

SOME MORAL PROBLEMS ASSOCIATED WITH HUMAN TRANSPLANTS

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When dealing with the moral aspects of transplants one has to think of a double operation, that by which the tissue or organ is taken from one person, and that by which it is grafted on to another: hence we should consider both the receiver and the donor.

As regards the receiver the doctor should be sure that the patient will die if the transplant is not made, and that, be-

sides, there is a good probability of the operation being successful. The surgeon should also have the consent of the patient, or, if he is a minor, of his parent (father) or tutor.

As regards the donor, the transplant may be an autograft, or a graft from another person. In the first case there is no difficulty as all the parts of a living human organism are ordained to the benefit of the whole. The surgeon has only to be morally sure, medically, that both excision and graft are necessary for the patient's survival and scientifically likely to be successful (cf. Fr. Gerald Kelly, "Notes on Moral Theology, 1951", in *Theological*

Studies, March, 1952, p. 60; Pius XII's Address to the First International Congress of Histopathology of the Nervous System, September 13, 1952, in *Addresses of Pope Pius XII*, 1952, Edizione Paolini).

The problems arise with grafts from another individual. The donor may be dead or alive. In the former case the consent has to be given by the next of kin or the situation must be such that the consent may be legitimately presumed. Obviously the case in which it cannot be presumed would be when the dead donor had expressed such a refusal in his will. Still, even in such a case, if the necessity of saving the receiver make the measure urgent and no other provision for a transplant is possible, one might perhaps agree to presume that the dead donor would not have been unwilling to change his mind had he been still alive.

The crucial problem is how to be certain that the donor is dead, because if he is not, even though his state is hopeless and it is certain that he would die very soon, an excision made upon him which terminates his life is murder. The traditional definition of death used to be the complete and permanent cessation of respiration and circulation, but recent advances in chemical and electronic cardiac resuscitation techniques as well as the use of mechanical respirators have created a need for a new definition. In the case of death through an accident, the determining of death may not be difficult, for if, in that case, the corpse shows damages or lesions which are incompatible with life, e.g. if the brain is completely crushed, or the head cut off, it is clear that death in its absolute sense, is present. In fact, the soul can only animate a functional body, i.e. one which has the essential organs for animation, for life; and that requires that the body still retain those of its organs which are required for animation. Hence if it lacks the brain or the heart it is not in a state to be animated by a soul. If these essential parts are lacking, even though there is still some movement, artificial or otherwise, in other parts, the body as such is dead and the soul will not animate it.

Clinical death is now generally accepted as identifiable with brain-death,

and the electrocephalograph is the standard instrument to detect it. But even here one may safely ask: Is this absolutely safe? Indeed, a barbiturate dose may result in a flat EEG for four hours or more, and nobody will call that death. We might perhaps define death as the point at which the brain ceases to function having reached a point of no return, i.e. having reached a stage when it is unable to regain its functionality. The electroencephalograph is certainly a very helpful instrument for establishing that state provided that the straight EEG line is not provoked by artificial agencies, such as the overdose referred to above. Decomposition of the body begun and permanently continued certainly indicates death, but it is more an indication of a state of death, not of the moment at which death occurs; and for transplant operations the state of decomposition may be too late: the surgeon wants the organ to be transplanted *before* decomposition begins.

The case of transplants from human beings who are still alive raises greater problems. If what is taken from the donor destroys or substantially impairs the biological functionality of the organism, provoking death, then or later, the excision is not morally allowed, because it amounts to murder if the donor is not willing, and to suicide if he is willing, since man has only the use, not the ownership of his own body. This has always been the teaching of the Catholic Church, and Pius XII confirmed it in the address quoted. These are his words: "As regards the patient, he is not the absolute owner of his own body and of his soul. He may not therefore freely dispose of himself as he pleases or fancies... the patient is subject to the Theology which follows from nature; he has the right to make use of his body, limited by the natural scope of the faculty itself... and because he has the right of use, he is not the owner, he has not an unlimited right to accomplish acts of destruction or of mutilation of an anatomical or a functional character."

