

## EDITORIAL

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### LEGISLATION OF PRESUMED CONSENT FOR END-OF-LIFE ORGAN DONATION IN THE UNITED KINGDOM (UK): UNDERMINING VALUES IN A MULTICULTURAL SOCIETY

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In an editorial by the ethics advisors of the British Medical Association, Hamm and Tizzard state that presumed consent for organ donation is the way to solve the shortage of organs for transplantation in the United Kingdom (UK).<sup>1</sup> Presumed consent for organ donation includes not only heart-beating (declared dead by brain criteria) but also non-heart-beating (declared dead by circulatory arrest criteria without antecedent brain criteria) donation.<sup>2-4</sup> Critics within the medical community have challenged the validity of brain criteria to declare somatic death in heart-beating donors.<sup>5-7</sup> Brain criteria applied in the determination of death for heart-beating organ donation also have serious flaws<sup>8</sup> that include fatal consequences when patients whose condition may be salvageable, ie, amenable to treatment, are determined to be brain dead.<sup>9,10</sup> More than 60% of heart-beating donors whose conditions fulfill the clinical criteria of brain death have no structural disruption on brain autopsy<sup>11</sup> that would validate irreversible cessation of all functions of the entire brain, including the brain stem.

Critics in the medical community have also questioned if circulatory arrest of 2 to 10 minutes is long enough to ensure that non-heart-beating donors are really dead before organ procurement.<sup>6,12,13</sup> The President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research requires that circulatory arrest must be long enough for irreversible cessation of all functions of the entire brain, including the brain stem, to meet the criteria for uniform determination of death (page 18).<sup>14</sup> The President's Commission stipulates that circulatory arrest time must be longer than 15 minutes for irreversible cessation of the entire brain (and brain stem) functions (page 16)<sup>14</sup> especially with continuing advances in the field of resuscitation and neurological preservation. All donors must be prevented from reanimating during extracorporeal interval support for organ retrieval<sup>15</sup> which has validated critics concerns that the currently accepted circulatory arrest time in non-heart-beating donation is too short to comply with uniform determination of death.

Government and professional organizations and advocacy groups have mischaracterized organ donation as donation after death to make it palatable to the general public. However, both types of organ donors (whether "brain dead" or not) are resuscitated and maintained on artificial life-support systems for organ preservation until organs can be procured for transplantation.<sup>2,16</sup> If not previously instituted at the end of life, tracheal intubation,

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mechanical ventilation, and hemodynamic support of the circulation with vasoactive medications, mechanical devices, or both are required to maintain viability of organs in donors for transplantation.<sup>17</sup> Therefore, organ-donation procedures begin before death in that they involve resuscitation of donors to preserve organs, and a more accurate descriptor of this process is “organ donation at the end of life”.

Hamm and Tizzard argue that presumed consent for organ donation is the solution to eliminate preventable death among people on the UK’s transplant waiting list.<sup>1</sup> Is presumed consent for organ donation the best approach to deal with end-stage organ disease in society? Implementation of effective primary and secondary preventative health care services to dramatically decrease the development of end-stage organ disease is much more cost effective and causes less harm than the alternative of escalating organ-transplantation activity.<sup>18</sup> Does presumed consent to supply more organs for transplantation serve the best interest of the health of people living in the UK? In 2006, the UK population was estimated at 60 million, with approximately 500,000 annual deaths.<sup>19</sup> The institution of presumed consent would supply organs in great excess of the demand quoted by Hamm and Tizzard to save 1000 lives each year in the UK.<sup>1</sup> The ramifications of a surplus organ supply are unknown; we do know, however, that the health care resources necessary to procure these organs from donors will burden an already financially challenged national health care system in the UK.

Hamm and Tizzard cite the results of a public opinion poll indicating that 64% of respondents favor a soft system of presumed consent.<sup>1</sup> Nonetheless, the authors also wonder why 90% of the UK population favors organ donation but only 24% of adults have registered as organ donors. This discrepancy in the results of opinion polls can be explained, however, by examining the phrasing of survey questions designed to obtain the desired response and findings. Organ donation is portrayed as an “after-death” scenario to the members of the general public who are surveyed, whereas pertinent information about medical procedures required before death to donate organs are not disclosed. When people are confronted with the reality of the organ-donation processes, they often change their views. Therefore, how people respond and behave in real-life situations can be

notoriously misrepresented in survey results.

What are the societal consequences of presumed consent for organ donation? Presumed consent for organ donation has much deeper societal consequences that are not readily apparent to the general public. Legislation permitting presumed consent for organ donation silently dismantles the traditional boundaries of the legal norms pertaining to the determination of death while ignoring the continuing controversy regarding whether donors are really dead before organ procurement.<sup>6,7,12</sup> The transplant community has reinterpreted enacted laws in many countries to defend disputed end-of-life practices in organ donation.<sup>8,20,21</sup> In medical practice, arbitrarily defining death,<sup>6</sup> wrongfully declaring brain death,<sup>22</sup> and hastily determining the inability of a patient to recover from a life-threatening event,<sup>23</sup> are a few of the convenient end-of-life vehicles that may be implemented to increase the supply of human organs for transplantation. Although certain end-of-life practices in organ donation are inconsistent with existing laws,<sup>8,21</sup> they remain uncontested in many countries. It can be argued that organ-procurement practice is no different from other acts of physician-assisted death or homicide, except for the ability of organ-procurement practice to circumvent current laws that prohibit physician-assisted death.<sup>8, 13, 24</sup>

Presumed consent for organ donation implicitly denies individuals the right of autonomy over their bodies and repudiates their personal views about end of life that may emanate from religious and cultural values and beliefs. Consequently, presumed consent undermines the plurality of religious and cultural beliefs and differences about end-of-life practices in society.<sup>25,26</sup> For example, mandating procurement of organs through presumed consent breaches the boundaries of forbidden areas of rituals about death and handling of the deceased body.<sup>27</sup> Mutilating the body and removing organs may deny dignity, peace, and respect to grieving families of the recently deceased.<sup>27</sup> Critics of presumed consent also consider several end-of-life practices that are required in organ donation to be active processes that shorten the dying process and hasten death.<sup>28</sup> Several European cultures and religions object to end-of-life practices that can actively shorten the dying process or assist in death.<sup>29</sup>

Presumed consent for organ donation can disproportionately affect certain vulnerable groups in

society. Individuals who have severe cognitive or physical disabilities; those who are institutionalized over a long-term basis; and the frail, elderly, poor, and homeless who have no families or surrogates may not be able to opt out of end-of-life organ donation. For these vulnerable groups, society decides, then, to donate their organs on the premise of supplying organs to save others. Presumed consent to

donate organs infringes on the fundamental human right of individuals to autonomously decide what happens with their bodies. By marginalizing traditional societal values, the subtext of presumed consent for organ donation has much more dire consequences than advocates may be willing to disclose to the general public.

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