Personhood as a Foundation of Morality in Africa: A Critical Analysis of Ethical Norm-Dead Donor Rule from an African Moral Perspective"

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Abstract: **Our conceptual understanding of personhood in Africa guides of moral determination, as well our moral concept in African context affects our perception of personhood. Therefore, the concept of morality, personhood and health in African context should be understood as co-related either by cause or effect relationship with issues pertaining to each either springing from or leading to the other. Morality deals with individual character and the moral rules that govern and limit our conduct. It investigates questions of right and wrong, duty and obligations, and moral responsibility. With this perspective, it can be argued that the moral rightness or wrongness of any ethical norm in the African context should be judged not solely from an outside world view of an individual, but also taking consideration of the African conceptual perspective of morality and personhood because of their co-relationship. It is from this understanding I discuss in this paper an important ethical norm known as Dead Donor Rule, an ethical norm formulated as follows; 'Organ Donors must clinically be dead before procurement or harvesting of organs can begin. Procurement of the organs must not cause or be the cause of the Donors death'. The problem I am addressing is, "Is it permissible from an African perspective of morality and personhood to directly bring about the disabling mutilation of a human being, even to delay the death of other person or persons? What criteria can we use to make a morally acceptable decision in such a case?" The hypothetical ethical rule or moral norm tested here is Dead Donor Rule. The ethical theory that I apply here is Kantian ethical theory or Kantian categorical imperative. This philosophical discourse is carried out through a mixture of armchair philosophical reflection and existing literature. The conclusion draws out emerging of two opposing groups one supporting and the other opposing the application of the Dead Donor Rule. The recommendation is further unbiased discussion on the objective criteria for organ donation/organ harvesting that also take into account an African concept of personhood and moral standards that conceive human life as sacred and transient beyond physical life.**

I. INTRODUCTION

I begin by introducing key concepts used in this paper. Ethics/Morality deals with individual character and the moral rules that govern and limit our conduct as human beings. It investigates questions of right, duty and obligations and moral responsibility. Morality, personhood and health in Africa are understood as co-related either by cause or effect relationship, that is, issues pertaining to each either springing from or leading to the other. This implies that the moral rightness or wrongness of any ethical norm in the African context should be judged not solely from an outside world view of an individual but also taking consideration of the African conceptual perspective of morality, personhood, and health because of their co-relationship. It this from this understanding that I discuss in this paper an important ethical norm known as Dead Donor Rule in the field of health. The problem I am addressing here is "Is it permissible from an African perspective of personhood and morality to directly bring about the disabling mutilation of a human being, even to delay the death of other person/persons? What Criteria can we use to make a morally acceptable decision? The moral norm I am addressing in this regard is known as Dead Donor Rule, and the ethical theory I am applying in the discussion is Kantian ethical theory or alternatively Kantian Categorical Imperative.

The discussion follows dialectical argument formula, with dialectic understood here as a theory that every concept as we think about it, begins to show us its limitations, and passes over into its opposite, into the very negation of itself; as such it is expressed in terms of thesis, antithesis, and synthesis.

Dead Donor Rule

The Dead Donor Rule is an ethical norm formulated as: Organ donors must be clinically dead before procurement or harvesting of organs can begin. In other words, procurement itself must not cause or be the cause of the donor's death. The second formulation has foundation in law, in that; organ procurement should not be the cause of the death of an organ donor, and this is premised on the laws on homicide which forbids the killing of a patient or any person for any reason.

From Medical ethics perspective, the doctrine on the Dead Donor Rule states that vital organs may be taken only from dead patients and that living patients must not be killed by, nor for organ retrieval. However, a distinction should be made here on some vital organs, such as kidneys, skin grafts, a portion of liver and others which can be transplanted from one living person to another in desperate need of a vital organ without causing death or grave harm to the donor. By clarifying the organ transplants which can be done inter vivos, the moral issue of dead donor rule applies specifically to organs which cannot be harvested from a living person without causing grave harm or causing death directly or

indirectly. The giving of a part of one's own body to help a gravely or even mortally ill fellow human person is not only morally justifiable but an act of charity. For example, Pope John Paul II in his address to the International life sustaining treatments and vegetative state: "Scientific Advances and Ethical Dilemmas," articulated the norm as follows:

"A person can only donate that of which he can deprive himself without danger or harm to his own life or personal identity, and for a just and proportionate reason. Therefore, organ transplants are in conformity with the moral law if the physical or psychological dangers and risks to the donor are proportionate to the good that is sought for the recipient".

