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Recent advances in transplant surgery have created a need for a re-evaluation of the moral principles which might be applied in the resolution of certain of the problems consequent upon such medical progress. The present article makes no pretense at giving to the medical or moral worlds definitive answers which would make their respective tasks a simple matter of "application of principle." One might criticize the work as being but a repetition of what has already been said by eminent theologians and moralists. Such a criticism would indeed be justified; for it is the purpose of the author to present a collation of thoughts and principles, mainly from the Christian point of view, which would be applicable to the possible resolution of the moral problems of organ transplantation, and at the same time open the many doors of the "house of dialogue" which follow from such a presentation.

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MEANS OF PRESERVING LIFE

Since man is obliged to use all reasonable and moral means of preserving his bodily health and well being, let us for the moment briefly consider the moralist's distinction of *ordinary* and *extraordinary* means of preserving one's life and bodily integrity. Fr. Murray is brief but concise in this matter in saying:

> *Ordinary means* might best be defined as those that are at hand, and do not entail effort, suffering, or expense beyond that which prudent men would consider proper for a serious undertaking according to the state of life of each individual person. *Extraordinary* means, on the other hand, are means that are not commonly used by prudent persons, and that involve serious difficulty or inconvenience.[1]

Fr. Kelly tells us that the theologian would say that:

> . . . *ordinary* means of preserving life are all medicines, treatments, and operations, which offer a reasonable hope of benefit for the patient and which can be obtained and used without excessive expense, pain, or other inconvenience. . . In contradistinction to ordinary are *extraordinary* means of preserving life. By these we mean all medicines, treatments, and operations, which cannot be obtained or used without excessive expense, pain or other inconvenience, or which, if used, would not offer a reasonable hope of benefit.[2]

From another point of view:

> Ordinary means may be *natural*, as sufficient nourishment, protection against heat and cold, rest, hygiene, ordinary remedies, ordinary nursing; and *artificial*, as certain ordinary techniques, intravenous serum, oxygen, blood transfusions, insulin, incubators and minor operations. . . . It is not easy to give an exact definition of extraordinary means of preserving life. However they can be recognized from the following general characteristics: little chance of success, high cost, and objectionable aspects.[3]

Not only is it difficult to determine in the practical order of things what is ordinary and extraordinary in some cases, but the difficulty is compounded by the different uses to which the physician puts these terms.[4] However, there are some means which most moralists consider as extraordinary for all men, "such as rare and expensive operations or extensive traveling for one's health; whereas the same ethicians consider most of the commonly available techniques of modern surgery and medicine as ordinary means.[5] St. Alphonsus tells us that no man is obliged to use an extraordinary means of preserving health of life, but that we are allowed to employ such means.[6] In certain cases one may have a duty to use extraordinary means when his failure to do so would result in a failure to fulfill other duties, such as in the case of the head of a nation upon whom rests the security and well-being of those under his charge.

At this point let us simply state that one *is always obliged to use ordinary means of sustaining bodily integrity*; whereas, *one may use extraordinary means if he so desires or if such means is necessary for the fulfillment of some other grave obligation.*

MUTILATION AND CONSENT

St. Thomas Aquinas speaks of mutilation as follows:

> Since, a member is part of the whole human body, it is for the sake of the whole, as the imperfect for the perfect. Hence, a member of the human body is to be disposed of according as it is expedient for the body. Now a member of the human body is of itself useful to the good of the whole body, yet, accidentally it may happen to be hurtful, as when a decayed member is a source of corruption to the whole body. . . . If, however, the member be decayed and therefore, a source of corruption to the whole body, then it is lawful with the consent of the owner of the member, to cut away the member for the welfare of the whole body, since each one is entrusted with the care of his own welfare.[7]

From what Aquinas tells us we can see that when mutilation becomes necessary "for the welfare of the whole body," as in medically indicated necessary surgery, the consent of the individual must be obtained. In this regard, article 6 of the *Moral Code* adopted by the Canadian Hierarchy in October, 1954, states:

> Even the procedures listed in this section as permissible require the consent, at least reasonably presumed, of the patient or his guardians. This condition is to be understood in each case.

And it must be noted that when the patient consents to a medical or surgical procedure, it is necessary that his consent be of his own free choice. The *Nuremberg Code* represents ten standards to which physicians should conform when engaged in experiments on humans. The principles grew out of the judgment laid down at Nuremberg, Germany during the war crimes tribunal in August of 1947. The German defendents, mostly physicians, were accused of crimes which involved experimentation upon human subjects. The world is still shocked at the merciless and inhumane manner in which these experiments were conducted. The code clearly points out that the first consideration in human experimentation is the voluntary consent of the subjects:

> The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision.[8]

However it should be kept in mind that in certain instances one may not be able to give his personal consent. This may occur in such cases as when:

1. One is not *sui compos* and his parents or guardians have the moral or legal right to act in his behalf.
2. An attending physician in a case of emergency – disaster, accident, etc., must anticipate consent of person.