If what is taken from the donor does not destroy or substantially impair the biological and functional integrity of the organism one should distinguish. If what is

taken is minimal and clearly does not involve mutilation in the strict sense of the word, and, besides, does not impair one's health, e.g. a small bone, a small piece of skin, a blood transfusion or the like, there is no moral prohibition whatever. But theologians are divided in their opinion of the moral correctness of the act if what is excised is a whole organ (one, which, if single, does not provoke death if excised, e.g. the uterus; or both of a pair if they do not provoke death when excised, e.g. both ovaries; or one of a pair, e.g. a cornea, a kidney, etc.).

Some theologians consider such an excision as *always* immoral since, in their view, it runs counter to God's ownership of the human body. They think that every mutilation is a violation of biological integrity, and they appeal to the maxim "*non sunt facienda mala ut eveniant bona*" (what is evil may not be done for the sake of a good purpose). Furthermore they refer to the statement of Pope Pius XII quoted above and to the encyclical *Casti Connubii*, paragraph 24 (30th Dec. 1930) of Pope Pius XI which reads as follows: "Christian doctrine establishes, and the light of human reason makes it most clear, that private individuals have no power over the members of their bodies beyond that which pertains to their natural ends; and they are not free to destroy or mutilate their members, or in any other way render themselves unfit for their natural functions except when no other provision can be made for the good of the whole body." Theologians quoted as holding this view are L. Bender, *Organorum humanorum transplantatio*, in *Angelicum*, XXXI (1954); *Il trapianto di un membro dal punto di vista morale*, in *Perfice Munus*, (Aprile, 1955); T. Goffi, *Moralità del trapianto di un membro umano*, in *Rivista del Clero Italiano* (1954); *idem* (1955); G. Borg, *Del trapianto di un membro*, in *Perfice Munus* (Marzo, 1955); F. Regatillo-M. Zalba, *Theologiae Moralis Summa* (1953), Vol. II, n. 252; F. Hurth, *De re matrimoniali*, (1955).

Another group of theologians, while accepting that mutilation is illicit, are of the opinion that there can be exceptions "when God is expected to be willing", and

they hold that God may be considered to be willing when the excision is done for the noble motive of charity, taking, of course, account of due proportions. The unity of the human race in the brotherhood of creation and of Redemption would be the justification of the charity motive. Prominent theologians holding this view are A. Vermeersch, *Theologiae Moralis Principia*, 1945, Vol. II, N. 299; P. Bongiovanni *Trapianto di un organo*, in *Perfice Munus* (dic. 1954); A. Gemelli, *Sulla liceità di cedere un organo per il trapianto omoplastico*, in *La Scuola Cattolica*, 1934; D. Gennaro, *Casus conscientiae*, in *Perfice Munus* (Aprile, 1955).

Still another group of theologians who accept that mutilation, if considered in itself, is immoral, but who allow transplants of one of a pair of organs, redefine mutilation. They hold that by mutilation should be meant not the excision of an organ, but the destruction of its functionality. In their view, if an organ was excised in such a way that it remained alive and functioning, and hence, when grafted, continued to function, biologically, as newly grafted, one could not speak of mutilation. Apart from charity motives as in the precedent theory, they quote in their favour the *Casti Connubii* passage of Pius XI already mentioned. They contend that from the Pope's words one can gather that bodily organs are given to man for their natural end, i.e. for a definite biological purpose, and the words "or in any other way" equate the word "mutilation" with "unfitness for their (the organs') natural functions". Hence, these theologians think it is immaterial on which body the organs function as long as they continue to function properly (given always a good reason — the motive of charity — and taking care of due proportions). Holders of this view are L. Babbini, *Il trapianto delle ghiandole alla luce della morale*, in *Palestra del Clero*, 1950; L. Scremin, *Dizionario di morale professionale per i medici*, 1953; and the already quoted Bongiovanni and Gennaro.

