

Innovation and Value: Organ Transplant Abuse in China

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Abstract

Innovation is ethically neutral. Its value depends on how it is used. Technological developments do not change human nature. But they do change the ability to bestow benefits or inflict harm. The development of transplant technology and the mass killing in China of prisoners of conscience for their organs are linked. That this mass killing has been happening within the community of practitioners of the spiritually based set of exercises Falun Gong has been established beyond reasonable doubt. One independent researcher after another has come to that conclusion, as well as an independent tribunal. The mass killing of prisoners of conscience through forced organ has spread geographically and within prisoner of conscience groups as transplant technology has developed. In particular, the development of ECMO (extracorporeal membrane oxygenation technology) and machine perfusion, which is widely used in China, have allowed for organs to survive longer outside the body and be moved around China. The repression of the Uyghurs as well the depletion of the arbitrary detained Falun Gong population through organ extraction and the increased portability of organs because of ECMO and machine perfusion have led to a partial shift in sourcing from local Falun Gong detained to repressed Uyghurs in Xinjiang province. The presentation would explore and explain abuse of transplant technology and its shift in victim populations as a case study of the harm that innovation can bring if not properly encased in legal and ethical norms.

Keywords: China, Organ Transplant Abuse, Innovation

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Introduction

This paper is intended as a contribution to the International Academic Forum Innovation and Value Initiative.¹ The approach of the Initiative, as described on the Forum website, is that innovation has value, but to date has had limits. Better forms of innovation are necessary to overcome those limits, to increase the value of innovation.

That approach is not completely wrong. But it is partial. Many innovations have both positive and negative values. Many innovations are both beneficial and harmful. What needs to happen, when it comes to the harm of innovation is not to overcome the limits, but rather to increase them.

Innovation is ethically neutral. Its value depends on how it is used. Technological developments do not change human nature. What innovation changes is the ability to bestow benefits or inflict harm.

A quote attributed to Albert Einstein, a theoretical physicist whose proof that mass could be converted into energy led to the development of atomic weapons and the bombing of Hiroshima and Nagasaki, is this: "The release of atom power has changed everything except our way of thinking... the solution to this problem lies in the heart of mankind. If only I had known, I should have become a watchmaker."

That is a statement, which could be made about many innovations. Some innovations are created for harmful purposes. But many are not. And the innovators cannot even imagine the harm to which their innovations could and often do lead.

Innovators with good intentions are taken aback when they see the harm to which their innovations lead. Only after they see the abuse does a fundamental truth hit home, that their innovation has not changed our way of thinking.

The solutions proposed in the quote attributed to Einstein, changing the heart of humanity or doing something besides innovating, are not, I suggest, that realistic. If Hiroshima and Nagasaki did not change our way of thinking, nothing will. As well, even if Albert Einstein had become a watch maker, someone else would likely have theorized the relativity of energy and mass. There is a long history of innovations with more than one innovator.

That does not mean that there is no solution to the problems innovations pose. But the solution realistically cannot be to change the heart of humanity or to stop innovation. The solution has to lie elsewhere.

We have to accept the reality that, though innovation generates constant change, human nature remains the same. We have to address human nature as it is, not as we would like it to be or hope it to become.

When we consider the spectrum of thinking of humanity as a whole, the range is vast. The willingness of elements of humanity to inflict harm does not change with every innovation. On the contrary, with many innovations, the ability to inflict harm increases and the willingness of at least elements of humanity to inflict harm remains. The result is that, with many innovations, no matter how well intentioned, the risk of harm increases.

The solution, clumsy as it is, is catch up. When innovations intended for good end up generating harm or risk of harm which their creators did not anticipate, the solution has to be after the fact, putting in place mechanisms of prevention and remedy, as quickly, as systematically, as widespread and as effectively as possible.

One could give a myriad of examples of the unanticipated problems innovation poses, aside from the bombing of Hiroshima and Nagasaki flowing from Einstein's innovative theory of relativity. Here I will address only one, the innovation of organ transplantation.

