RESEARCH ARTICLE

Organ Donation: A Necessary Social Obligation?

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ABSTRACT

One success of medicine has been to change the death of a human being for the life of a patient with terminal organ failure when organs such as the liver or lung are donated. These results of organ surgery and treatments, nevertheless, are accompanied by the maintenance of patients waiting lists, and deaths. Educational programs have made advances in popular knowledge. However, the data shows that society’s undefined attitude toward donation impacts the “organ shortage”. For example, the value of the slogan that qualifies donating as a gift is controversial today. Organ shortage requires an analysis of its persistence, as well as suggestions for its solution.

Keywords: Cremation vs organ donation, Organ shortage crisis, Social transplant education, Transplant waiting lists.

1. INTRODUCTION

Without a doubt, one of the most significant achievements of medical science has been the capacity, primarily through the death of a human being, to obtain for an indefinite period a greater well-being of the patient on the waiting list, in cases of terminal failure of the kidney, or the life when vital organs, such as the liver or lung, are required [1].

This positive evolution of the results of techniques and treatments related to organ transplantation is limitedly accompanied by positive statistics referring to the number of patients on the waiting list, and particularly the overall stable death of patients on the waiting list [2].

These indicators justify a deep analysis of the causes of conditioning organ shortage as a severe and stable health crisis. It is necessary for society to understand that, except for transplants with living donors, transplantation of any organ or tissue from a deceased donor, currently requires, as the only possibility, a complete motivation of society to the essential need for its consent to the donation. Also, current global statistics show that a partially positive attitude towards consent on the part of society is a potential cause of the stability of patients on waiting lists, which practically might not allow to confirm a complete solution to the organ shortage problem [3].

2. METHODOLOGICAL ANALYSIS

2.1. Organ Donation and Religion

All monotheistic religions support donation and consider it a generous act of charity. These churches globally consider organ donation to be a sign of generosity and social commitment, being a noble attitude of showing compassion and care for others and contributing to the health and well-being of society [4].

Religious leaders have made statements about donations and transplants. Through these statements, they not only express the support of their faith but also explain how someone can “live their faith” by deciding to register as an organ and tissue donor to save lives. Pope Francis in 2019, addressing the Italian Association for the Donation of Organs, Tissues, and Cells, stated: “Donation is an act of social responsibility and expression of universal brotherhood” [5].

Thus, organ donation has also been defined as a commitment acquired in moral terms that requires reciprocity, in collective, not individual, requirements. The anthropological approach to organ donation aims to capture how the sociocultural situation of donation is structured and to extract the links of significance. Organ donation represents an anthropological complexion [6].

Organ donation in several countries is now optional. In Chile, the Organ Donation Law 20,413, modified in October 2013, establishes the requirement to record the desire not to be a donor in a special document signed before a notary, which would become part of the National
Registry of Non-Donors. In other words, it makes organ donation mandatory for anyone who has not registered their refusal to do so. This law seeks to meet the demand for organs of thousands of patients on the waiting list, who, at daily risk of life, hope to overcome the severe social medical problem that the shortage of organs represents [7].

The Pan-Hispanic Dictionary of Legal Spanish, when defining presumed consent point 2, expresses that it is generated in cases in which the owner of the legal asset is unable to consent (express his will), his consent is presumed in the hypothesis or fiction that he would have consented if he knew of the fact and had the opportunity to do so [8].

2.2. Disposition of the Human Corpse

Starting in the 1960s, organ transplants were introduced into the accepted procedures in medical practice, promoting that the canons established for the disposal of the human body would be questioned and, in turn, motivate substantial changes in national legislation.

As an example, Mexico, accepting the above criteria, establishes in the General Health Law, article 346: “Corpses cannot be property and will always be treated with respect, dignity and consideration”. This definition is important because it admits that the right of property with respect to the corpse or its parts is prohibited for ethical-immaterial reasons and implicitly in relation to the recognition of society. Likewise, it allows us to establish the nature of the corpse as a “res nulli commercium”.

