

Roberto Andorno

Persistent controversies in organ transplantation

Editorial

This issue of *Bioethica Forum* is devoted to a number of key controversies surrounding organ transplantation: is presumed consent the best answer to organ shortage? Which is the fairest way to allocate organs from deceased donors? To what extent should living donors be compensated? How can it be ensured that donors consent is free from any form of coercion? Although these issues have been discussed at length during the last three decades or so, they still remain unresolved and therefore need to be further explored.

Of course, these discussions are not only significant from an ethical but also from a legal point of view. It is noteworthy that some of the first laws relating to bioethical issues, which have been enacted since the end of the 1970s, were precisely those attempting to regulate organ transplantation. At present, at least 91 countries have specific laws on this matter [1]. Probably no other bioethical issue has attracted so much attention from lawmakers as this one.

The central objectives of legislation in this area seem to be, first, to ensure an adequate protection of living donors; second, to respond in an equitable manner to the need of patients waiting for an organ; and third, to prevent organ trafficking and the exploitation of people in need. It is not by chance that, according to the Swiss Constitution, the three fundamental goals of legislation relating to organ transplantation are: «to protect human dignity, personality and health», «to establish mechanisms for a fair allocation of organs», and «to prohibit the trade in human organs» (article 119a). On the basis of this constitutional provision, Switzerland enacted in 2004 the «Federal law on the transplantation of organs, tissues and cells».

As in many other bioethical controversies, the dilemmas mentioned above have received different and in some cases quite disparate legal responses from European countries. Certainly, the Council of Europe's Convention on Human Rights and Biomedicine of 1997 and the Additional Protocol on organ transplantation of 2002 represent a serious effort to establish some common standards in this field. However, significant differences between domestic laws still persist.

Among scholars also, opinions on this matter are very different and even opposed. A good example of this is a recent article of a leading British bioethicist (John Harris) who provokingly argues that, given the current organ shortage, compulsory deceased organ donation must be implemented. This means that, even if the deceased has explicitly expressed an objection to organ removal after his or her death, such wishes can be simply ignored in the name of solidarity [2]. Clearly, the decades-long debate on the ethical and legal aspects of organ transplantation is far from being closed.

Correspondence

Dr. Roberto Andorno
Institut für Biomedizinische Ethik
Universität Zürich
Pestalozzistrasse 24
CH-8032 Zürich

e-mail: andorno@ethik.uzh.ch

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2. Antonia J. Cronin and John Harris, «Authorisation, altruism and compulsion in the organ donation debate», *Journal of Medical Ethics*, 2010, vol. 36, issue 10, p. 627–631.