**The Ethics of Presumed Consent in Organ Donation**

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**The Ethics of Presumed Consent in Organ Donation**

Presumed consent in organ donation refers to a practice in which the deceased organ owner’s consent for organ donation is presumed as their consent status is not known. As moral arguments have been made both in favor of and against such a practice, let’s further explore the dilemma, beginning with a case study from New Jersey.

**Part 1: Case Facts and the Ethical Dilemma**

This case study involves an elderly woman who was found unresponsive at a bus stop in New Jersey. Paramedics were called, and in attending to her anticipated medical needs, she was transported to the local hospital Emergency Department (ED). There, diagnostics were run, and the results revealed both swelling and blood flow blockage in the brain. As these findings were concerning and more advanced care was needed, she was transferred to the area’s tertiary medical center Intensive Care Unit (ICU). While all these events were taking place, the local police were working on identifying the woman, however, all attempts were unsuccessful. Back at the hospital, the woman continued to deteriorate, and the hospital eventually declared her brain dead. Per the policy outlined by the hospital, staff was required to notify the organ donation organization, which the action was carried out. Per the policy of the organ donation organization, the organs of the unidentified individual were to be harvested as there was no clear indication that the elderly woman would have refused organ harvesting (Angelo & Simon, 2016).

This is a sad case, and it highlights a moral dilemma that arises when we have to decide whether or not to pursue organ harvesting on an unidentified individual. In understanding the specifics of the dilemma, we will take into account an aspect of Kant’s ethics that stresses the importance of honoring all individuals’ self-inherent worth (Aufrecht, 2021). So, in further examining the dilemma, when the consent status of a deceased and unidentified individual is unknown, we have to rely on surrogate decision-makers to act in the individual's best interests. The problem with this is, however, the appointed decision-maker is really a stranger who is clueless about the deceased individual’s life philosophy and ultimately, their view on organ donation. Because of this, any decision made, whether it is in favor of or against organ harvesting, has the potential to go against the individual’s true wishes. This presents a moral dilemma as no matter which action you decide to take, you are bound to undermine one’s true wishes, and therefore, their self-inherent worth.

So, the question arises, in striving to honor one’s self-inherent worth, should we presume approval or disapproval for organ donation?

**Part 2: Resolution to the Dilemma per Others**

**Ben Saunders in Favor of Organ Harvesting**

In providing resolution to the moral dilemma, Saunders concludes an argument in favor of a system that presumes approval for organ donation unless the act of organ harvesting had been clearly prohibited by the deceased individual beforehand (Saunders, 2010). To justify this type of system, in a *Modus Ponens* argument, Saunders’ first premise goes as follows: If the act of organ donation is morally right, then we should presume approval for organ donation when consent status is unknown as in general, people will want to do the right thing. So, the question arises; is the act of organ donation morally right? Saunders says yes to this question in his second premise. In explaining why the act of donation is morally right, he stresses to his audience the fact that the organs in question are of no use to the original owners. Because of this, he deems organ donation to be morally right as it is using organs that will otherwise be wasted, in benefiting and improving the experience of individuals who are actually alive (Saunders, 2010).

**Potts et. al Against Default Organ Harvesting**

Contrary to Saunders, Potts et. al (2010) believe that the act of presuming approval for organ donation and pursuing organ harvesting is morally wrong. In their argument, they urge their audience to investigate mounting evidence that suggests the “not dead” state of individuals when the organ procurement protocol is usually carried out. As this may mean that organ procurement is being carried out based on an assumption regarding one’s life and death status, Potts et. al (2010) believe that the system of default organ harvesting inappropriately seeks to maximize organ availability at the greater expense of control upon people’s private aspects of life.

**Part 3: Personal Resolution to the Dilemma**

In striving to honor one’s self inherent worth, in situations where the consent status of deceased individuals for organ donation is unknown, contrary to Saunders and in agreement with Potts et. al, I believe we must presume disapproval for organ donation and maintain physical integrity. To understand how I came to this conclusion, we can simply begin by examining my primary argument below.