In Roman law, things that belonged to the gods or were intended for their service and, therefore, could not form part of any private property were considered “res nullius divini juris”. This definition in turn raises the following question: If property rights do not exist, how is the disposition of the human body regulated? [9].

In the Argentine Republic, JA Guzmán Lozano stands out in the Argentine legal system, the classic jurisprudential reference is the vote of Tezanos Pinto in the ruling of the 2nd Civil Chamber, when referring to the legal nature of a corpse, he expressed: “To be such, it also needs to represent a pecuniary value that it lacks”. Despite this, he assures that it does not constitute a subject of law either because along with life, the person’s mental and legal aptitude to acquire rights and contract obligations has disappeared: “Once the death of a person has occurred, the remains become a material good that is outside of commerce but that, like other very personal rights, can be the object of specific legal relationships and can be disposed of within certain limits”. Also, Guzmán Lozano maintains that with the sanction of Law No. 21,541, the human corpse can be conceived as an “extra commercium” thing of relative availability, by virtue of which it can be disposed of for purposes other than natural ones if there is prior authorization from the owner of the body or his immediate relatives. It must be expressed that doctrine, law and jurisprudence mostly confer on the corpse the legal qualification of a “thing outside of commerce”. However, in pursuit of certain social goals, its limitation of legal availability is relative, such as in the case of research, teaching, transplantation, or when it has historical-social value. This limitation is absolute and exclusive when its immediate destination is burial or cremation. Its full marketability—as a Real Right—occurs when the remains have lost the individuality of the person. of the subject (skele-
tons, mummies, remains of historical value, etc.) or when even defined they have acquired value in other socially accepted senses [10].

Respect for the corpse is part of an intangible heritage forged in time that transcends transversally, with its logical nuances, the most varied cultures of the world. It is the pure manifestation of a moral intuition that is our own and that allows us to visualize a dead body, much more than mere biological waste. However, precautionary law corresponds, in the most holistic way, to the healthy institution of respect due to the dead. Holism as a methodological and epistemological position postulates how systems and their properties must be analyzed as a whole and through possible. The treatment of the deceased says a lot about the rules that govern it and the society that dictates it. It remains to be seen whether the doctrines that conceive a certain past value in the corpse reach sufficient robustness to revive the debate [10].

2.3. Criteria for the Crime of Abandonment of a Person and Omission of Assistance

What does person abandonment consist of? In principle, from a legal point of view, abandonment of a person is a crime clearly defined in Chapter VI of the Argentine Penal Code (CP), specifically in articles 106, 107 and 108.

Article 106 establishes that whoever endangers the life or health of another, either by placing them in a situation of helplessness or by abandoning to their fate a person unable to help themselves and whom they must maintain or care for or whom the author himself has incapacitated, will be punished with imprisonment of 2 to 6 years. The penalty will be confinement or prison of 3 to 10 years, if because of abandonment serious damage results to the body or health of the victim. If death occurs, the penalty will be 5 to 15 years of confinement or prison.

The last Chapter of the Title “Crimes against persons” of the Argentine Penal Code contemplates two different situations: endangering the life or health of another, abandoning them, or abandoning to their fate (art. 106 CP), and the omission of assistance (art. 108 CP). The unifying notes of both crimes are the danger that the situation of abandonment represents for the life or health of the victim and the imposition of conduct on the agent [11].

2.4. Organ Cremation

Why is cremation increasing in the world? Cremation has become more culturally acceptable.

Religious and cultural beliefs also play an important role in this decision. Except for Orthodox Judaism, the Eastern Orthodox Church, and Islam, most religions accept the cremation process.

In many countries around the world, people are increasingly choosing cremation over burial. People over 40 who consider it important to have a religious aspect as part of a funeral, has decreased from 50% of what it was in 2012, to 35% in 2019.

It is a very personal decision made by the individual or family members. In addition to taking into consideration
the wishes, feelings and beliefs of the deceased loved one, there is also a fear in some people of decomposing or being buried alive.

