

What do the dead really want?

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A public policy change is afoot in Israel and I believe it will stumble badly. The Minister of Health wants to switch Israel's transplant system to one of "presumed consent." That is to say, all Israelis that die will be presumed to have wanted to donate their organs unless they opted out while still alive. Yael German thinks this will increase organ donation from dead people. I think she is dead wrong.

It is well known that Israel has one of the lowest organ donor registration rates among Western nations, 14 percent compared to America's 45 percent. Currently a citizen needs to opt in to the transplant program by getting an organ donor card known as ADI or, absent such a card, the person's family needs to agree to donate the deceased's organs. Practically, however, with or without a card, no hospital will remove a patient's organs without consent of the family, as happened in the infamous case involving soccer star Avi Cohen, whose family refused to donate his organs despite his apparent wishes otherwise.

To address the dearth of donors and increase organ donation, well-intentioned Minister of Health Yael German is trying to change the law to switch to the presumed consent system where families are not asked permission to donate organs. Under such a plan, families would still be able to stop the donation but they would have to take an active step by signing forms in order to stop the process. Since this sets organ donation as the default and requires action from the family to prevent it from occurring, many think this will lift an obstacle to donation and lead to more consent. Proponents often point to Spain, which has presumed consent and an extraordinarily high organ donor registration rate, as proof that such a system works.

While the presumed consent system might lead to higher donation rates it ain't necessarily so. Certain assumptions are worth questioning. Did the adoption of presumed consent increase organ donation in Spain? Spain actually had a very high organ donor consent rate before the law was adopted and, while adopting opt-out increased organ donation, it was not as significant as people believe it was. Moreover, until 2009, Israeli law allowed organs to be removed from brain-dead patients without receiving familial permission – which is similar in effect to presumed consent – yet this did not increase organ donation.

In addition, what works in one society will not necessarily apply to another. Even if opt out significantly increased organ donation in Spain, would it do so in Israel? Israelis put great value on personal autonomy and independence. Israel's splintered citizenry would not want the government to, in effect, presume to own their bodies. Israelis, by and large, mistrust the medical community. Who says they will believe the medical establishment when they report they have no record of their loved one opting out?

Let's imagine a scenario where the patient did not opt out of organ donation. Under the new system, the state presumes he opted to be an organ donor. The family objects because they think he was lazy and just never got around to opting out. Which sentence is more likely going to convince you to let the donation happen? "Your

brother had an organ donor card in his wallet,” or “Your brother never called the national database to opt out of organ donation so we assume he wanted to be an organ donor.” Obviously the former.

The problem is, and always has been, that although the majority of Israelis are secular they become religious in matters concerning death. All of a sudden they are worried about halachic imperatives about being buried whole, of fulfilling biblical verses of returning to the dust of the Earth, and of needing body parts for resurrection of the dead.

Clearly the answer to the shortage of organ donors would be public campaigns showing pictures of Rabbis with organ donor cards. The Halachic Organ Donor Society has recruited more than 200 Israeli rabbis to get organ donor cards including Rav Shar YOSHUV Cohen and Rabbi Riskin. Efforts and resources should be invested in directly addressing Israeli inhibitions to organ donation through education, public rabbinic support, and raising awareness about the need for organ donors.

If presumed consent would work, I’m all for it. I just don’t believe it will. In Israel, the answer is education – not legislation.