Geographical Justice and Organ Allocation

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Disclosure

I serve on OPTN’s Ethics Committee, but these comments represent my own views, not the views of OPTN or the federal government.
Learning Objectives

1. Articulate what role geographic proximity should have, ethically speaking, for organ allocation.

2. Evaluate the ethical questions raised by OPTN’s new proposal ending DSA/Regions priority in allocation.

3. Interrogate the ethical importance of local, national, and international communities for organ allocation.
The Issue in Miniature: Ending DSA/Regions

**OPTN**

**Eliminate the Use of DSA and Region in Kidney Allocation Policy**

**Affected Policies:**
- S.1: Minimum Acceptance Criteria
- S.1.A: Kidney Minimum Acceptance Criteria
- B.2.A: Exceptions Due to Medical Urgency
- B.3: Kidney Allocation Points
- B.5.K: Highly SENSitized Candidates
- B.5.K: Allocation of Kidneys from deceased donors with KDPI Scores less than or equal to 20%
- B.5.K: Allocation of Kidneys from deceased donors with KDPI Scores greater than 20% but less than 35%
- B.5.J: Allocation of Kidneys from deceased donors with KDPI Scores greater than or equal to 35% but less than or equal to 85%
- B.5.K: Allocation of Kidneys from deceased donors with KDPI Scores greater than 85%
- B.7.A: Choice of Right versus Left Donor Kidney
- B.7.B: National Kidney Offers

**Sponsoring Committee:**
OPTN Kidney Transplantation Committee

**Public Comment Period:**
August 2, 2019 – October 2, 2019

**Board of Director’s Date:**
December 3, 2019

**Executive Summary**

The Final Rule sets requirements for allocation policies developed by the Organ Procurement and Transplantation Network (OPTN), including the use of sound medical judgement, achieving the best use of organs, preserving the ability for transplant programs to decide whether to accept an organ offer, avoiding wasting organs, avoiding futile transplants, promoting patient access to transplantation and promoting efficient management of organ placement. The Final Rule also includes a requirement that allocation policies “shall not be based on the candidate’s place of residence or place of listing, except to the extent required” by the other requirements.

- Perceived Conflict with Final Rule
- End DSA/Regions
- Replace with single fixed distance circle with a radius of 250 nautical miles around hospital
- Treats 250 nautical miles as hard boundary
- “Geographic Equity” (?)
The Issue in Miniature: Ending DSA/Regions

Figure 1: Geographic Layout of DSAs across the United States

Figure 2: Map of OPTN Regions across the United States
The Issue in Miniature: Ending DSA/Regions

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The Issue in Miniature: Ending DSA/Regions

Figure 6: Visualization of Single Fixed-Distance 250NM Circle for DSA
The Bigger Questions

• What role for geography *qua* geography?
  – Is “geographical discrimination” or “geographical equity” a morally justified concept?
  – Are the political communities in organ allocation geographical ones?
Principles for Allocating Scarce Medical Goods (Generally)

- Lottery
- First-Come first-served
- Sickest first
- Youngest first (age weighting)
- Save the most lives
- Save the most life years (prognosis)
- Instrumental value
- Reciprocity

Persad et al., *Principles for allocation of scarce medical interventions*, 373 Lancet 423 (2009)
OPTN Principles

• Utility
• Justice (aka “equity”)
• Respect for Persons (including autonomy)
• Potential for Conflicts

OPTN, Ethical Principles in the Allocation of Human Organs (last updated June 2015)
What Role for Geography?

• Two concepts of role for geography:
  – Geography as a proxy for something we should care about
  vs.
  – “Geographical equity”
OPTN Rejection of Geographical Equity in DSA/Region Proposal

– 1984 Task Force Organ Transplantation, “national resource”
– 2012 AMA Code of Ethics
– 2012 HHS Survey
E Pur Si Muove (and yet it moves…)

• A hypothetical to test our intuitions.

<table>
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<th>State</th>
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<th>State</th>
<th>Kidney Donors (2019)</th>
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</tbody>
</table>
Proving Too Much? Why Stop at “National”

1 ORGANS WITHOUT BORDERS? ALLOCATING TRANSPLANT ORGANS, FOREIGNERS, AND THE IMPORTANCE OF THE NATION-STATE (?)

I. GLENN COHEN

I. INTRODUCTION

Most of the discussion of market or nonmarket forms of allocating and procuring organs takes as its unit of analysis the nation-state, or, less commonly, a particular state or province, and asks what should the system look like in this framework. In this article, the second of two articles that I contribute to this issue of Law and Contemporary Problems, I want to expand the viewership and examine an issue that has received perhaps too little attention in the scholarly and policy discourse: the desirability of treating the nation-state (or its subdivisions) as the right level of distribution for organs, whether through market systems or nonmarket allocation systems. I show that when we flirt with using a more global viewfinder, a series of difficult (and thus far largely unexplored) ethical and regulatory questions arise relating the inclusion of “outsiders.” In part V of this article I explore what relevance this analysis may have to allocation within the nation-state as well.

A large number of questions could be discussed under this title, but for this article I largely limit myself to two related questions. In analyzing both questions I use the United States as the “home country.” This makes for rhetorical simplicity, but the basic issues are the same for any home country. The first issue is: Should the United States allow “foreigners” to be on the list of those eligible to receive organs in the United States when they become available and, if so, at what level of priority? Second: Should the United States maintain its own organ

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Theories for favoring Nationals:
- Reciprocity
- “National ownership”
- Investment/Contribution

- Compare treatment of non-resident aliens listed in the U.S.
- Eurotransplant model and national import-export balance adjustment
- Scandiatransplant “reciprocity rules”
What We Talk About
When We Talk
About Geography(?)