The linkage between transplant innovation and harm

The development of the technology of organ transplantation is relatively recent, subsequent to World War II. The developers of that technology, it is safe to say, did not anticipate it would lead to the mass killing of prisoners of conscience for their organs. Yet, that has been the result.

Transplant technology was, when initially developed, considered a boon to humanity. There were attempts to spread it as quickly and widely as possible, without guardrails. Consequently, once in China, state hospitals with the cooperation of prisons and detention centre, began the mass killing of prisoners of conscience for their organs, there was a combination of global surprise and disbelief.

Part of that surprise was the result of then existing legal and professional structures and institutions. Since the killing of prisoners of conscience for their organs had not been anticipated, there were no legal or professional ethical standards to prevent or remedy the killings. The absence of norms and remedies made the violations easier to perpetrate. The absence was one cause of the abuse and also a reflection of how unexpected the abuse was.

The mass killing in China of prisoners of conscience for their organs is a fact without substantive research dispute. Every researcher who has looked at the data comes to the same conclusion that the abuse has existed without a reasonable doubt since the early 2000s and continues to this day.²

Yet, many people, when presented with this reality, react in disbelief. This disbelief is often the result of the anomalous juxtaposition of the good of organ harvesting and the harm of mass killing of prisoners of conscience.

There is an apparent complete mismatch between transplant technology and the mass killing of prisoners of conscience. Their linkage appears to be a joining of opposites. On its surface, transplant technology would seem to be an unmitigated good. The mass killing of prisoners of conscience appears to be a harm without excuse or value or justification. How was it possible for the two to come together?

To answer that question requires consideration of the situation in China. Two laws, one of 1979 and one of 1984, were important for the development of transplant technology in China. The Chinese Ministry of Health Rules Concerning the Dissection of Corpses of September 1979 sets out three types of dissection-ordinary, forensic and pathological dissection. Ordinary dissection is allowed in two types of cases, one where the deceased has so provided in a will or the family volunteers the corpse for dissection and a second where no one claims the corpse.³

The Provisional Regulations on the Use of Dead Bodies or Organs from Condemned Criminals of October 1984⁴ provides that the dead bodies or organs of the three categories of condemned criminals can be made use of. The three categories are:

1. The uncollected dead bodies or the ones that the family members refuse to collect;
2. Those condemned criminals who volunteer to give their dead bodies or organs to the medical institutions;
3. Upon the approval of the family members.

Organ transplantation began and developed in China through the use of prisoners sentenced to death and executed. In the earliest cases, organs were extracted after execution. However, a practice developed of killing through organ extraction, because that practice was preferable for transplantation. Once a person is dead, their organs deteriorate. Extracting organs while the person was still alive led to higher quality of extracted organs.

China began organ transplantation without an organ donation system. The reason has partly the cultural aversion to donation and partly the result of the fact that death penalty volumes were so high that, at least initially, the volume of death penalties provided more than enough organs for transplantation.

The consequence of this initial sourcing of organs from death penalty prisoners was that the transplantation system revolved around sourcing organs from prisoners. Hospitals became used to sourcing organs from prisons. The courts, which sentenced prisoners to death, used their registries as organ distribution systems, distributing organs from prisoners killed locally to local hospitals.

Another feature particular to China is the widespread existence of military hospitals. Military hospitals in China, though run by the military, cater, unlike military hospitals elsewhere, to the population at large and not just military patients. These military hospitals have a special access to organs from prisons and detention centres because of the close connections between the military and the prison/ detention personnel.⁵

Three related developments led to a shift from a prisoner sentenced to death population to prisoners of conscience as the primary source of organs from transplantation. One was the decline of the death penalty.

Death penalty statistics in China are considered official secrets. Yet, it is impossible to cover up entirely the volume of prisoners sentenced to death and executed.