As people today live far from their family roots, cremation provides more flexibility in terms of commemoration compared to the method of burial in a cemetery. Cremated remains can be stored in a cremation urn and displayed on a shelf or mantle at home, scattered in the ground, scattered in the air from an airplane, floating in the water, placed in a columbarium, buried in a cemetery, or entombed in a crypt inside a mausoleum. You can take the cremated remains of the deceased with you if you move to another city, which is not possible in the case of a burial.

Other alternatives are to hold a funeral before cremation or a memorial service afterwards. By opting for cremation, the loved one's ashes can then be scattered, buried, or entombed. A basic service, dignified without excessive costs [12].

2.5. Brief History of Organ Transplantation

Except for legends and claims of miracles, most transplant stories take place in the last 60 years, in the face of previous failures.

The idea of replacing diseased or damaged body parts has been around for millennia. Complex transplants were contemplated, such as the “successful” transplant of an entire leg by the third-century saintly physicians Cosmas and Damian, which is depicted in several famous paintings.

In the history of organ transplantation, some findings that deserved recognition were overlooked or forgotten, while others without biological importance had a great media impact.

As early as 600 BC, the use of autogenous skin flaps to replace missing noses was conceived. In the 16th century, Gaspare Tagliacozzi and other pioneering plastic surgeons had success with such procedures. The obvious extension of these methods was to use grafts separated or “free” from the patient’s tissue or other donors. But until the 20th century, it was never mentioned that grafts could fail. Even the great 18th-century experimentalist John Hunter, who transplanted human teeth and spurs, seemed unaware that homografts would fail. Only in the last half of the 20th century, there was consensus that the outcome of homografts differs from that of autografts.

In 1954, the kidney was the first human organ to be successfully transplanted. Liver, heart, and pancreas transplants were successfully performed only in the late 1960s, while lung and intestinal organ transplant procedures began in the 1980s.

Until the early 1980s, potential organ rejection limited the number of transplants performed. Medical advances in the prevention and treatment of rejection led to more successful transplants and an increase in their demand [13], [14].

2.6. Evolution of Organ Procurement in the World

The new concept of corporate social responsibility forces us to see the transplant situation globally. Of the 6 billion inhabitants of the world, only a small part has access to transplantation. Of the 10 most populated areas, only the U.S. The European Union, Argentina and Brazil have state programs with cadaveric donations. In other cities, such as China, India, Indonesia, Pakistan, Bangladesh, and Nigeria, the concept of social responsibility does not exist, or it is a marginal and unregulated activity [15].

According to the World Observatory, in 2021, 139,040 transplants were carried out in the 79 countries that have participated in the edition of the “Transplant Newsletter” as of August 20, 2022. Of them, 89,244 were kidney transplants (37% from living donors), 33,105 from the liver (20% from living donors), 8,232 from the heart, 6,301 from the lung, 1,986 from the pancreas and 172 from the intestine. These transplants were possible thanks to 37,653 deceased donors, to which must be added the 39,522 living donors (32,755 kidney, 6,748 liver and 19 lung).

Thus, we can observe that only 10–12 countries have a cadaveric donation rate greater than 20 donors per million inhabitants, which can meet the organ needs (kidney, liver, heart, pancreas, lung and intestines) of the population and not create an exaggerated exponential increase in waiting lists.

In 2021, the number of deceased donors increased by 7.9% with an increase in the number of donors in asystole or cardiac arrest, which went from 8,166 in 2020 to 8,503 in 2021 and which is confirmed as an important avenue for expansion of the donation. Significantly, last year, Spain registered 622 donors in asystole, which represents a rate of 14.2 per million population, the highest activity in the world.

Despite the growth last year and the high transplant activity in some countries such as Spain, a significant number of patients remain on the waiting list. As of December 31, 2022, in this country, the waiting list stood at 4,746 patients. Of them, 66 were children. This number of patients on the waiting list is like that registered in 2021 (4,762 patients). In 2021, forty thousand people died while on waiting lists.