**Primary Argument | Disjunctive Syllogism**

*Premise 1:* In situations where the consent status of deceased individuals for organ donation is unknown, we must either presume approval for organ donation and pursue organ harvesting or presume disapproval for organ donation and maintain physical integrity.

*Premise 2:* In situations where the consent status of deceased individuals for organ donation is unknown, we must not presume approval for organ donation and pursue organ harvesting as these acts are morally wrong.

*Conclusion:* In situations where the consent status of deceased individuals for organ donation is unknown, we must presume disapproval for organ donation and maintain physical integrity.

So, the question arises, what makes the act of presuming approval for organ donation and pursuing organ harvesting morally wrong? To answer this, I will be presenting two different secondary arguments; one will be based on Kant’s Formula of Ends and the other will be based on the moral significance of maintaining organ ownership during the post-mortem period.

***Secondary Argument 1 | Kant’s Formula of Ends | Modus Ponens***

*Premise 1:* In situations where the consent status of deceased individuals for organ donation is unknown, if the act of presuming approval for organ donation and pursuing organ harvesting treats individuals as means and not as ends in themselves, then the act of presuming approval for organ donation and pursuing organ harvesting is morally wrong.

*Premise 2:* In situations where the consent status of deceased individuals for organ donation is unknown, the act of presuming approval for organ donation and pursuing organ harvesting treats individuals as means and not as ends in themselves.

*Conclusion:* In situations where the consent status of deceased individuals for organ donation is unknown, the act of presuming approval for organ donation and pursuing organ harvesting is morally wrong.

So, the question that needs to be addressed here is how does the act of presuming approval for organ donation and pursuing organ harvesting treats individuals as means and not as ends in themselves? One important thing to note with default organ harvesting is that there are deviations being made to the natural post-mortem process. For information, these deviations refer to additional interventions and resources that are implemented and utilized, respectively, in pursuing organ harvesting. So, the question arises, are these deviations to the natural post-mortem process for the benefit of the organ donors or the organ recipients? As the act of organ harvesting clearly increases happiness for the organ recipients but the same cannot be said about the organ donors, I am inclined to believe the unneeded deviations made to the natural post-mortem process are for the benefit of the organ recipients, and not for the organ donors. This suggests that organ donors are not treated as ends in themselves, and instead, being used as mere means for the organ recipient’s happiness.

***Secondary Argument 2 | Moral Significance of Maintaining Organ Ownership After Death | Modus Ponens***

*Premise 1:* In situations where the consent status of deceased individuals for organ donation is unknown, if the act of maintaining organ ownership is morally significant in the post-mortem period, then the act of presuming approval for organ donation and pursuing organ harvesting is morally wrong.

*Premise 2:* In situations where the consent status of deceased individuals for organ donation is unknown, the act of maintaining organ ownership is morally significant in the post-mortem period.

*Conclusion:*  In situations where the consent status of deceased individuals for organ donation is unknown, the act of presuming approval for organ donation and pursuing organ harvesting is morally wrong.

This argument is not only designed to support my primary argument, but it also provides an objection to the underlying thought process of Saunders’ second premise above. To specify, Saunders' second premise states that the act of organ donation is morally right, and the thought process behind this premise is that the organs in question are of no use to the original owner (Saunders, 2010). Although this is true in literal terms, we need to also consider the moral significance of maintaining organ ownership in the post-mortem period. To clarify, the dilemma of concern involves organs to which we are not only physically attached, but have also formed connections on a holistic level over a lifetime. The specific type of connection cannot be pinpointed as each individual is different, however, it is certain that organs are part of our holistic identity and the deep nature of the connection is incomparable to our connections with material objects, and in most cases, other individuals. That said, to simply hold the same moral standard of ‘giving something of no use for self to others’ that you would on material objects ideally, to something more special, i.e. our organs, is erroneous. Therefore, the act of maintaining organ ownership is morally significant in the post-mortem period as it ultimately preserves one’s inherent worth by honoring organ ownership and not undermining their identity.