For one, the many laws imposing the death penalty are public. For another, death penalty cases are often reported in the local media. Third, there are many lawyers who defend those accused of crimes which carry the death penalty. These lawyers may report on their caseloads. Fourth, complete secrecy about the death penalty would undercut its supposed deterrent effect.

The huge death penalty volume in China led to global push back, as part of the global opposition to the death penalty. The Government of China reacted by raising the level of the Court which imposed the death penalty, thereby making death penalty sentences harder and slower to issue, and by cutting down the number of death penalty offences.

The Government of China initially defended the sourcing of organs from prisoners sentenced to death on the basis that the prisoners volunteered their organs to atone for their crimes. These claimed donations were not independently verifiable. As well, because of the coercive environment of prison, these donations, no matter what the documentation, could not be considered truly voluntary. Foreign transplant professionals and non-professionals alike refused to accept this justification for sourcing organs from prisoners sentenced to death. The Government of China eventually relented, announcing that, as of January 2015, they would cease sourcing organs from prisoners sentenced to death.⁶

A second feature leading to the shifting of sourcing of organs from prisoners sentenced to death to prisoners of conscience was the massive detention of Falun Gong and their vilification. Falun Gong is a set of exercises with a spiritual foundation. It is a blending and updating of the Chinese qi gong exercise and spiritual Buddhist/ Taoist traditions. It began in 1992 with the teachings of Li Hongzhi. The practice was initially encouraged by the Communist Party on the basis that the exercises were beneficial to health and cut down on the costs to the health system.

The practice grew, with the encouragement of the Party, from 70 million practitioners, according to Government estimates, to 100 million practitioners, according to practitioner estimates, by 1999. At the time, the membership of the Communist Party was 60 million.

In 1999 the Party turned complete around, from encouraging the practice to repressing it. One reason was its very popularity. The ideology of Falun Gong is not political, but it is a belief system that has nothing to do with Communism.

Another reason for the repression is the spirituality of Falun Gong. Communists in China, in contrast, maintained their adherence to atheism.

A third reason for the repression was the mobilization capacity of Falun Gong practitioners through the internet and cell phones, to protest the initial efforts at repression. The Party was not used to flash mobs and horizontal communication. They developed a paranoid fantasy that Falun Gong was an organized effort orchestrated by an underground mastermind.

The repression led to massive detentions of Falun Gong practitioners. Those who recanted and pledged allegiance to the Party were released. Those who initially refused to do so, but relented after torture were also released. Those who remained in arbitrary, indefinite detention were numbered in the high hundreds of thousands, spread throughout China.

Why the Communist Party repressed Falun Gong and why they claimed to repress Falun Gong diverged considerably. The fact that the practice of Falun Gong had more adherents than the Communist Party, though a primary motivator for the repression, was not much of a selling point to those not members of the Party.

The Party invented a wide variety of slanders against Falun Gong to justify their repression. Their inaccuracy, on the one hand, led to a sequence of Falun Gong protests and attempts to communicate the reality of Falun Gong, something that generated a large number of arrests and detentions. The slanders, on the other hand, had the effect of demonizing the Falun Gong population within the Party and the state apparatus. This was particularly so in the Chinese prison and detention system. Many jailers viewed their Falun Gong prisoners/ detainees as sub-human.

A third feature leading to the shifting of sourcing of organs from prisoners sentenced to death to prisoners of conscience was the change of financing of the Chinese health system. Under the socialist system, which the Chinese Communists initially introduced to China, the health system was financed by the state.

However, under Chinese President and Communist Party General Secretary Deng Xiaoping, China shifted from socialism to capitalism. That shift meant taking government money out of a lot of public services, including hospitals. All of a sudden hospitals had to find other sources of funds. Selling organs became the primary reason why these hospitals were able to keep their doors open.

