Author’s response to reviews

Title: The Reuse of Cardiac Organs in Transplantation: An Ethical Analysis

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Author’s response to reviews:

Dear Editor,

We thank you for careful reading of our manuscript and providing helpful comments. We have revised and reconstructed our manuscript entitled “Reuse Cardiac Organ Transplantation: Legal and Ethical Implications” (METH-D-18-00050), substantially according to the Reviewers’ comments. As stated below, we would like to change the title of our manuscript to “The Reuse of Cardiac Organs in Transplantation: An Ethical Analysis.” We look forward to hearing from you regarding our revised manuscript, which we submit for publication in BMC Medical Ethics. We are happy to revise it further to address any other concerns you may have.

Sincerely yours,

Akira Akabayashi
The article succeeds in identifying the main fields of legal and ethical concern in the reuse of a transplanted heart. However, with the exception of section 2.2., most parts of the article appear to be rather brief and limit themselves to an introduction of the relevant legal and ethical implications. Therefore, in the opinion of the reviewer, the article would greatly benefit from more in-depth treatment and a more focused and detailed discussion of the particular points raised. For example, section 1.1 presents an overview of the legal situation in the United States and in Japan; however, it seems to fail to provide the necessary information crucial for an effective binational comparison. The authors might want to add at least a brief account of the legal foundation, as well as an overview of the historical and cultural background of the current legal situations in both countries.

Although the methodology of this article is specified in the abstract as a “comparative analysis between the United States and Japan regarding legal and ethical aspects,” a genuine comparison is conducted only on the legal aspects (chapter 1). Apart from a paragraph in section 2.2, chapter 2 (ethical aspects) lacks a comparative analysis of the situation in both countries. Moreover, for some parts of the article (e.g., section 2.3), it is unclear whether the observations presented are given for the Japanese context or for the situation in the United States, or are considered to be “universal.” (Also, the various moral attitudes and notions presented in section 2.3 leave a rather speculative impression, since the basis on which these assumptions are made remains unclear.) Therefore, concerning the method of the article, the authors might also want to reconsider the status of their comparative approach and its relevance to answering their research question presented on page 6. This would imply that they consider whether the proposed binational comparative analysis should really be the central focus of their article, or if priority should rather be given to a more full-fledged philosophical-ethical approach, evaluating the ethical implications of the reuse of a transplanted heart.

We thank Dr. Bauer for the thought-provoking comments that urged a reexamination of our manuscript. Given that the ethical analysis of reuse cardiac organ transplantation (RCOT) is the
key feature of this manuscript, we have made revisions to present more clearly this focus. In restructuring the entire manuscript, we have focused on the ethical aspects of RCOT to provide in-depth discussions, and only briefly discussed the necessary information on the medical and legal aspects.

Consequently, we decided to delete the term “Legal” from the title of this manuscript. The remaining medical and legal descriptions from the original manuscript should both contribute to the subsequent analysis of ethical aspects. With regard to medical considerations, we limited these to a presentation of evidence pertaining to safety. The premise of our ethical consideration is the analysis of safety, which is also a medical evaluation. With regard to the legal description, we discuss issues related to ethical considerations. Using Japan and the United States as examples, we simply confirm issues of illegality, before launching into a thorough discussion of the argument pertaining to property rights, as the latter becomes an important focal point in subsequent ethical considerations.

In rearranging the overall structure as described above, we concluded that it is more appropriate to adopt an ethical analysis method rather than a comparative analysis method in our manuscript, and the Methods section was revised accordingly. Traditionally, ethical analyses can be divided into those that are universal and normative, versus those that are cultural and descriptive; we adopted a universal ethical analysis.

Dr. Bauer commented, “with the exception of section 2.2., most parts of the article are rather brief and limit themselves to an introduction of the relevant legal and ethical implications.” Accordingly, we have revised the manuscript to deepen further our discussions for all items related to ethical analysis presented in the original manuscript (please note that, since we have restructured our ethical analysis, section numbers do not correspond to those of the original manuscript).
We hope our substantial reconstruction and revision of the manuscript places it in condition for publication in BMC Medical Ethics. We are happy to revise it further to address any other concerns you may have. Thank you in advance for your further review.

The original comments of the reviewer 2, Dr. David Rodriguez-Arias (red font), and our responses

1. The paper needs better structure: concerns about inheritance and concerns about consent are similar in my view. Consent-related issues are well discussed in the paper. A suggestion would be to clearly differentiate concerns about consent of the First Donor, and concerns about the second recipients consent to receive a reused organ. Besides, the authors overlook an important and specific question related to the reuse of organs. This becomes especially problematic in this paper, as the authors take very seriously the intention of FD, suggesting that First Donors may have moral, legal and property claims on the use and reuse of their hearts. That question is: Should the first recipient have a right to refuse to donate their transplanted heart after death? (given the assumption that they are not the owners)?

