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Veritatis Splendor and the Ethics of Organ Transplants

by

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We live at a time when technological progress has augmented and intensified our natural inclination to self-preservation while also arresting and eclipsing our moral wisdom. Thus, Pope John Paul II's October 1993 encyclical, *Veritatis Splendor* (*The Splendor of the Truth*) is the very moral wisdom that we are groping for. The encyclical is historic as well as timely because it marks the first time in the history of the Church that the Pope has addressed and defended the very foundations of morality against the rampant skepticism and confusion about moral norms. One of the most outstanding points of the encyclical is the upholding of the consistent teaching of the Church that a human act, independently of the intention of the agent or circumstances connected to the act, can be intrinsically evil and can be known to be so. In n. 80 of the encyclical, Pope John Paul II makes this point and then cites a passage from *Gaudium et Spes* that names some of these intrinsically evil acts.

Whatever is hostile to life itself, such as any kind of homicide, genocide, abortion, euthanasia and voluntary suicide; whatever violates the integrity of the human person, such as *mutilation*, physical and mental torture and attempts to coerce the spirit; whatever is offensive to human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution and trafficking in women and children; degrading conditions of work which treat laborers as mere instruments of profit and not as free responsible persons: all these and the like are a disgrace, and so long as they infect human civilization they contaminate those who inflict them more than those who suffer injustice, and they are a negation of the honor due to the Creator. (emphasis added)¹

I had put a good deal of thought into the moral justification of bodily mutilation for the sake of organ donation prior to the publication of *Veritatis*

Splendor and I had already been struggling with this question. However, the mention of "mutilations" in this list of intrinsically evil acts obliges the moral theologian to press on with this question with ever greater intensity. In my reflections, I will restrict myself to organ donations from a living donor, even if I also think that organ donations from cadavers raise many serious questions. Please also take note that I want to press this issue into a corner. I am in search of an honest and consistent answer. It is my view that we have been fudging on this issue.

It is interesting to note that, in recent years, whenever the Magisterium has spoken on the topic of organ donation, the motive of charity has been lifted up and praised. However, to the best of my knowledge, the Magisterium has not addressed the moral species of the act of bodily mutilation for the sake of organ donation, independently of the intention or circumstances, at least not until *Veritatis Splendor*, and there, as noted, only in passing.

Pope Pius XII was the first Pontiff to address the issue in a direct and fundamental way. At that time, when the practice of organ transplanting was at its infancy, there were attempts to articulate the moral justification of bodily mutilation on the basis of the principle of totality. According to that principle, all the parts of the human body, as parts, are meant to exist and function for the good of the whole body, and are thus naturally subordinated to the good of the whole body. Pope Pius XII was very clear in his teaching that the principle of totality could not be the basis of the moral justification of bodily mutilation. The principle of totality, the Pontiff pointed out, referred to the natural, physical body and not to the moral body of civil society. Extending the principle of totality to include the moral body of civil society, he noted, would leave the door open to the moral justification of subjecting the body of the human person to the service of civil society. According to the principle of totality, the Pope noted, the parts of the human body serve the whole body, of which it is a natural part. The principle of totality does not envision the part of one human body serving another human body.²

In the course of this discussion, theologians began to distinguish between major and minor mutilations of the body. Major mutilations were those in which a part of the body was permanently removed from the body. Minor mutilations were those in which parts of the body were removed, but not permanently, as in the case of the removal of skin and blood, which naturally restore themselves. In the light of this distinction, theologians began to wonder if the practices of blood transfusions and skin grafts could be morally justified on the basis of the principle of totality, given the fact that these are minor mutilations in which parts of the body are not permanently removed. It is important to note that a positive answer to that question would also lead to the conclusion that, indeed, yes, parts of the body can have a legitimate purpose beyond serving the whole body of which it is a natural part, as long as the part is restored in order to continue serving the same whole body. Note that the moral justification of minor mutilations was not originally envisioned by the principle of totality.