Consequently, transplantation of organs from living donors is morally permissible when such donation will not sacrifice or seriously impair any essential body function and the anticipated benefit to the recipient is proportionate to the harm done to the donor. Not only the freedom, but also the dignity of the prospective donor is to be respected. Morally, in accordance to the golden rule which springs from Kantian ethical philosophy, donation of organs after death is a noble and meritorious act and is to be encouraged as a manifestation of generous solidarity. In the case of a living donor, organs may be taken from a donor if it is a question of organs of which the transplant will not constitute a serious and irreparable impairment for the donor.

Ethical Problem

The question we should address as African moral philosophers is, "is it morally admissible directly to bring about the disabling mutilation of a human being, even in order to delay the death of other persons according to African moral concepts?"

Ethical Perspective

Emphasizing the donation of organs from dead patients, the moral philosopher in medical ethics explicitly underlines the importance of the Dead Donor Rule. Thus "there must be certainty that it (the donor) is a corpse, to ensure that the removal of organs does not cause or even hasten death. The removal of organs from a corpse is legitimate when the clinical death of the donor has been ascertained." This means that there is the precise duty of "taking steps to ensure that a corpse is not considered and treated as such before death has duly been verified." This brings forth the issue of criteria of ascertaining death, which shows that the issue of organ transplant or the dead donor rule cannot be treated in isolation from other issues addressing human dignity, touching on the sanctity of human life which is more than biological life. This is an important ethical point where moral ethicists and scientists proposing the abandoning of the dead donor rule differ. Although it must be noted that medical ethics accepts both cardio-pulmonary and brain death criteria of determining death, in order for a person to be considered dead-'a corpse'- the position held in this argument is that it is enough that cerebral death of the donor, which consists of the irreversible cessation of all cerebral activity, be ascertained. "When the total cerebral death is verified with prudential certainty, that is, after the required tests, it is licit to remove organs and also to surrogate organic functions artificially in order to keep the organs alive with a view to transplant."

We should abandon or do away with Dead Donor Rule to fulfil moral a obligation

Some scholars, in Moral philosophy as well as in the medical field argue that it would be right to set aside the Dead Donor Rule (DDR) to facilitate the harvesting of organs that are functional and of better quality for transplant. The argument for proposal to set aside the Dead Donor Rule has been based on several reasons. The first is a critique of the criteria used to determine brain death. Brain death occurs when the irreversible function of all the brain, including the brain stem is certified. An evaluation for brain death should be considered in patients who have suffered a massive, irreversible brain injury of identifiable cause. A patient properly determined to be brain dead is legally and clinically dead (Wijdicks, 1995). To counter this assertion, it is argued that even after 40 years of using this criterion of determining clinical death of a person, it remains controversial. Thus, "the proponents of removal of the Dead Donor Rule stress that the arguments about why the patients with declared brain death should be considered dead have never been convincing." Based on the critical literature about this subject, they conclude that, "although it may be perfectly ethical to remove vital organs for transplantation from patients who satisfy the diagnostic criteria of certain brain death, the reason it is ethical cannot be that we are certain they are really dead (Wijdicks, 1995)."

The second reason advanced by the proponents is the existence and use of protocols which allow non-heart-beating donations (NHBD). The protocols are based on cardio-pulmonary criteria to determine the occurrence of death. According to them, a patient is considered to be dead and potentially suitable as a donor when he/she suffers the "irreversible" loss of cardio-pulmonary functioning. This means that in this protocol, life support is withdrawn from the patient who is not brain dead and then he/she is monitored for the onset of cardiac arrest. After a period of time ranging from two to five minutes, organs for transplants are harvested from the patient if they remain in cardiac arrest. The proponents of the abandonment of the dead donor rule argue that in this situation, the rule is practically overlooked. They state that, "the cardiac definition of death requires the irreversible cessation of cardiac function. Whereas the common understanding of" irreversible" is "impossible to reverse", in this context irreversibility is interpreted as the result of choice of competent patient or his/her surrogate not to reverse." According to these proponents of setting aside the dead donor rule, this interpretation is paradoxical since the hearts of patients who have been declared dead based on irreversible loss of cardiac function go on to function successfully inside the chest of another patient. It would not be logical for an

irreversible heart of one patient to be functional in another. On this note, Troug and Miller, two prominent supporters of the proponents of the abandonment of the dead donor rule, basing their argument on Kantian ethics say that the term "irreversible" is not precise and should be used carefully. They rhetorically ask "Are we guilty of obfuscation by trying to avoid describing the practices of withdrawing life support and retrieving vital organs from living donors as killing?" To this question, their answer is affirmative.

