normal. If you are interested in responding to him - his email address is at the bottom. Personally I think harvesting organs from an executed person is wrong, unless they have given their consent.

X]

MY REPLY:

Your opinion is appreciated. Also, thank-you for circulating the question. As an aside, it is quite

Doyle - Organ Harvesting from Prisoners

possible to poison someone by lethal injection without damaging the organs, but it must be done just right.

Thanks again,

John Doyle

RESPONSE TO MY REPLY:

Hmmm ... that's interesting. I did wonder after I sent that if they could flush them out with something.

MY REPLY:

Indeed, the organs are flushed out after explantation. "Wisconsin solution" is one preparation that can be used for this purpose.

Best Wishes,

John Doyle.

Doyle - Organ Harvesting from Prisoners

REPLY 3:

I heard on some documentary that an individual executed by lethal injection made their organs not suitable for transplant. All the drugs used it makes sense to me. Besides it's just another way for the prisons to violate a prisoner's rights. There is already enough abuse in the prison system and the donor farming industry is also under scrutiny of abuse.

X

"The political machine triumphs because it is a united minority against a divided majority." Will Durant,
American historian

MY REPLY:

Dear X,

Thanks for your opinion.

You may find it interesting that, although there are special technical issues involved, it would in fact be

Doyle - Organ Harvesting from Prisoners

possible to harvest organs after lethal injection. Although it has to be done "just right", it is not especially difficult to do.

As to your opinion, I am curious why would it be a violation of a prisoner's rights if it was done with his consent?

Thanks for your help in this matter.

Best Wishes,

John Doyle

RESPONSE TO MY REPLY:

I believe a person, prisoner or not, has the right to choose what is done with their body after life. Unfortunately anytime any branch of the government is given a new rule of authority it always leads to abuse of power. It doesn't matter what is said. It doesn't matter how good it looks on paper ...it never works out the way it is supposed to.

Doyle - Organ Harvesting from Prisoners

The same goes for the correctional system. They don't follow their own rules so why would harvesting of organs be any different. I wouldn't put it past the guards to figure out some way of making money off the situation. The only difference between the guards and the inmates is the uniform.

The investigative report I saw regarding the abuses and slipshod procedures in the organ harvesting industry is enough to warrant concern. This is outside of a prison atmosphere. One can only imagine what would be done inside the prison atmosphere!

I don't trust them... period!!!!

X

"The political machine triumphs because it is a united minority against a divided majority." Will Durant,
American historian

Doyle - Organ Harvesting from Prisoners

REPLY 4

As the Prelate of THE UNIVERSAL ETHICIAN CHURCH, I feel qualified to provide answers to the ethical dilemmas involved.

1. Organ harvest from prisoners on Death Row would have a tendency to encourage the continuation of an evil practice, i.e. THE DEATH PENALTY, as persons and their relatives, desperate for body parts, would tend to promote executions to add to the supply of organs for transplant. Therefore as a general principle, organ transplant would be unethical, except in #2 below.

2. There might be some occasions where organ transplant could be ethical:

a. The person admits guilt and independently wants desperately to save a life in exchange for the life taken and freely requests that someone be helped to make amends for his or her terrible act(s).

b. The person has an immediate family member, loved one, or close friend in desperate need for a transplant.

Doyle - Organ Harvesting from Prisoners

In this case, it would be entirely ethical for the inmate to donate an organ on his or her own free will and stated desire.

It would be unethical to offer incentives for organ donation.

It would be unethical to harvest organs without consent.

It would be unethical place organs in a general organ bank, except as in a. above.

It would be unethical for any physician to participate in an execution in any way, even in pronouncing death unless specifically requested by the victim as in a. and b. above. Even then, the physician would have to be willing freely to perform the operation.

ETHICIUS I

MY REPLY:

Dear X,

Doyle - Organ Harvesting from Prisoners

Your well-formulated opinion is very much appreciated.

Thanks,

John Doyle

RESPONSE TO MY REPLY:

Brother John,

Please keep me posted on the progress of your project. You may be curious to visit our websites at www.salvationnetwork.org. I am pleased to learn about your studies in bioethics. May you be blessed in your good works.

X

Doyle - Organ Harvesting from Prisoners

REPLY 5

Sir:

My first question is, who will receive the money from the death of a human?, and yes, the killing fields will go mad with killing if they feel they can gain money from killing.