We thank Dr. Rodriguez-Arias for the thought-provoking comments, which have helped us substantially reconstruct our manuscript and improve it considerably.

The major point of our revisions was to restructure the entire manuscript. We have organized the manuscript into the following three parts: medical analysis, legal analysis, and ethical analysis. With respect to the medical and legal analyses, we have limited our discussions to the issues that contribute to the subsequent ethical analysis. The point we want to emphasize is the composition of the ethical analysis section. First, we classified possible patterns as Patterns 1 - 4 according to whether First Donor (FD) and First Recipient and Second Donor (FR/SD) consent to RCOT or not. Details are shown below.
Next, for each of Patterns 1 – 4, discussions were organized according to the following basis of argument: 1) RCOT is ethically permissible, and 2) RCOT is ethically impermissible. For (1), we argue that ethical defense of RCOT is possible on the grounds of self-ownership, as well as the nature of organs as public property (public property theory), gift concept, and heritage concept; in each case, we concluded that RCOT is ethically justifiable. For (2), we mainly discuss identity issues related to organ recycling and organ transplantation as the basis of argument that RCOT is ethically impermissible.

Later in the discussion, we point out the ethical vulnerability of the argument that RCOT is ethically impermissible, and that the argument supporting the ethical permissibility of RCOT comes out ahead. We believe that this section (“Judgment”) represents the originality of this manuscript.

2. The paper mixes ethical and policy issues: that some people may believe that there may be identity issues related to retransplantation of an organ does not make it an ethically relevant topic to be discussed. As an analogy: If people thought that God would be angry if I accept a second-hand heart (a belief that is equally unsupported by data), would you include this as an ethical issue? The concern that personal identity may be threatened by transplantation has never been supported by empirical data. Of course, that does not make the concern politically negligible, but it remains ethically trivial.

We ultimately conclude that debates about identity related to organ transplantation are ethically trivial, according to your suggestion. However, some people might consider personal identity
issues ethically problematic based on the same logic you pointed out. As a matter of fact, identity is considered a serious problem in the tradition of philosophy. Empirical data have yet to be acquired to address these philosophical and controversial themes. We therefore would like to leave out this identity issue, and will address it in a future study.

3. It takes for granted, without much discussion, that directed deceased donation is a position that should be taken seriously. This leads to the assumption that the authors "need to explore the possibility of developing a distinct theory, rather than adopting the conventional ones". That "a considerable number of people in our society might desire to honor the intention of FD as much as possible in the setting of RCOT" does not count as sufficient to elaborate an alternative theory of inheritance, perhaps.

We thank Dr. Rodriguez-Arias for this comment. As suggested, we have organized discussions about designated organ donation (DOD) when we restructured the ethical discussions. In the framework of this manuscript, DOD becomes a problem when Pattern 3 (FD “Disagrees” and FR/SD “Agrees”) is under discussion. This is a case in which FD had expressed their intention to not approve reuse of the organ, while FR/SD wishes for RCOT. When this situation arises, measures to maximize respect for self-ownership of FD’s organ leads to DOD. DOD itself is already a controversial concept, and the utmost respect for self-ownership might also lead to the commercial use of organs, which we cannot tolerate. These points are discussed in detail in Sections 3.2 and 3.3 of the main text.

4. Despite the prominent role families have in OD in Japan, involving that dimension in the analysis creates more confusion than clarity.

As suggested, we decided to delete the discussion about the role of family unique to Japan. We believe that this will help avoid confusion.
5. The whole section on recycling is expendable: why re-using an organ involves a higher challenge to respect than it first use? Isn't organ transplantation a form of recycling itself?

Organ recycling is used as the basis for our argument that RCOT is impermissible. After briefly introducing this discussion in Section 3.2, we discuss it as a mere disgust issue in Section 3.3. However, the feeling of disgust toward RCOT is not that of transplanting the organ once, but of reusing the organ for the second, third, and fourth (or more) times. As such, we think that this feeling of disgust certainly differs in quality from that concerning organ transplantation in general.

Moreover, as pointed out, organ transplantation is a form of recycling. However, our point relates more to the number of times the organ is recycled. Although it might be a matter of degree, we argue that multiple rounds of organ recycling differs in substance than organ transplantation in general.

We hope our substantial reconstruction and revision of the manuscript places it in condition for publication in BMC Medical Ethics. We are happy to revise it further to address any other concerns you may have. Thank you in advance for your further review.