

Rethinking the Ethics of Prisoner Organ Donation

Katrina Hui

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INTRODUCTION

Since the first successful kidney transplant in 1950, transplantation has quickly become the best and most economical treatment for conditions such as end-stage renal failure. High demand for organs has created a shortage that many nations have struggled to meet. Donor rates remain notably low in Eastern Asia due to a combination of cultural and religious factors. In 1984, the People's Republic of China began the controversial practice of using organs from executed prisoners to address these shortages. The nation quickly came under fire from the international community and organizations including the World Medical Association, the Transplantation Society, the International Society for Heart and Lung Transplant, and the Chinese Medical Association, all of which condemned the practice as an egregious violation of human rights.^{20,16,5,11} China's vice minister of health, Huang Jiefung, has noted that the country plans to shift away from its reliance on prisoner organs; however, at present, 95 percent of organs in China still come from deceased donors, the majority of whom are executed prisoners.¹⁰

ANALYSIS

Setting aside the debate of whether capital punishment should be permissible at all, the death penalty as it is carried out in China is an especially contentious issue. Though capital punishment is not unique to the country, China is thought to execute more prisoners per year than any other nation. This number remains high even after adjusting for the large population; China's rate of execution per capita is believed to be the sixth highest in the world, following Saudi Arabia, Belarus, Sierra Leone, Kyrgyzstan, and Jordan.¹ In the absence of official published reports, human rights organizations estimate that the number of executions ran as high as 5,000 in 2009.⁶ These statistics have brought into question the types of crimes, several of which are nonviolent in nature, that are punishable by death. In 1996, two Shanghai men were executed for the theft of badminton rackets and ballpoint pens.¹⁵ Inconsistencies in punishment are common; government officials found guilty of embezzling millions have received suspended death sentences, ultimately allowing them to live.⁸ These cases highlight concerns that criminal punishment in China is liable to corruption and that many citizens are subject to disproportionately harsh punitive measures.

While there is no question that capital punishment in China should be reformed, it is important to distinguish between the issues surrounding the broken criminal justice system and the actual ethicality of organ procurement from executed prisoners. Major concerns about the use of organs from prisoners include corruption in the judicial process, the use of harvested organs for profit, the lack of informed consent, and the increased burden and inequality in home countries resulting from donations overseas.¹⁹ Upon scrutiny, it becomes apparent that these criticisms, except for those about informed consent, target the implementation of capital punishment and the unfair distribution of organs rather than the acquisition process itself. Indeed, there are salient reasons for using prisoners as organ donors, especially in a country with 1.5 million people on the organ waiting list. This type of organ donation increases the supply of organs, provides prisoners with the opportunity to make amends for their misdeeds, and decreases the

burden of organ donation in home populations.^{10,19} Though practices in China leave much to be desired, it is entirely plausible to conceive an ethical and well-regulated system under which capital prisoners may donate their organs.

To its credit, the Chinese government has enacted a set of laws, entitled Regulations for Human Organ Transplantation, to protect prisoners from abuse. Article 23, Item 2 of “The Tentative Provisions Regarding Utilizing the Corpses or Organs from the Corpses of the Capital Prisoners” permits the retrieval of organs from executed prisoners only with the consent of the prisoner and his or her family.¹⁸ There have been mixed reports about the enforcement of these rules, and corruption in the judicial process clearly breeds suspicion about the ethical nature of obtaining volunteers. However, even with proper enforcement, critics claim that the prisoner population can never freely give consent, insisting that, on because of their environment, prisoners are vulnerable to coercion or undue inducement and may be pressured into giving their consent either out of fear or in hopes of currying favor with authorities or other benefits.

Some proponents of prisoner organ donation believe that worries about informed consent are faulty and that, in reality, consent is a non-issue. They argue that prisoners, by nature of being prisoners, are stripped of many rights, including, in places that allow capital punishment, the right to live. As Rhodes and Schiano (2010) state, “Without [the prisoners’] consent, others make decisions about where they live, when they wake, when they sleep, what they eat, what they do, if and when they die, and how. Prisoners are not allowed to refuse medical treatment or food. Prisoners who try to refuse have treatment or food forced upon them. Traditionally, the state can even decide on the disposition of a prisoner’s corpse”.¹⁴ There is a lack of convincing argument that demonstrates why rights surrounding organ donation are different from other rights that prisoners forfeit when committing a crime. If we accept the restriction of many prisoners’ rights, to condemn the deprivation of the right to donate would reveal an inconsistency in moral judgment.