**Application of the Proposed Resolution to the Case Study**

So, with my arguments concluding that we should presume disapproval for organ donation in instances where the consent status of deceased individuals for organ donation is unknown, the resolution to the dilemma of the case study on Part 1 would be a system that is against organ harvesting. This type of system would have policies set in place that would restrict organ harvesting from being carried out on the unidentified elderly woman. For example, the hospital policy would require staff to notify the organ donation organization only if there is a clear indication of consent for organ donation. Similarly, the policy of the organ donation organization would be clear in that not to pursue organ harvesting unless the consent status is known and in favor of organ donation.

**One Likely Objection to my Argument**

As far as an objection is concerned, one may mention the fact that I did not address the other side of the moral dilemma that was introduced in Part 1. To clarify, any decision made in surrogate decision-making, whether it is in favor of or against organ harvesting, has the potential to go against the individual’s true wishes. What about the group of deceased individuals whose organs will not be removed based on false presumption? If the wish of a deceased individual was to donate their organs, shouldn’t we strive to honor this wish?

This argument makes a lot of sense, and it comprises the moral dilemma discussed above in Part 1. I agree that we must strive to honor not only the wishes in favor of, but also the wishes that are against organ donation, however, the problem here is that the deceased individual’s wishes are unknown. So given this situation where we cannot honor the deceased individual’s wishes for certain and are required to make a difficult decision based on presumption, our approach should be a conservative one where we maintain physical integrity in striving to make post-mortem experience as natural as possible. This act of just allowing and not making any unneeded deviations to the natural post-mortem process is an attempt made in good faith to treat the deceased individual as ends when their wishes cannot be honored for certain.

**Part 4: Further Information that will Change my Mind**

It can be implied from my argument above that the system against organ harvesting advocates for and seeks to serve deceased individuals. That said, there is no denying that the yielded benefits of such a system will never be actually experienced by the intended beneficiaries. Conversely, in a system that favors organ harvesting, it is clear that the benefits will be experienced by the organ recipients who, as argued in Secondary Argument 1, are the intended beneficiaries.

In arguments I have read so far, this difference in actual benefits experienced is usually the justifying factor presented in support of a system that practices default organ harvesting. Saunders, for example, argues that the act of organ donation is morally right, and this premise relies on the idea that the organs in question are of no use to the original owner (Saunders, 2010). Here, it can be implied that Saunders is rationalizing the righteousness of organ harvesting in terms of actual benefits experienced. I believe this type of approach is flawed as it is organ recipient-centered, and disregards other crucial parts or variables of the equation. For example, what about the family members of organ donors? Will the family members of organ donors be satisfied with such an approach? How would certain religious groups feel about the need to make their stance against organ harvesting clear so that bodily integrity is ensured after death? As the patient-centered approach is being increasingly stressed in healthcare, how will the future generations of both the healthcare workers and the general population view the system that presumes approval for organ harvesting?

As these are important considerations to take when rationalizing the righteousness of organ harvesting in terms of actual benefits experienced, I am open to change my mind if a more balanced argument was to be presented in favor of default organ harvesting. To specify, the argument must show the benefits are higher in a system that presumes approval for organ donation than a system that presumes disapproval; and in doing so, the cost-benefits analysis must take into account the variables of the above-mentioned questions.

**Conclusion**

Finally, the case study of the elderly woman highlights the essence of the dilemma that arises when we have to decide whether or not to presume consent for organ donation. To clarify, as the consent status of the elderly woman regarding organ donation was unknown, the decision made either in favor of or against organ harvesting would not honor and preserve her true wishes and self-inherent worth, respectively, for certain. Given this dilemma, moral arguments have been made both in favor of and against the system of default organ harvesting. One specific argument in favor of default organ harvesting deems the action to be morally right as such practice allows organ recipients to benefit from the deceased individuals’ organs which would otherwise be wasted. This approach is contrary to my view of the ideal resolution, however, as I believe we must strive for an approach that presumes disapproval for organ donation. This conclusion is drawn with the understanding that the system of default organ harvesting is morally wrong as such an approach treats deceased individuals as means to someone else’s gain, as well as undermines the moral significance of maintaining organ ownership after death. Finally, my stance on the dilemma is only based on my present understanding of the topic. As there are still many things to learn, I am open to changing my mind regarding the system of default organ harvesting if I come across a more balanced argument that considers different perspectives and is not only organ recipient-centered.

**References**

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