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The Ethics of a Default Organ Donor Status

Introduction

Organ transplantation represents one of the first true instances of rationing in modern medicine. In the United States, more than 35,000 have passed away during the last five years while waiting for an organ transplant [1]. A proposed solution for bridging the gap between the demand and supply of donated organs in the US is the adoption of an opt-out system in which consent for organ donation is presumed unless the individual formally withdraws consent. A number of important ethical issues are encountered when choosing the default organ donor status, but by applying the principles of autonomy and justice it can be shown that an opt-out system is the ethical decision.

Public Preferences

In the face of an ever increasing need for donated organs, the healthcare community and government agencies are taking a closer look at the patterns behind organ donation and the factors that influence donation rates. In 2005, a national poll of the US found that the vast majority of the public (95.4%) supported organ donation [2]. Despite this high approval rate, only a significantly smaller percentage (78.2%) indicated they were likely to donate and only slightly over half (53.2%) actually granted permission [2]. It is this attrition between public perception and public behavior that is of particular interest to policymakers.

The Default Effect

In looking for a solution to increasing donor rates we encounter an important question regarding how humans make their choices. One view holds that people have predetermined preferences based on the perceived value of each choice. Their choices are simply expressions of those preferences and values. If this is determined to be the correct model of human decision making, the solution to increasing donation rates would be

to increase public perception of the value of being an organ donor.

An alternative model suggests that preferences do not exist until the decision-maker is asked to make a decision. In this model, it is upon being faced with a decision that people construct their preferences. The key point of this model is that a decision-maker's preferences can be altered by the question itself. If this latter model is true, then public policy should not focus its efforts on public perception but rather on how the public is approached to make the decision.

In the latter model, one of the most prominent manipulations of preferences is the influence of a default option via what is known as the "default effect". The default effect is mediated through three pathways: by appearing to be a suggestion, by being the path of least resistance, and by upholding the status quo [3]. The default effect has been demonstrated to play a major role in healthcare decisions. It has been shown that even end-of-life treatment preferences in a living will, a document that should contain a patient's most personal desires for important medical decisions, can be heavily influenced by the default options presented [4].

In the case of organ donation, it has been shown that the default effect is a major determinant of donation rates. Effective consent rates in European countries with opt-out defaults are above 85% and fall below 30% in countries with opt-in defaults. Additionally, an experimental study using respondents from the US demonstrated a 42% consent rate with opt-in defaults versus a rate of 82% seen in the opt-out scenario. It is also worth noting that the experiment saw a 79% consent rate when no default option was given [3]. The significance of this will be expanded upon later in this essay.

Autonomy

It is thus abundantly clear that the presence of a default has a dramatic impact on public behavior. By selecting an opt-out default, it is clear that policymakers could realize substantial increases in organ donation and bridge, if not close, the gap between the need and availability of donated organs. But such blatant manipulation of public behavior raises important ethical concerns in regards to patient autonomy.

By setting organ donor status as a default, public policy makers are directly influencing public behavior through the three previously mentioned mechanisms: by appearing to be a suggestion, by being the path of least resistance, and by upholding the status quo [3].

The default status of organ-donor becomes an official, if subtle, recommendation to the decision-maker on behalf of the policymaker. The decision-maker is thus encouraged not to make his or her own decision, but rather to trust that the appropriate and correct decision has already been made. It is true that the opinion of an expert is an acceptable and standard part of informed-consent. However, the use of this opinion as a default that must be actively undone goes against the ideal that a patient should hold power over his or her body.

Additionally, an opt-out system punishes those who prefer not to donate their organs by requiring more effort in the form of making a decision (rather than avoiding a decision and using the default) and seeing the decision through. This encourages the decision-maker to avoid actually making a choice and reinforces the previous notion that the proper decision has already been made for them. This further undermines the individual's role as the custodian of his or her body.

