



The ownership of human body: an Islamic perspective

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Received: 20 May 2009

Accepted: 29 May 2009

Published: 30 May 2009

J Med Ethics Hist Med. 2009; 2:4.

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Abstract

Using human dead body for medical purposes is a common practice in medical schools and hospitals throughout the world. Iran, as an Islamic country is not an exception. According to the Islamic view, the body, like the soul, is a "gift" from God; therefore, human being does not possess absolute ownership on his or her body. But, the ownership of human beings on their bodies can be described as a kind of "stewardship". Accordingly, any kind of dissection or mutilation of the corpse is forbidden, even with the informed consent of the dead or his/her relatives. The exception of this principle is when such procedures are necessary for saving lives of other persons. In this article using the human dead body for medical education, research and treatment is discussed and the perspective of Iranian Shiite religious scholars in this regard is explained.

Keywords: *Cadaver, Ownership, Islam, Iran, Transplantation.*

Introduction

Respect for the human dead body, is a consensual principle in the Islamic jurisprudence. According to this principle, the dead body should be buried as soon as possible after death. In addition, mutilation of the human body, even the bodies of non-Muslim enemies, is forbidden (bearing in mind that mutilation of the dead bodies of enemies was a custom among the tribal Arabs at the time of Prophet Muhammed).

The limited number of cases of dissecting dead body which were discussed in the history of jurisprudential debates were dissection the body of a recently dead woman for saving her still alive fetus and dissecting the body of a dead person for

removing an amount of money who had swallowed when he was alive. Both of these practices have been considered allowed with certain conditions and with some differences among different jurisprudential schools (1, 2). Otherwise, any kind of mutilation of a dead body was considered as repulsive and forbidden.

There was no problem with this idea, till the modern medicine has been introduced to the Muslim communities. Dissection of the dead bodies for learning and teaching human anatomy at first, and subsequently, the other uses of human dead body on research, education and treatment, emerged new queries about the permissibility of using and dissecting the human dead body for such purposes.

Muslim physicians in Iran, as an Islamic country, has confronted such conflict between respect for the dead body and necessities of modern medical practice, after the introducing of the modern sciences and foundation of modern universities, about 150 years ago. The problem became more prominent after the Islamic revolution in 1979, after which the government and universities became committed to conform medical practices to the Islamic law.

Nowadays, human dead bodies are being used in medical universities and hospitals thorough Iran, for the above mentioned purposes. All the medical schools have their own dissection rooms in the departments of anatomy; interventions such as intubation are being practiced on the recently dead bodies in the hospitals; autopsy for legal and medical purposes is a common practice in the authorized centers and organ transplantation from cadaver is being done frequently. There are still some debates and discussions about the religious permissibility of all these practices.

The main subject of the aforementioned debates is the ownership of human body. Does a person own his/her body? Has he/she the authority of giving consent for such practices on his/her body after death? In this article I have described and discussed the opinions and decrees of the Iranian Islamic jurisprudential authorities in this regard.

Meaning and classification of ownership

According to Henk ten Have and Jos Welie: "Ownership is a complex collection of claim rights, duties, powers, and immunities. As a paradigm of ownership, reference is often made to Honore's concept of "full individual ownership. Honore compiled a list of standards "incidents of ownership. Although the incidents are not taken individually, necessary conditions for private ownership, they may, however, together be sufficient for full individual; ownership. The standard incidents include: the right to possess a thing; the right to the exclusive use of a thing; the right to manage it; the right to its income; the right to the capital, i.e., the right to alienate (transfer) the object, and the liberty to consume, waste or destroy the object; immunity from expropriation; the power to bequeath it; the absence of term; the prohibition of harmful use; liability to execution; and residuary character. This list is useful as a frame of reference in order to determine different modes of ownership" (3).

The aforementioned authors have considered three possible positions, regarding to the ownership of human body:

1. No ownership of the human body and its parts;
2. No full ownership of the body, but limited property rights with regard to body parts;
3. Full ownership of the body and its parts (3).

Obviously, ownership of everybody to his body does not possess all the abovementioned incidents. For instance, one can not transfer his/her own body to anyone else; also, one can not waste his/her own body. In addition, selling human organs is prohibited in almost all of the juridical systems. Therefore, it seems plausible to say that human being has limited ownership to his or her own body.

According to the Islamic view, the body, like the soul, is a "gift" from God; therefore, man does not possess absolute ownership on his body. But, the ownership of human beings on their bodies can be described as a kind of "stewardship" (1).

It should be noticed that in secular schools of thought, regardless of the kind of ownership, a person is the most relevant one for decision making about his or her body after his or her death. Accordingly, using advance directive can solve the ethical problems in many cases. According to the Islamic schools of thought, a person has not any kind of authority, ownership or stewardship on his future dead body. Therefore, advance directive is not considered an absolute right in the Islamic law.