Lastly, another group of theologians, and quite a large one, holds that mutilation is in itself not bad and illicit, but

simply morally indifferent. They contend that if man may offer his *life* for the good, spiritual or material (duly proportionate) of others, why not also an organ of his body if this does not provoke death? They quote Our Lord's words (John, 15, 13): "Greater love than this no man hath, that a man lay down his life for his friends." The Church has canonised Fr. Kolbe for giving his life to save a family man (from motives of divine and human charity, of course, which Fr. Cunningham expresses in terms of the unity of men in the mystical body of Christ). The execution of condemned murderers by public authority can only be morally allowed because it is presumed that "God is willing" and because the taking of life is not of its own nature (*ex natura sua*) bad, otherwise God would not be able to allow it. Some moralists, among them St. Alphonsus de Liguori (whom the Church has made the patron saint of Moral Theologians), have not deemed it possible, morally, to condemn castration carried out with the object of keeping a childlike voice. Even granting that man is not the owner of his body, yet he is its good administrator. This allows him to beat his body even to the shedding of blood and to deny it nourishing food for the spiritual purpose of self-chastisement and self-denial, and it also allows him to accept some mutilation and to dispose of some organs for the spiritual and material benefits of himself and of his fellow men. The biological integrity of one's body is not substantially impaired since the excision of one of a pair of organs does not involve death or ill-health, and the excised organ fulfills what might be called a secondary natural function in its new body without defeating its primary purpose which was the good of one's own body.

Papal pronouncements should be interpreted within the framework and context of the purpose and occasion of their delivery. In *Casti Connubii* Pius XI was referring to the sterilisation laws proposed by Hitler and had no intention of referring to transplants, apart from other considerations of interpretation as above. Pius XII was referring to the same methods by which a cure was being sought to

maladies of the nervous system (of a mental nature) by the suppression, even temporarily, of personal liberty or by the excitement of sexual instincts. Pius XII does not say that man has no power whatever of mutilation, but, on the contrary, he says that man has *not* an *unlimited* power of mutilation. Hence, it follows, that, albeit limited, he does have some power of mutilation in terms of the anatomical and functional characteristics of his organs. All of it makes it clear that the Pope was speaking of *substantial*, not absolute integrity of the body's biological functioning. As a result of these considerations these theologians formulate their argument in the "double effect" form: from mutilation which is morally indifferent, two effects follow independently, the positive one which is to save life, and the negative one, the justifiable loss of a member of the body.

This last theory has been upheld by many theologians right to the present day. We mention B. J. Cunningham, C.M. (*The Morality of Organic Transplantation*, Washington, 1944); G. Kelly S.J. (*Notes on Moral Theology*, 1946; *The Morality of Organ Transplantation*, in *Theological Studies*, VIII, 1947, and in XI, 1948); "Preserving Life" in *Linacre Quarterly*, Feb. 1957; McCarthy, (*The Morality of Organic Transplantation*, in *Irish Ecclesiastical Record*, Vol. 67, 1946); J. Connery, (*The Morality of Organ Transplantation*, in *Theological Studies*, XV, 1954); J. Pereda (*La Mutilacion y el transplante de organos*, in *Estudios de Deuste*, julio-diciembre, 1954); M. V. Murray, (*Problems in Conduct*, N. York, 1963); J. J. Lynch, (*Ethical Implications of Renal Transplants*, in *J. Amer. Med. Assn.*, April, 1967; *Ethics of the Heart Transplant*, in *America*, Feb. 1968); C. Curran, (*The Morality of Human Transplants*, in *The Sign*, March 1968); B. A. Paparella, (*Moral Principles Applicable to Organ Transplantation*, in *Linacre Quarterly*, Nov. 1968). Since the Church has not condemned these views (of this last and fourth group of theologians) expressed after, and in interpretation of Pope Pius XII's statement, and as the arguments advanced command attention, their opinion

is probable enough to be safely followed, from the moral point of view, at any rate until the position is definitely clarified. Thus Fr. Lynch (op. cit.) writes: "No one is required to acknowledge as obligatory a prohibition which is at best objectively doubtful. In other words, no theologian could legitimately accuse of moral wrong doing the physician who involves himself professionally in organic transplantation with due regard for those precautions which sound medical sense would pres-

cribe for that procedure. Or to put it more precisely... the doctor, who in his prudence seeks to preserve human life by means of organic transplantation, can merit no less theologically than he does scientifically, and Fr. Curran (op. cit.) says: "The general principle would be that one has administrative power over one's own body, and that, provided he does not appreciably maim himself or lay himself open to the risk of personal injury, he can give what he has to help someone else."