Nonetheless, it is essential that any medical or surgical treatment "require the consent, at least reasonably presumed, of the patient or his guardians," since "each one is entrusted with the care of his own welfare." It would seem then that the moral justification of mutilation would rest essentially upon *free and deliberate consent* of the individual as well as the *proportionate necessity* of sacrificing a part of the body in an attempt to preserve the integrity of the whole. We will see later that the mutilation of one's body under certain conditions may be employed to save another.

PRINCIPLE OF TOTALITY

Earlier we spoke of the proportionate necessity of sacrificing a part of the body in an attempt to preserve the integrity of the whole. In order to comprehend such necessity we can here ask: What is man's relation to himself and to his body? In brief, let us simply state that God has direct dominion over life and over the human body, for God is man's efficient cause and last end. In that life

is given to man, he has a consequent obligation to attain to all reasonable and moral means of sustaining that life and of avoiding needless danger to health, limb and body. As custodian of his life and bodily integrity man is obliged to tend to his physical and mental well-being. Mutillation is accomplished by means of an accidental or intended destruction of an organic function or removal of a bodily part which is necessary for bodily integrity. According to St. Thomas and most moralists, it is morally permissible when a bodily part threatens the integrity of the whole "to cut away the member for the welfare of the whole body;"[9] for, "it is morally permissible to sacrifice a part for the good of the whole, when the welfare of the whole body cannot be secured by any other means."[10] It should be clear that mutilation cannot be permitted except for a proportionately grave reason. That we may engage in a physical evil such as mutilation is ably expressed by Fr. Gerald Kelly as follows:

> . . . there are some physical evils that are naturally subordinated to higher ends, and we have a right to cause these evils in order to obtain these ends. Thus, the bodily member is subordinated to the good of the whole body, and one has a right to remove this member when this is necessary for the good of the whole . . . the principle, evil is not to be done is not an absolutely universal principle. It refers absolutely to moral evil. As for physical evil it refers to those which lie outside the scope of the agent's direct rights (e.g., death of an innocent person); it does not refer to evils that one has a right to cause (e.g., self-mutilation to preserve life or health; the death of an enemy soldier or an unjust aggressor).[11]

Suffice it here to say tha we may morally mutilate an organ member for the adequate good of whole body when there is a pro tionate reason for the same. Such moral justification is founded on at Pope Pius XII termed the "Pr ciple of Totality."[12] In one of his merous addresses on medical and cientific subjects, the Pontif stated at man did not have "unlimited wer to destroy or mutilate his b and its functions."

> Nevertheless, by virtu of the principle of totality, b irtue of his right to use the ser es of his organism as a whole, patient can allow individual s to be destroyed or mutilated n and to the extent necessary f he good of his being as a whole.[13]

And this could be done n it was necessary to "ensure being's existence and to avoid, o naturally, to repair serious and last g damage which cannot otherwise b voided or repaired."[14]

The Pope is cauti in his presentation of the pr ciple and repeats himself thus:

> This principle asserts t t the part exist for the whole and that, consequently, the good of the part remains subordinated the good of the whole, that th whole is a determining factor for e part and can dispose of it its own interest.[15]

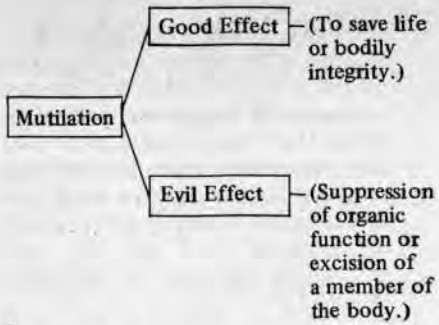
"Thus, it is in the proper application of this principle that we have the moral justification for surgical operations such as appendectomy, cholecystectomy, thyroidectomy, lobotomy, etc.; the destruction of organs and functions by irradiation; medical treatments with possibly untoward by-products, e.g., use of antibotics; etc."[16] From the success of such medical and surgical procedures we can see that the physical evil effected is outweighed by the physical good effected. And as Father Connell states it: "according to Catholic moral principles, the mutilation or excision of a part of the body is permitted only when there is certainty or probability that benefit will thereby come to the whole body in sufficient measure to compensate for the harm that has been done."[17] "The essential point in all these things is that, in terms of the total welfare of the patient, there is a just proportion between the harm, inconvenience, and risk, on the one hand, and, on the other hand, the good to be accomplished for the patient."[18] *The morality of every medical or surgical mutilation must be evaluated in the light of its purpose and necessity.* "In general, we may observe that mutilation of one's own body without good reason, is an offense against temperance or fortitude; while unreasonable mutilation of the body of another is an act of injustice."[19]