Using the human dead body for education

Dissecting of dead bodies is a standard practice for education in anatomy departments. It has been practiced in the medical schools in Iran since the foundation of modern medical schools.

Almost all the Iranian Shiite religious authorities deem allowed to dissect the corpse of a non-Muslim for medical educational purposes. But almost all of them consider such practice on the dead body of a Muslim, as forbidden (2, 4). According to the religious decrees (Fatwas) of some of Iranian Shiite religious authorities (e.g. Ayatollah Khamenei (5) and Ayatollah Makarem Shirazi (6)), in the cases of unavailability of the corpse of non-Muslims and the necessity of educating life-saving medical knowledge and techniques, dissection of the corpse of a Muslim would be allowed.

There is another kind of using human dead body for research which seems to be more controversial, morally speaking, using the recently dead body to practice endotracheal intubation (ETI). "ETI is the placing of a tube in a patient's trachea and it is the preferred method of managing the airway in patients with life-threatening conditions" (7).

As far as I searched, practicing ETI on the recently dead has not been asked from the religious authorities in Iran; however, according the logic of their answers to the similar questions and their view toward the ownership of human dead body, it may be concluded that in the cases of necessity, it would be allowed.

Using the human dead body for research

This kind of using human dead body, for example using in car crash tests, has been objected with this argument that such practice is contrary to the principle of human dignity (8). Nevertheless, such uses are commonly provided by the informed consent had been given before the death.

In this regard, in Iran, a national guideline has been compiled in the medical ethics and history of medicine research center of Tehran University of Medical Sciences and communicated by the minister of health in 2006 (9). According to the Special Guideline for Research on Human Organ and Tissue Transplantation, for using organs or tissues obtained from the dead bodies, in addition to the necessity of being approved by the Research Ethics Committee, "obtaining the consent of person before death or the consent of his or her representative is necessary". In the transplantation researches the consent should be based on opting-in, even if this would be changed for therapeutic purposes. Also, "when one is opposed to donate his or her organs or tissues, his or her representative can not permit it after his or her death" (10).

Although the abovementioned guideline has been approved by religious scholars in Iran, it is interesting that some issues like as the deference between Muslims and non-Muslims have not been considered in it.

Using human dead body for treatment

The Iranian Model of Kidney Transplantation was very successful in eliminating the long waiting list for kidney transplantation (11). However, serious ethical concerns about the commercialization of human organs are being conveyed by ethicists, from inside and outside of Iran, to Iranian religious and health authorities (12, 13). Using organs of deceased or brain-dead persons has been discussed as a solution. Religious authorities permitted such practice and consequently, in 2000, the parliament approved the Organ Transplantation and Brain Death Act, allowing the use of organs from deceased or brain-dead persons provided the consent by their relatives (14). The similar considerations mentioned above, about the impact of religious differences, do exist in these cases.

In addition, removing the cornea of unidentified dead bodies in the Forensic Medicine Organization has been practiced for several years.

Discussion and conclusion

The religious perspectives toward using human dead body for medical education, research and treatment are based on some presumptions including:

1. The supreme religious authority (Vali-e Faghih) has the right to make decision regarding human dead bodies usage.
2. In the cases of necessity for life-saving educations, researches or treatments, use of human dead body is allowed, encouraged and even recommended.
3. In the cases of dissecting, it is preferred to use the dead bodies of non-Muslims.
4. In the cases of treatment, the priority should be given to the Muslim patients if the needs are equal and resources are limited.

This essay is not complete without pointing out some important related points:

1. The exact relation between ethics and religious jurisprudence is still ambiguous and controversial among Iranian scholars. Jurisprudential decrees are considered as the basis of the rules and regulations in Iran but in the cases of conflict between such decrees and universal ethical norms, some modifications seem necessary.
2. In the case of this essay, according the classical Shiite jurisprudence, the decision-making about using human dead body is not by the advance directive or consent of relatives. But such consents have been considered as necessary by regulations because of ethical obligations.
3. The difference between Muslims and non-Muslims with regard to dissecting the dead body for educational purposes has not been mentioned in the formal rules and regulations which shows the difficulty of translating such decrees to rules and regulations.
4. According to the Islamic law, saving the life of human beings has utmost priority and if any kind of using a corpse is necessary for life-saving, it would definitely be allowed. However, judgment about the "necessity" is very difficult in many cases.

Acknowledgement

I would like to express my many thanks to Dr AbduSSaleh Ja'fari for his very helpful comments, Professor Pooneh Salari for her so kind cooperation and to the esteemed reviewers of the Journal of Medical Ethics and History of Medicine for their valuable remarks.

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