

Presumptuous Consent

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Date: 16.06.2010

Category: Emerging Technologies

Since organ donation became the recommended treatment of choice for many patients with end-stage organ failure, the controversy over the number of available organs for transplant and the solutions to addressing the shortage of much needed organs for those on waiting lists has been an on-going discussion. Proposed solutions typically include payment for organs, denial of organs to some patients, or changing consent practices.

For example, should we open up the free markets and let people buy and sell organs? Sally Satel, a physician and resident scholar with the American Enterprise Institute and herself a recipient of a kidney transplant, said that she would have "gladly paid for a kidney," if the laws had permitted it. Dr. Satel has recently edited a volume, *When Altruism Isn't Enough: The Case for Compensating Kidney Donors*, where experts and scholars advocate for government incentives to those willing to "donate" a kidney.

Or, should we draw bright lines for those who are too sick and not allow them to be added to organ waiting lists? Wesley Smith, our CBC special consultant, writes this about the dangerous cocktail of futile care theory and organ donation:

Think about it: We already have bioethicists advocating for futile care theory, that is, the right to refuse wanted life-sustaining treatment based on quality of life judgmentalism, resource allocation, or both. Add in the motive for taking organs to this volatile field-and wary families will become even less trusting, and medical issues will become even more likely to end up in court. Square that if we ever enact explicit health care rationing, or redefine death to include a diagnosis of PVS-as many luminaries in the transplant field advocate.

And, what is back in the news again is the solution often referred to as Presumed Consent. Presumed consent states that we should presume that all people would want to be an organ donor, and we move to an opt-out system whereby individuals need to explicitly state that they do NOT want to be an organ donor versus stating that they do want to be a donor. CBC has written about all of these proposed "solutions" over the years, and we will continue to do so as these issues surface where changes in policy and practice are proposed.

Assemblyman Richard Brodsky, (D-New York), is hoping to make his state the first in the country to adopt presumed consent as their policy. Brodsky's interest in this law is personal too, as his daughter has been the recipient of two kidney transplants. I often lament that laws get written and passed when the lawmaker has a personal and vested interest. How many lawmakers are running their re-election campaigns on their successful passage of strict, assisted-reproductive technology regulation? But I digress . . .

Brodsky believes, as do proponents of presumed consent laws, that these types of policies will lead to a positive and dramatic increase in the number of available organs for those in need of them. Well, the verdict is still out on whether or not presumed consent policies solve the organ shortage. Yes, it is true that if we just assume people want to donate their organs, we will have greater access to more of them. However, as people live longer and not necessarily healthier lives, and since transplantation is the treatment of choice for those in end-stage organ failure, it is still not certain that the shortage will disappear.

But what is really at the heart of the matter is the doing away with the altruistic notion that organ donation is just that. It is a gift, freely given (not sold) and never coerced or presumed. It is the arrogant, presumptuous taking of organs which, I submit, is smack dab in the middle of the shortage; people are afraid that they will be rushed to death or denied care in order to get to their organs. I

personally am a huge supporter of organ donation. And I have made my wishes known to my proxy who is named in my durable power of attorney for healthcare decisions, should I not be able to consent for myself. Ethical solutions are needed, not the presumptuous taking of organs.