Finally, an opt-out system preys on human aversion to loss. By setting a default, policymakers present the decision-maker with a starting state rather than a blank sheet. In choosing to change from the default, they are inherently making a trade-off and losing

a given value to gain another value. This is in contrast to having to choose between gaining one of two values. In the case of an opt-out system, those who wish to opt-out are forced to trade the perceived value of being an organ-donor with the perceived value of keeping their organs. But it has been demonstrated that losses are perceived to be greater than gains of an equal magnitude [5]. This means that by choosing a default, policymakers create a perceived cost inherent in switching regardless of the options being chosen between and values being traded.

The use of a default option imposes significant outside influences on the decision making-process. These influences cause the policymaker's beliefs and desires to impact a decision which should be exclusively about the decision-maker's beliefs and desires. Thus, the use of a default clearly stands at odds with patient autonomy. If a default must be chosen, non-action (and thus an opt-in system) would be the appropriate choice from the view-point of autonomy as it preserves the individual's role as the decision-maker for their body.

Justice

While patient autonomy makes a strong argument against having a default status, it ignores the larger picture of organ donation in the context of a healthcare system. As one of the first true instances of rationing in modern healthcare, the role of justice in the ethical analysis of organ donation policy takes a prominent role. The principle of justice in health care rationing commonly assumes one of three manifestations: need principles, maximizing principles, and egalitarian principles [6].

The need principles of justice come in two major packages. In the first, resources are allocated based on the "rule of rescue" in which resources are prioritized to save and prolong life [6]. While pain and suffering can be either included or excluded in considering the allocation of resources, the priority remains on preventing death. Under these principles, the lives saved by transplanting organs outweigh any emotional or mental suffering by the organ donor or his or her

loved ones. In the second major concept of need principles, resources are allocated by the capacity of the patient to benefit. Again, the life-saving impact of organ transplantation supersedes the non-medical benefits experienced by an unwilling donor and his or her family.

The maximizing principles of justice argue that rationing should divide resources in the way that does the most to maximize public health. The egalitarian principles focus on distributing healthcare evenly among the public. Again, because there is no medical disadvantage to donating organs, the health benefits to the transplant recipients outweigh any potential emotional damage imposed on the done and his or her family. Ultimately, we see that from the viewpoint of justice the primary concern is maximizing organ donation rates.

Autonomy vs Justice

This raises a difficult situation in which the principle of justice argues for an opt-out system while the principle of autonomy argues for an opt-in system or a one with no default (neutral). An opt-in system both decreases donation rates and inhibits patient's autonomy and can thus be discarded as an option. This leaves two viable options: a neutral system or an opt-out system.

Making this a more complex dilemma is the previously mentioned finding that in an experimental study the donation rates for both opt-out and neutral systems were roughly equal [3]. This indicates that in the case of organ donation, the influence of the default effect in an opt-out system is negligible. The

key point here is that the public's attitude toward organ donation mitigates the effect of an opt-out system on autonomy and the effect of a neutral system on donation rates.

It is this equality between the two options that makes an opt-out system the ethical choice. Ultimately, the transplant situation is a desperate situation. While it is an everyday occurrence in today's society, the lack of organs and subsequent rationing represent a healthcare crisis. In the face of insufficient resources, there is a need for reprioritization of the four ethical principles. The result of this reprioritization is justice taking precedence over autonomy. This change in priorities is an accepted part of society's response to emergencies and situations with limited medical resources. The prioritization of justice would always give an edge to an opt-out system. An opt-out system prioritizes justice while having a minimal effect on autonomy.

Conclusion

The prominent impact of the default effect means that the choice of default organ donor status is an important decision facing policymakers in the face of one of the first true instances of healthcare rationing in the US. The principles of autonomy and justice play an important role in this decision as they balance individual rights with the needs of the public. A neutral system and opt-out system both offer a viable solution with similar donation rates and have a minimal impact on patient autonomy. The opt-out system, however, ensures that none of a limited and precious resource is accidentally lost and is thus the preferable system in the face of a desperate need for donated organs.

Sources Cited

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