



Procuring Organs “Over My Dead Body?”

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While it may cost an arm and a leg to live in the state of New York these days, it may soon cost a liver or kidney to die there.

Residents of the state have been debating a legislative measure that would automatically enroll all residents as organ donors. The law would rely on what is termed “presumed consent” and allow for the harvesting of a deceased resident’s body parts unless that resident had specifically opted out of “donating” in this way when signing up for a driver’s license.

This approach to organ procurement raises significant ethical concerns. Would we allow a bank (or even a worthy charity) the right to automatically raid customers’ bank accounts upon their death unless they “opted out” of the program? As one commentator described the situation, “It really does smack of something quite dark when a system’s default mode exploits the fact that dead men not only tell no tales, they refuse no proposals.”

A recent editorial in the *Buffalo News* carried the analysis further:

“A corpse may not have many rights, but one of them ought to be that the handling of it is not based on an invasive presumption. Informed consent

should remain the standard. What is needed is to increase the number of donors through leadership and persuasion, not state-facilitated confiscation.”

State-facilitated salvaging of organs in the absence of explicit consent undercuts the essential character of organ donations as a gift. As Pope Benedict XVI noted in 2008:

“Informed consent is a precondition of freedom so that the transplant can be characterized as being a gift and not interpreted as a coercive or abusive act.”

In fact, informed consent is so fundamental that the Catechism of the Catholic Church points out how organ transplants, “are not morally acceptable if the donor or those who legitimately speak for him have not given their informed consent.”

So what might be the anticipated effects of mandated presumed consent? Perhaps the very opposite of what advocates were hoping for - it might, paradoxically, cause people to step back from donating. As one commentator, half in jest, declared: “So

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now, if you're 'dead enough', they'll just pull the plug and walk off with your entrails under the guise of presumed consent which makes me think very strongly against being an organ donor.”

Prof. James F. Childress commented on the importance of trust issues at the center of a very sensitive decision like organ donation:

“If you ask why people do not currently sign donor cards, some of those reasons have to do with inertia, with not having thought about it, but some of them just have to do with trust and mistrust of the system.”

Even among those who are fortunate enough to receive a scarce organ, there could be an awkward hesitancy introduced by such a legal maneuver. One organ recipient named Alison posted this comment about the presumed consent law on an internet discussion site:

“As an organ recipient I would not have signed up for the UNOS [United Network for Organ Sharing] list if a law such as this were in place. I could not live with a transplant not

knowing if the person was indeed dead when the organ was taken or if their religious beliefs were against organ donation and they just had not filled out an opt-out card... Frankly for me personally, the burden of knowing that someone had to die (accident, suicide, ..., homicide, some family's tragedy) for me to live is hard enough and the only thing that helps is knowing they gave willingly....”

By forcing the issue of presumed consent, rather than patiently seeking to convince potential donors to "opt-in" of their own free will — which is the way organ donation occurs in most American jurisdictions — lawmakers and organ procurement agencies may experience significant setbacks as people respond to a perceived assault on their freedom.

Lawmakers and the medical establishment would do better to educate potential donors about the importance of organ donation and seek to win their trust throughout the procurement process. Building up such trust through the process of informed consent all the way to the procurement of the organs themselves would go a long way towards increasing or-

gan availability for future transplant patients. Novel approaches such as mounting a public relations campaign from Hollywood might also increase the number of willing donors. The effect of having a noted celebrity on TV urging people to check the organ donor box on their driver's license renewal form could be significant. Building up an authentic culture of life — and encouraging organ donation in ethically acceptable ways — needs to be a real priority for medicine and society, as organ transplantation offers significant and enduring health benefits to the sick who often-times have no other hope.

Rev. Tadeusz Pacholczyk, Ph.D. earned his doctorate in neuroscience from Yale and did post-doctoral work at Harvard. He is a priest of the diocese of Fall River, MA, and serves as the Director of Education at The National Catholic Bioethics Center in Philadelphia. Father Tad writes a monthly column on timely life issues. From stem cell research to organ donation, abortion to euthanasia, he offers a clear and compelling analysis of modern bioethical questions, addressing issues we may confront at one time or another in our daily living. His column, entitled “Making Sense of Bioethics” is nationally syndicated in the U.S. to numerous diocesan newspapers, and has been reprinted by newspapers in England, Canada, Poland and Australia.