To the best of my knowledge, no one has articulated the moral justification of major mutilations, except in terms of the motive of charity. According to the

Catechism of the Catholic Church as well as *Veritatis Splendor* (and John Paul himself points out at the beginning of *Veritatis Splendor* that this encyclical presupposes that one has read the third part of the *Catechism*, "Life in Christ") the morality of the human act is dependent upon the moral species of the act as well as the intention and circumstances. In other words, the morality of a human act depends on the *what* as well as the *why, how, when* and *where*. Moreover, a good *why* (even charity) and/or a good *how, when, or where* cannot make a bad *what* good. For a human act to be a good act, it must be good in every respect. This teaching of the Church, it seems, rules out the argument that, when it comes to bodily mutilation for the sake of organ donation, the supernatural virtue suspends the natural principle of totality.

Between the time of Pope Pius XII and that of Pope John Paul II, it does not appear that moral theology has accomplished much at all in the realm of the ethics of organ transplanting. Generally speaking, one either encounters appeals to charity or appeals to what at first might appear to be a new distinction between anatomical integrity and functional integrity. On the basis of this distinction, some have argued that while one is not obliged to preserve one's anatomical integrity, there is the obligation of preserving one's functional integrity. If I have more than one of the same organ and can live with just one, the argument goes, then it is morally legitimate to donate the organ that I do not need. As it is put in the *Ethical and Religious Directives for Catholic Health Care Facilities*, "The transplantation of organs from living donors is morally permissible when such a donation will not sacrifice or seriously impare any essential bodily function and the anticipated benefit is proportionate to the harm done to the donor."³

Upon closer inspection, this seemingly new distinction turns out to be the principle of totality in disguise, or the principle of totality coming through the back door instead of through the front door. It is true that the statement, "It is morally legitimate to donate an extra organ that I can function without" differs from the statement, "My organ can legitimately serve the body of another person." The first statement, based on the distinction between anatomical and functional integrity, justifies mutilation in connection with the origin of the donation. The second statement justifies mutilation in terms of the end served. The first statement principally addresses the bodily welfare of the one donating the organ, while the second statement principally addresses the bodily welfare of the beneficiary of the donation. It might appear that the distinction between anatomical and functional integrity adjusts the principle of totality to the possibility of serving as the basis of the moral justification of bodily major mutilation for the sake of organ donation by introducing a mandatory safety clause for the donor. However, the bottom line is that it is the principle of totality, the principle that Pope Pius XII ruled out, that is being appealed to. Moreover, the distinction between anatomical and functional integrity basically sidescirts the point at the core of the principle of totality, namely, that at issue is the meaning and dignity of human nature as embodied person or personed body. The distinction between anatomical and functional integrity, besides serving as the backdoor entrance of the principle of totality into the discussion of the ethics of organ transplants, fosters the self-understanding of the human person as a set of

parts, some of which are expendible.

My point is that the *what* of bodily mutilation for the sake of organ donation is very difficult, if not impossible, to justify morally. Indeed, that *Gaudium et Spes* labels mutilations as intrinsically evil - and does so without qualification - suggests that it is impossible to justify morally. Moreover, there is an aspect of organ donation that can be extremely helpful in gaining a deeper appreciation of the meaning of the intrinsically evil.

In their book, *Spare Parts*, published in 1992, René Fox and Judith Swazey reviewed their study of the developments in the practice of organ transplanting, a study that extended from the 1950s to the present time. Besides noting that organ transplanting has been remarkably unsuccessful, the authors chart the map of the pattern of the practice over 40 years. Basically, the pattern looks like a fork on the road. At first, the practice traveled down one road at the fork, namely, encouraging the donor and beneficiary to know each other. The idea behind this practice was the humanization of the mutilation and donation. However, as the practice was carried out, an unexpected problem arose. Fox and Swazey label the problem "the tyranny of the giver." In an overwhelming number of instances, the donor was, in effect, incapable of finally letting go of the organ that he or she donated. In the end, the donor was incapable of viewing the donated organ as "not-me" or "not-mine." Remarkably, this was even more the case in the context of one family member donating an organ to another family member.

It wasn't long before the practice of organ transplanting retreated from that road and proceeded on to the second road at the fork, namely, anonymous giving. This road has proven to be as problematic as the first, and even more so. Anonymous giving has led to the call for the marketing of human organs. Thus, each road, each in a different way, leads to the dehumanization of the practice, if it weren't dehumanizing in the first place.