The attitude of the politicians is that death row inmates are worthless and need to be killed, why would they want the organs of these people placed in what they call a good person.?

MY REPLY:

Suppose there is no money involved (unlike the Chinese system). And suppose the inmate provides consent. What then would be your opinion?

Thanks,

John Doyle

Doyle - Organ Harvesting from Prisoners

REPLY 6

~~~~~

**DEATH ROW INMATES ARE NOT SPARE PARTS!**

And to think that you would get anyone that was not

"ENCOURAGED" by the prison that did not go to help their own family  
is truly naive even here in this country!

~~~~~

MY REPLY: Unfortunately my reply was not saved

RESPONSE TO MY REPLY

Yes.. John, You could say that your question was something that I feel strongly about. You would not of wanted to read what I deleted.. <oops> I was on a roll and thought you didn't need that! You also have to take into account that there has also been 102 inmates that have been taken off Death row. If someone thought that they could get "spare parts" from one there is no way that anyone would believe them one way or another even if everything in the case was screwed up! And no I am not saying that everyone on DR are there wrongly but I do say that if to kill or even kill your self is against the law then for the State to kill is

Doyle - Organ Harvesting from Prisoners

and should be against the law ALSO! put Frank Valdes in a search and it will give you a idea of just one of the wonderful prison systems we have here and also how people think about DR inmates.

MY REPLY:

Dear X,

Thanks again for your input.

The search you suggested was quite fruitful. Indeed, a number of people have provided helpful insights that I would not otherwise have been exposed to.

Please also note that I am exploring a research question - this issue is not something I have been personally advocating.

Best Wishes,

John Doyle

Doyle - Organ Harvesting from Prisoners

REPLY 7

Dear Sir,

If the prisoner gave permission, I really do not see any problem with harvesting organs. However, the donor would have to be checked for AIDS, Hepatitis, and other underlying medical conditions. Most of those would preclude them donating organs from what I can see. I am not certain if this would pertain to corneas.

I do not think that special privileges would be a factor, as the United States is voluntary for donors. I also do not believe that telling the subject of the donation should be a factor as well. I hope this helps you.

Please do not hesitate to let me know if you need more.

Regards,

X

"Be neither saint- nor sophist-led, but be a man!"

Doyle - Organ Harvesting from Prisoners

Matthew Arnold

Empedocles on Etna [1852] act I, sc.ii, l. 136

MY REPLY:

Dear X,

Thank you very much for your input.

John Doyle

REPLY 8:

Hi!

I read with interest your email concerning tissue harvest from executed inmates, which had been passed onto a list I read.

Doyle - Organ Harvesting from Prisoners

As someone who is involved in medical research, related questions (though more to do with clinical trials) have crossed my mind, and I would just like to make the following couple of points.

Just want to emphasise that these are personal opinions, and nothing to do with the company I work for

1) Tissue harvest from individuals who had recieved a lethal injection would be almost pointless - the toxins involved are going to cause real problems both for tissue integrity, and potentially for the person they are transplanted into.

2) the inmate population, esp. on DR is inherently unhealthy. Many suffer from serious infectious diseases - many others from the side effects of drug abuse and poor diet - to "feed them up" for 'harvest' would be extremely unethical!

3) the whole question of censent is very interesting. I think it is almost impossible to get free consent from inmates... and be sure that the consent is freely given. How would you confirm there had been no coercion?

Doyle - Organ Harvesting from Prisoners

I have other thoughts as well concerning trials, but I hope that this adds to your research right now.

Best wishes

X

MY REPLY:

Dear X,

Thank you for your input.

I do want to correct you on one point. You state "Tissue harvest from individuals who had recieved a lethal injection would be almost pointless - the toxins involved are going to cause real problems both for tissue integrity, and potentially for the person they are transplanted into."

In fact, this need not be the case with appropriate clinical planning. Indeed, all three "toxins" used in lethal injection are merely overdoses of drugs used routinely in clinical anesthesiology, and need not be

Doyle - Organ Harvesting from Prisoners

inherently toxic in the appropriate clinical context. (Of course, the drugs would likely have to be flushed out.)

Thanks again for your valuable opinion.