Troug and Miller point out that the proponents of the rule are correct when they state that insisting on the dead donor rule gives an opportunity for protecting living, severely compromised patients from being used as a source of organs to save other patients. They point out that "if our appraisal of current practices is correct, invoking the Dead Donor Rule offers a veneer of protection given that most donors of vital organs are not really dead. However, they insist that this is only a vague truth, we need to look elsewhere for real safeguards against the abuse". To that end, there is therefore need for moral ethicists to investigate the holes punched into the safeguards of the dead donor rule by scientific advancement in the medical field with the aim of strengthening it if it were to remain in application and relevant to serve the noble purpose of protecting the life of vulnerable patients and the dignity of human life. The question of the correct interpretation of Kantian categorical imperative to this debate challenges diverse interpretations of the rule, differing definitions and criteria of certifying death and different views. Kantian ethics calls for universality, defining death from different points of view or criteria defeats the logic of opposing the dead donor rule.

There are also those who argue that we should apply the principle of double effect in case of controversies on the dead donor rule. The principle of double effect provides guidelines for determining when it is morally permissible to perform an action in pursuit of a good end in full knowledge that the action will also bring about bad results. The principle rests on four main criteria: that is; the nature of the act is itself good, or at least morally neutral, the agent intends the good effect and not the bad either as a means to the good or as an end itself, the good effect outweighs the bad effect in circumstances sufficiently grave to justify causing the bad effect, the agent exercises due diligence to minimize the harm. However, this principle still falls short of expectations to justify setting aside the rule. In that, by the very act of harvesting the vital organ, the death of the donor is willed by the one harvesting the organ or freely accepting the organ to be harvested.

The better option: Do good, Avoid Evil

It is worth pointing out that what is expected from scientists and moral ethicists from Africa as well as other parts of the world is a proposal for strengthening the protection of patients, especially the most vulnerable, even at the moment of their imminent death. This calls for a proposal to strengthen the Dead Donor Rule, to make it more precise and protective by clearing all its ambiguities. The debate on the rule has formed two camps, one supporting the maintenance of the rule and strengthening it, and the other calling for abandonment of the rule. The former highlights the moral importance of this rule in safeguarding the dignity and sacredness of human life and how this rule safeguards against the abuse to this dignity. The latter build their argument on the need for abandonment of this rule by highlighting the hindrances it creates in harvesting viable vital organs from the consenting donors or their legitimate surrogates and the prominence of autonomy in making valid decisions regarding human life.

The proponents arguing for setting aside the rule seek a better approach to emphasize the importance of obtaining valid informed consent for organ donation from patients or surrogates before the withdrawal of life-sustaining treatment in situations of "devastating and "irreversible" neurologic injury."

Different views against the argument to set aside the Rule.

First, the DDR is morally implicit and not explicit. That is, it is implicitly grounded on the moral notion of human dignity and the moral obligation to protect it. Therefore, scientists should and proponents of setting aside the rule would do justice to explain the fundamentals of organ transplantation from an ethical position. This will guide a critical analysis of the proposal to abandon the rule from the view of human dignity or sanctity of human life which is not in contention.

Form the views presented by the critics of the Dead Donor Rule, the "Key Protection" of life is valid informed consent, as if such a doctrine had the perfection that the rule lacks. That is, instead of protecting the dignity and sanctity of human life, they seem to advocate for the protection of human freedom. It is interesting to note that to these proponents, the protection of life ultimately resides in the autonomy of the subject that makes a decision about it. The authors insist that the patient or an appropriate surrogate can make the decision about withdrawing life support and the donation of vital organs. In this case, death can occur, and life is ''protected'' if the end comes because of autonomous decision of the patient or their surrogate to make the body available for retrieving its vital organs for transplantation.

It can rightly be deduced from their argument that the official pronouncement of patients' death will come only after removal of the vital organs and in the same way, it can be argued that harvesting vital organs is the cause of death for the patient. However, in the sense of the proponents of setting aside the dead donor rule, such harvesting of organs for transplant is not considered immoral because it takes place only when informed consent has been obtained from the patient or the patient's surrogate. Again, this is morally unacceptable and a violation of human dignity which the Dead Donor Rule is set to protect. Freedom or individual autonomy should never be even a morally acceptable remote cause of death. An elevation of individual freedom to this level is un-

African where communal life is emphasized as Samuel John Mbiti puts it "I am because you are" (Mbiti. J, 1969).