The separate causes of the shifting of the sourcing of organs from prisoners sentenced to death to prisoners of conscience had a synergistic effect. Once the health system shifted from sourcing organs from prisoners sentenced to death to prisoners of conscience and started charging for organs, they began to realize how profitable the shift was. The demand for organs for transplant globally is inexhaustible. So, with the massive, demonized, indefinitely, arbitrarily detained Falun Gong population seemed to be the supply.

What initially seemed like a stop gap became over time, for the health system, a bonanza. Organs from prisoners of conscience, rather than just being used to fill the gap caused by the shift from public to private in hospital financing and the decrease in availability of death penalty organs, became the basis for expansion. Transplant hospitals and transplant wings of existing hospitals sprang up throughout China, catering to a global transplant tourist population.

Though the use of death penalty prisoner organs for organ transplantation eventually stopped, at least nominally, because of its unacceptability abroad, there has been no similar announcement of stoppage of the use of prisoners of conscience organs. The reason for this difference is that the Government of China had earlier admitted to using organs from death penalty prisoners to attempt to explain away the large difference between the volume of organs transplanted and the volume of otherwise identified sources for these organs. For prisoners of conscience, there was no similar admission. There was therefore, in terms of the Chinese Communist/ Government public record, nothing to stop.

The Chinese State Council in 2007 enacted Regulations on Human Organ Transplant which prohibits sourcing of organs without consent.⁷ The 1979 law which allows organ sourcing for research or education of unclaimed bodies without consent and the 1984 law which allows organ sourcing from unclaimed bodies of prisoners without consent remain in effect. The 2007 Regulation did not repeal them. As a matter of legal interpretation, the particular is typically taken as an exception to the general, rather than being invalidated by the general.

As well, family members often would not reclaim bodies of detained or imprisoned Falun Gong practitioners. For one, the family often did not know where their detained or imprisoned Falun Gong relatives were. For another, the family often were reluctant to identify themselves to the authorities for fear of being victimized for not themselves stopping the practice of their Falun Gong relatives.

The Government of China is controlled by the Chinese Communist Party, not just in Beijing, but throughout China. The law in China under the control of the Party has a distorted position. The Party controls the police, the investigators, the prosecutors, the courts and even the defence bar.

Consequently, the law is not used against the Party, because the Party does not want the law to be used against itself. There is no rule of law, only the rule of the Party.

That is a horrifying enough story as it is. But there is more. Again, the motor for change was innovation.

Transplant volume ramped up, after the entrenchment of the using organs killing of Falun Gong prisoners of conscience for their organs, to 100,000 organs transplanted a year. The Falun Gong population in arbitrary indefinite detention, as large as it was, eventually, through the mass killing for their organs, depleted. The number of newly detained Falun Gong practitioners was nowhere near as great as the number of those who were slaughtered through the mass industrialization of the Chinese transplantation system. A large new source of organs became necessary. That source became, for the most part, the Uyghur population, detained in large numbers since 2017, in continuation and expansion of a systematic repression which had initially escalated in 2014.

In March 2014, eight Xinjiang Uyghur terrorists stabbed 141 people at a train station in Kunming City, Yunnan Province, killing 31. Urumqi, the capital of Xinjiang, is almost four thousand kilometres away from Kunming. A non-stop flight between the two cities takes over four hours. A terrorist attack of this dimension, emanating from Xinjiang and taking place so far from Xinjiang, electrified China. After that attack, President Xi Jinping called for an all-out "struggle against terrorism, infiltration and separatism" using the "organs of dictatorship," and showing "absolutely no mercy."⁸

Although the terrorist component of the Xinjiang population is infinitesimal, the whole Uyghur population was demonized as terrorist. Although the vocabulary of demonization used against Uyghurs was different from that used against Falun Gong, the result was the same, mass killing of the target population for their organs.