John Doyle

Appendix 9

Draft IRB Request for Project Approval

[I am grateful to Professor Allyson Robichaud for assistance in the preparation of this document]

Project Title: An Electronic Survey of Public Opinion Concerning Organ Harvesting from Executed Prisoners

Research area: public opinion, bioethics

Research technique:

Electronic qualitative survey using electronic mail. E-mail addresses will be extracted from the advocacy Web site of Martin A. Draughon, an inmate on Death Row in Texas, as well as from other sources (such as bioethics directories), in order to obtain a list of individuals to which an electronic survey can be sent.

Doyle - Organ Harvesting from Prisoners

Project purposes:

(1) to explore public opinion concerning the matter of organ harvesting from executed prisoners

(2) to explore the opinion of trained bioethicists concerning the matter of organ harvesting from executed prisoners

Study subjects:

(1) public citizens (sample size 500 or less)

(2) trained bioethicists (sample size 100 or less)

Description of the task subjects will be performing:

This is a qualitative survey project. Subjects will be asked respond to an e-mail invitation requesting them to express their opinion on some questions concerning issues surrounding the practice of harvesting organs from executed prisoners for transplantation.

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Privacy safeguards:

Survey responses will be seen only by me and the surveys will be kept in a locked office at the Cleveland Clinic Foundation. Anonymity will be maintained by never using any respondent's name and removing any other identifying information from any report or permanent files that might result from the survey.

Participation in this opinion survey is absolutely voluntary. Those to whom an initial email is sent are under no obligation to do anything at all. They do not have to even answer the e-mail if they do not wish to. The Informed Consent Statement makes it clear that participation is voluntary. There are neither risks nor benefits to participants.

Project Statement / Informed Consent Statement

I am in the process of researching the ethical issues concerning organ harvesting (organ removal or explantation) from executed prisoners. In particular, I am interested in the situation where the full consent of the individual to

Doyle - Organ Harvesting from Prisoners

be executed is obtained prior to the execution, and where the organs are used for medical transplantation purposes.

I am hoping you can let me know what you think about this issue. Your response will be kept confidential and your anonymity will be maintained by removing your name and any other identifying information from any report or permanent files that might result from this survey. Of course, your participation in this opinion survey is absolutely voluntary. You are under no obligation to do anything at all. That means that you do not have to even answer this e-mail if you do not wish to. (But I hope you will).

This project has been approved by the Cleveland State University Institutional Review Board. If I have any questions about your rights as a research subject (technically, that is what you are if you answer this survey), you can contact the Review Board at (216) 687-3630. If you have any questions about anything at all related to this project, you can contact me by e-mail at djdoyle@hotmail.com or Professor Robichaud at a.robichaud@csuohio.edu or (216) 687-3906. There are neither benefits nor risks to you if you choose to answer this survey, however, it is possible that the knowledge I

Doyle - Organ Harvesting from Prisoners

gain from the survey will be helpful to those interesting in knowing how people think about ethical issues. There are special rules about doing research with some people. Please do not answer this survey if you are under the age of 18, a prisoner, mentally retarded or mentally disabled. If you are pregnant, you may still answer the survey since it poses no risks to you beyond those of daily living.

If you are eligible and are still interested, here are the details.

As I said, I am interested in the situation where the full consent of the individual to be executed is obtained prior to the execution, and where the organs are used for medical transplantation purposes only. Please note that this situation is quite different from the prisoner organ harvesting reported to be carried out in China, where there is considerable evidence that consent of the executed individual is not obtained. I am interested in the situation where the prisoner is truly in favor of the organ harvesting, for example, in order to provide a needed organ for a relative or just to be generous.

Doyle - Organ Harvesting from Prisoners

There are many issues involved for which I would appreciate your comments. For example, is it ever really possible to get true consent in individuals in this setting? Would it be acceptable to provide death row prisoners with small incentives (for example, special meals or movie privileges) in order to encourage their participation? Given that physicians are generally not allowed to participate in executions (except to make a declaration of death), and given that the best clinical results would likely be obtained by harvesting organs under general anesthesia with the heart still beating, what would be the logistical issues involved? What, if anything, should the organ recipients be told about the source of their organ? Would programs of this kind of lead to an increase in the number of executions? Would it shorten the time that prisoners spend on death row? A final question is whether individuals who are against the death penalty as a matter of principle might still be in favor of organ harvesting "so that some good might come from an evil situation."

Your comments on the above and other related questions are appreciated. They may be sent to djdoyle@hotmail.com. A copy of my report will be sent to individuals who request it.

Doyle - Organ Harvesting from Prisoners

Sincerely,

D. John Doyle