Waiting lists are one of the largest health problems faced by the Ministries of Health. Since the pandemic, they have not stopped growing and their current figures are the highest since there is a record.

Global organ transplant activity will recover and grow by 13.6% in 2021. Despite the growth last year and the high transplant activity in Spain, a significant number of patients remain on the waiting list [16]–[18].

3. Discussion

Organ and tissue transplantation has managed to associate life with death, thereby benefiting society. However, the paradoxical shortage of donated organs limits this possibility.

To achieve this goal, it is essential that people understand that the solution for patients suffering from terminal organ failure is that our body after death is the sole and irreplaceable source of their health.

Society must accept that people die “unjustly” while waiting for an organ to be transplanted. Thousands of people also die every day, due to socioeconomic inequalities. The reality is that these deaths are a consequence of complex problems: economic, political, social inequality
and even corruption. The solution to the organ shortage depends on a social change: consent to organ donation. A critical analysis of the reasons for this incomprehensible behavior of people towards donation reveals that educating the members of society has not been able to develop a positive change in their current social behavior.

We have suggested a change from the classic slogan *Donating is giving life to Donation is sharing life*. We have also proposed the following ideas as useful complements to social education programs, to modify current behaviors towards donation:

- During life, we are potential recipients of a transplant
- All monotheistic religions accept organ donation and transplantation
- Our body, after death, is a unique and irreplaceable source of health

A social education that allows real knowledge of this problem will be a challenge to help people understand that it is a human right acquired by Society to give or receive the donation of organs and tissues during life. Regarding the negative factors concerning donation, it is important to highlight the importance of two of them: fear of death and respect for the integrity of the body, which are not essentially linked to ignorance and/or bad information.

Bodily integrity continues to be a central issue for negative behavior towards organ donation. The fear of mutilation includes the fear of losing any part of our body structure, of having limits on the mobility of our body or of losing the integrity of some organ, or part of the body or some natural function. These ideas can generate ethical and moral inhibiting behaviors regarding the treatment that our body or that of our loved ones receives at the time of death. Such reflections on the preservation of body image play a significant role in families’ decisions toward donation [19].

The analysis of these concepts undoubtedly implies evaluating the potential importance that they may represent in modifying the current crisis of “organ shortage”, both the review with respect to the growing social choice of cremation as a burial procedure, as well as the potential need to evaluate the relationship between negative consent and abandonment of people at risk of dying.

The study of the main causes of the social choice alternative to cremation, as a contradiction, opposes the main reasons that inhibit social consent to donation. That is, material reasons outweigh, for socioeconomic reasons, a decision that would make the life of one or more people possible through their consent to organ donation in the choice of respect for the deceased person.

With respect to the responsibility assumed at the time of the decision of consent to the organ donation requested in the case of the death of a loved one, the analysis of the scope of the different legal assessments regarding the abandonment of people at risk of life They should be analyzed by experts to consider their inclusion in public education programs.

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4. Conclusion

This careful analysis of the concrete current reality of the global persistence of organ shortage has suggested different circumstances inhibiting social behavior to consent to organ donation. Thus, it has also allowed some ideas regarding people’s conduct regarding consent to donation in the face of patient death.

Also, we mentioned the potential legal consequences of a refusal of organ donation consent in the case of possible deceased organ donors. In a synthesis, we propose the following concepts of what we consider to be of primary interest at the level of social education programs:

A. Organ donation from a living donor must respect the autonomy of the person and their legal support in force.

B. Organ donation from a deceased donor needs to consider the right to life of people who die on the waiting list. This persistent reality requires a critical analysis of establishing the unrestricted social obligation of the deceased (or after-life) donor.

C. These proposals require a modification in the socio-psychological structure of public education programs on consent to organ donation, seeking to obtain from society a clear understanding of its real and necessary role for the well-being of people.

**Conflict of Interest**

Author declares that there is no conflict of interest.

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**References**


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