By 2017, sourcing organs from Uyghur prisoners of conscience became both necessary, because of the depletion of the Falun Gong population in indefinite and arbitrary detention, and possible, both because of the mass Uyghur detention and because of innovation. At the time the mass killing of Falun Gong for their organs began, in the early 2000s, the survival time of organs outside the body, ischemic times, were short. Organs for transplants were sourced locally both because they could be and, more importantly, because they had to be. There was not enough time, after organs were harvested, to take them long distances away.

That changed with advances in organ cooling, organ preservation solutions and machine perfusion of organs with oxygen, all of which can extend organ survival time outside the body. Organs no longer need to be sourced locally. Through the development of those technologies, organs can now survive long enough outside the body to be sourced anywhere in China and be transported anywhere else in China. The repression of the Uyghurs as well as the depletion of the arbitrarily, indefinitely detained Falun Gong population through organ extraction and the increased portability of organs, because of variety of technological advances in organ transplantation, have allowed for a substantial shift in organ sourcing from local Falun Gong detained to repressed Uyghurs in Xinjiang province.

Conclusions

To move from the technology of organ transplantation to the mass killing of prisoners of conscience for their organs in one bound is a large leap. The disbelief in reaction to the evidence of the abuse is a reflexion of the size of the leap.

Yet, if one considers the confluence in China of these features:

- 1) the institutionalized sourcing of organs for transplantation from prisons from the get go,
- 2) the decrease in the availability of death penalty prisoner sources
- 3) the unacceptability abroad of sourcing organs from these death penalty prisoners,
- 4) the need for the hospital system to seek alternative sources of funding with the Communist shift from socialism to capitalism and the consequent withdrawal of government funds from the health system,
- 5) the massive arbitrary and indefinite detention of first the Falun Gong and then the Uyghur population,
- 6) the demonization of both these populations by the Communist propaganda machine,
- 7) the laws which allow the sourcing of organs from prisoners without their consent or the consent of their family members where the bodies are unclaimed,
- 8) the absence of rule of law which puts Communist Party misbehaviour beyond legal reach,
- 9) the widespread presence of military hospitals catering to the public at large, with privileged links to prisons and detention centres and
- 10) the blanket censorship and cover-up within China which prevents widespread knowledge of organ transplant abuse within China, the leap does not seem so large. What at first blush may not seem plausible becomes, if one looks at the details, far more explicable.

In retrospect it is easy enough to understand how this abuse happened. But it would have been unrealistic to expect the organ transplant innovators to foresee this abuse and forestall their innovations based on this hypothetical foresight.

Changing the hearts of the Chinese people about the Chinese Communist Party is certainly a worthwhile effort. Anyone who makes the effort deserves our commendation and support. I hope that one day it will happen and do not despair that it will not. Yet, waiting for an end to Communism in China is waiting too long. That wait is not an immediate practical solution to preventing and remedying organ transplant abuse in China.

Sourcing organs from prisoners began, in China, as a convenience and became an addiction. At the time that sourcing of organs from prisoners sentenced to death started, the sourcing seemed easy and obvious. There was a cultural aversion to donation and no donation system, and prisoners sentenced to death and executed were available corpses. A whole institutional structure within the health, court registries and prison system was built around this sourcing.

Once hooked on this sourcing, the users were unable to break the habit. On the contrary, the system developed a financial appetite for larger and larger doses. As the years went by, the health system became so dependent on this source of funds that withdrawal, without help, became impossible.

Accessing help within China is difficult, because of the totalitarian control of the Communist Party. The first step to breaking an addiction is to acknowledge its existence. The Party does not see as problems those problems they themselves have created.

Yet, outsiders can do plenty, both by avoiding complicity with abuses in China, and by providing leverage in China to those who would wish to effect change. Exactly what that avoidance and leverage should be and the explanation why that avoidance and leverage have not been effected comprehensively to date are the subjects of several additional papers.

What I would say now is that even the most seemingly beneficial innovation can wreak untold harm. Just look at organ transplantation innovation and its use for the mass killing of prisoners of conscience in China.

Endnotes

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