Contrary to the argument of these proponents, it should be stressed that the only morally right cause of death is the condition of a patient and not the autonomous decision to have one's organs harvested and to die as a consequence in order to do good to another. To ascertain that someone is dead, there has to be clinical and laboratory data on which the assertion can be verified. Morally, protocols which openly result to killing a patient by removing life support treatment are ethically unacceptable. They are morally against the sanctity and dignity of human life and place a human being as an absolute owner of his/her life. Truong and Miller, two notable supporters of the proponents of abandonment of the dead donor rule, argue that whether death occurs because of ventilator withdrawal or organ procurement, the ethically relevant precondition is valid consent by the patient. It is obvious that they are suggesting the autonomous person, because of his/her autonomy, has the moral authority to choose against human life itself as long as the choice is "valid". The question is, "can this pass the test of Kantian categorical imperative, and the Golden Rule?" Another moral question or contention is; "why in the opinion of the supporters of this autonomy and informed consent confer on any person such an absolute power?" Again, this goes against African moral concept where an individual does not hold total control over his/her life.

Again, for the supporters of the proposal to set aside the dead donor rule, they are convinced that "with informed and valid consent, there is no harm or wrong done in retrieving vital organs before death, provided that anesthesia is administered." This implies that the "omnipotence" of the consent is so great that it is able to transform into a good moral act the act of killing an innocent person during the process of harvesting their organs. In the light of the philosophical and moral arguments which support the inalienable dignity of human life, the statements of these proponents of setting aside the dead donor rule are not only unduly justified philosophically but are also morally unacceptable.

It is important to state here that the concept of autonomy, as it is currently stated by these medical ethicists is not the same as Kantian Categorical imperative, "Act as if everyone in the same situation would act the same". If the consent of the competent person to end their life so that their organs may be available for transplant is elevated to the same position with the Kantian Categorical Imperative, then we have to ask some significant philosophical and moral questions to point out what is at stake with this view.

1. Shouldn't we also consider every autonomous decision; no matter what it is, to be a categorical imperative?
2. Would we not have obligation to fulfill every decision of every autonomous and competent person or person's surrogate? Will it not be morally permissible to donate one's organs even if one dies in the process or one has not even been diagnosed with an incurable disease?

Supporters of the proposal to set aside the dead donor rule refuse the possibility that a healthy person who is not on life support could donate the same organs in the same way they argue for the person on life support. Their argument is that in the case of a healthy person this would almost certainly count as criminal homicide despite the donor's consent, because it would not follow a prior decision to cause death by withdrawing life support machine. One can conclude from this assertion that for these supporters, there is an essential difference between a person on life support and a person who does not need life support treatment. This leads to a morally unacceptable conclusion as far as human life is concerned. It implies that harvesting vital organs from the person on life support is treated as an act of altruism or charity and not morally wrong, whereas to do the same to another person not on life support treatment is treated as a crime.

There is a difference of sort between someone on life support treatment and one in good health; however, this difference pertains to health status and not their human dignity. Therefore, those supporters of setting aside the dead donor rule are making an unjustified differentiation between healthy and gravely ill people. The assertion that by retrieving vital organs, healthy people are murdered and the terminally ill are not, is morally misplaced and unacceptable. It defeats the goal of medicine. This school of thought is only permissible in the "culture of death" in which a lost metaphysical dimension of life and individual decision based on autonomy is the only point of moral reference. It complicates decisions bearing on matters of human dignity.

II. CONCLUSION

- It should be pointed out here that the proposal to set aside the dead donor rule is morally unacceptable from an African perspective of personhood and morality as it suggests that it is right to sacrifice the whole for the sake of the parts. Thus, the suggestion that any patient dying after refusal of life support treatment, who wishes to donate vital organs, should have the opportunity to do so, even if it would violate the dead donor rule, is based on a philosophically and morally distorted notion of human life and dignity, and Kantian categorical imperative.
- The proponents seem to build their case on the presumption that putting aside the rule offers a hope of increasing the probability that the organs will be viable for transplantation and expand the pool of organs available for donation. Though this presumption may seem appealing to those who desperately need these organs, this should be morally evaluated and discouraged on the ethical grounds based on Aristotle and St. Thomas' explanation that there are norms which do not admit exceptions; one of

them is the prohibition of the killing of an innocent person, even at his/her own request.

- Therefore, the proponents of the proposal to set aside the dead donor rule are morally and legally on the wrong side of the purpose of medicine, which is to be at service and protection of human life.
- It is therefore clear that the proponents of setting aside the dead donor rule base their argument on wrong premises and can easily misguide the medical field to lose the purpose for which medicine is founded. Their argument is morally unacceptable in the context of African morality and should be discouraged for the protection of the sanctity of human life and in the interest of the most vulnerable.

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