This permissibility of presumed consent, adopted by countries like Austria, Belgium and Spain, further illustrates the false premise of the need for informed consent. Presumed consent rests on two notions: “(1) that individual consent for organ donation is not ethically necessary, and (2) that it is good to conserve scarce resources and to avoid wasting them”.¹⁴ Because the procurement of organs from executed prisoners uses the same rationale, we cannot reasonably deem presumed consent to be acceptable while simultaneously rejecting the use of organs from prisoners.

Without going to the extreme of defending the removal of a prisoner’s right to consent, it is arguably unethical to disallow prisoners from donating their organs at all. It would be erroneous to assume that prisoners facing execution are not capable of exercising an autonomous choice to donate their organs. Many prisoners retain the ability to freely and thoroughly evaluate the pros and cons of such a decision. In fact, many prisoners on death row in the United States have expressed a genuine wish to become organ donors.¹³ Reasons include a desire for a sense of absolution for their crimes, wanting to help alleviate organ shortages, or some general motivation to aid the cause for personal reasons (e.g., a family member needing an organ or having died from not receiving one in the past).

It is worth examining the cultural and religious considerations surrounding organ donation. Though there is no official religion in China, the population’s values and practices are heavily influenced by Buddhism and Taoism, in addition to Confucianism. Confucian ethics places a heavy emphasis on *xiao*, or filial piety, which has led to the belief that a person’s body does not belong to him but to his parents and ancestors. The view dictates that one ought to return the body upon death in the same condition in which it was received. *Xiao* explains why organ donation has been met with resistance in China: It is regarded as a violation of the integrity of the body, which would be disrespectful to one’s family.¹²

However, there may be negotiable limits to this stance. Donations to relatives in need, for instance, can be viewed under a different light. It is important to recognize that Chinese individuals embrace a style of family-oriented decision-making, which differs drastically from Western individualism.¹⁸ The tradition of familism gives substantial weight to the opinions and well-being of family members. Because of the structure of interdependence among kin,

directed organ donation to save a family member's life may often be deemed important for the family unit and thus permissible.

The protection of bodily integrity may compete with other values. Sangha, an organization of Buddhists, has not taken an official stance on organ donation, but because the concepts of karma, reincarnation, and compassion are central to Buddhist thought, selflessly giving up an organ for another living being may be viewed as a noble and compassionate act.⁹ This is especially relevant for Buddhist prisoners facing death, who may wish to make amends for their crimes in order to be rewarded in their next life.⁷ Taoism, too, stresses the importance of humanity, and so its followers may wish to donate as an act of altruism.¹⁰ Prisoners may also choose to become donors to show respect for their families; donation gives their relatives a compassionate act by which to memorialize them.¹⁸ Providing prisoners with the option to donate their organs is without question in line with respecting their religious and cultural values.

The development of an ethical system of prisoner organ donation has relevance that extends beyond Chinese borders. Organ procurement from prisoners is a practice that has occurred or is occurring in other nations besides China. Singapore has had a policy permitting prisoners to donate organs that has been in place since 1972; Taiwan used organs from prisoners from 1990 to 1994; and, in France in the 1950s, organs were taken from guillotined prisoners. Even prisoners in the United States were once permitted to donate organs.³

CONCLUSION

China's practice of harvesting organs from executed prisoners is far from perfect. To be sure, its criminal justice system is prone to corruption and the country lacks a database and distribution system that would allow for the fair allocation of the scarce resource. But the prisoner population remains a viable source of organs that may help save the lives of thousands. Contrary to Western opinion, to restrict the practice of organ donation from this cohort altogether would be an affront to autonomy. It is tempting to understate the capacity of prisoners facing execution to give informed consent, yet with proper safeguards, prisoners remain fully capable of deliberating the decision to donate their organs, and may, in fact, possess strong reasons to do so, including respect for family or religious atonement.

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