It was for this reason that, after writing their book, Fox and Swazey left the field of the study of organ transplanting. However, it was all the more surprising to discover that in their book, they miss their own best point. After their discussion of the perils of the road of anonymous giving, Fox and Swazey reconsider the original practice of donor and beneficiary knowing each other, but they swiftly dismiss it in defense of anonymous giving! They left the field, to be sure. However, how did they manage to fall short of the conclusion that organ transplanting crosses the boundary of what human nature can support and condone?

There is another author who can be helpful at this point. Leon R. Kass, in a recent article, "Organs for Sale? Property, Propriety, and the Price of Progress,"⁴ is genuinely troubled about the practice of organ transplanting. On the one hand, he is well aware of the benefit an organ transplant can be for someone. He goes so far as to say that if his daughter's life could be saved by the donation of his own kidney, he would not hesitate to make that donation. On the other hand, Kass seriously questions how much wisdom, if any, can flow from the fusion of modern technical progress and the love of one's own.

At one point in his exploration of the benefits of organ transplants, Kass goes as far as anyone has ever gone, while still grounded in nature, in the attempt finally to articulate the moral justification of bodily major mutilation for the sake of

organ donation:

... a donated organ carries with it the donor's generous good will. It is accompanied, so to speak, by the generosity of soul of the donor. Symbolically, the "aliveness" of the organ requisite for successful transplant bespeaks also the expansive liveliness of the donor - even or especially after his death. Thus, organ removal, the partial alienation-of-self-from-body, turns out to be in this curious way, a reaffirmation of the self's embodiment, thanks to the generous act of donation.

Even in this argument of Kass - an argument that is, in his mind, a going out on a limb in search of a genuine moral justification of the *what* of bodily major mutilation for the sake of organ donation, he is unable - because I think it is impossible - to overcome human nature's inability to recognize the donated organ as "not-me" or "not-mine." In fact, Kass' attempted moral justification depends most of all on viewing the donated organ as "a reaffirmation" of the donor's "embodiment," following the alienation-of-self-from-body that constitutes mutilation. Kass' attempted moral justification of bodily major mutilation for the sake of donation, you will recall, is the articulation of the rationale behind traveling down that first road at the fork as discussed by Fox and Swazey: donor and beneficiary knowing each other. As we learned, however, that road leads to the "tyranny of the giver." The only way of avoiding human nature's inability to recognize the donated organ as "not-me" or "not-mine" is to travel down the second road of anonymous giving, which leads to the reduction of the human person to a set of marketplace parts.

If, in the light of *Gaudium et Spes* and *Veritatis Splendor*, we must call mutilations intrinsically evil, perhaps in hindsight, like Fox and Swazey, we can say that we learned that the hard way. However, in having learned it the hard way, we can at least draw from this experience the good that we ought not to take lightly the notion that a human act can be intrinsically evil and such acts are what they are because they cannot avoid dehumanizing us.

We are the heirs of the legacy of René Descartes and Francis Bacon, namely, the quest for "the relief of man's estate," "comfortable self-preservation," and even, as Descartes envisioned it, bodily immortality. Another way of describing their legacy is the attempt to reclaim the tree of life by way of a second try at the tree of knowledge of good and evil. A serious consequence of this inheritance is that our addiction to technological progress, especially as that progress augments and intensifies our natural inclination of self-preservation (which includes the natural love of our own bodies) reduces our reasoning about the true and the good to rationalizing what we have already willed. In our heart of hearts, we don't want there to be anything intrinsically evil. We don't want there to be natural limits to what is human. We want to live forever. We are convinced that we can figure out how to do so. In short, we still want to be God. We don't usually admit this. At best, imitating Bacon and Descartes (and usually unconsciously), we put a "kinder, gentler" face on it by speaking about our augmented and intensified love of our bodies in altruistic terms: we want to help others. Quite often this is genuine charity. Even so, we would have to say that, if we have Christian hearts, we still have Cartesian minds. A good *why* - even a Christian *why* - does not make a bad *what* good.

Think of *Veritatis Splendor* as the cherubim placed by God in the Garden of Eden to guard with a flaming sword (the splendor of the truth) the way to the tree of life.

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 4. *The Public Interest*, No. 107, Spring 1992, pp. 65-86.
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