PRINCIPLE OF DOUBLE EFFECT

One must consider that an act of surgical or medical mutilation is one which is intended to effect a good (to preserve bodily integrity), although there is foreseen that the same act will result in an evil consequence (the destruction or excision of body tissue or an excision of some organ). Such an act is termed a *voluntary in cause*, or an *indirectly voluntary* act. On this Fagothey tells us:

> There is a difference between the way in which the act itself is voluntary and the way in which its consequences are voluntary. That is *voluntary in itself*, or *directly voluntary*, which is the thing willed, whether it be willed as an end or as means to an end. That is *voluntary in cause*, or *indirectly voluntary*, which is the unintended but foreseen consequence of something else that *is voluntary in itself*; the agent does not will it either as end or as means . . . he wills the cause of which this is a necessary effect.[20]

The indirectly voluntary act of *twofold effect act* brings into our account of moral principles applicable to the morality of tissue and organ transplantation which requires mutilation of the recipient and the donor as necessary surgical procedure, the *principle of double effect*. It is obvious that with the directly voluntary act, evil becomes the direct object of the will-act as either end or means. Of necessity such an act is not morally permitted, for one is never permitted to directly will an evil; i.e., one may not morally choose to rob a bank. In an indirectly voluntary act, however, one does not will the evil effect which is brought into causal existence together with the good effect which is intended but rather, the evil effect is foreseen as a probable consequence of the direct action. Thus we may speak of an indirect mutilation (one which is indirectly voluntary) as one in which there is lessening of bodily integrity as a natural effect of the act, but the intention of the agent is directed toward the conservation of the total natural good, or the good of the whole body. As it were, the mutilation follows indirectly from the will-act, but there is a sufficient proportionality which exists between the indirect consequent effect and the directly intended or willed effect. In the two-fold effect act there are two effects which flow from the one and the same cause as follows:



In order that one might engage in an act which has two effects, one good and one evil, the four conditions of the "principle of double effect" must be met. It is not sufficient that merely one or two or three conditions be met, but rather the act must be in conformity with each of the following:

1. *The act itself which brings about both a good effect and evil effect must be good or at least morally indifferent.* The act of excision (or incision) *in se* is morally indifferent in its generic nature but becomes good when directed to some specific intention of the will as in the excision of a malignant tumor, etc.

2. *The good effect must not be obtained by means of the evil effect in such a way that the good flows from the evil* as follows:

H.A. ——→ E.E. ——→ G.E.

The importance of priority of good effect is not one of time but rather one of causality. The evil effect may neither be means or agency of the good effect. One may not engage in evil that good may come of it – *the end does not justify the means.* One must be careful to note that the suppression of organic function or use of a member does not itself bring about the good which is intended; rather, it is the ridding of th body of the pathologic condition th causes good health to be restored o fe to be saved.

3. *The evil effect must in way be intended but merely to ated as casually connected with th ntended good effect.* If the evil eff were to enter one's intention in an ay, even partially, the agent mak this evil effect a *directly volunta* act by willing it as end or mean The evil effect must simply be t erated as *unavoidable* and as *conco tant* with the good effect. As Aquina ells us:

> "Nothing hinders on act from having two effects, o y one of which is intended, wh the other is beside the intention."

4. *There must exist reasonable proportion between the g d and evil effects whereby one deci upon the necessity of placing the fold effect act.* If we had no pr ortionately grave reason for allowin e foreseen evil effect, then certain we would not be morally permit to cause such needless injury to o s person. If the evil effect is grave, t the reason for placing the a must be proportionately grave. If e evil effect be slight then the reas for placing the act may be proport ately slight or greater. Also, if it possible to substitute a similar acti which has a lesser evil or perhaps o evil effect whatsoever, then one ust seriously weigh the necessity of t intended act as opposed to the equivalent act or actions. One may speak of this condition as the *principle of reasonable or due proportionality.*

VARIOUS TYPES OF TISSUE TRANSPLANTS

From what has been said thus far it can be seen that mutilation may be considered as a generic medical or surgical procedure which results in two distinct species of surgery directed toward the removal of a threatening mass or pathologic organ, or toward the removal of healthy tissue or healthy organ of the body. Certainly the removal of a pathologic organ or threatening mass which constitutes a threat to bodily integrity can be seen as posing no moral difficulties under the principle of totality.

In the case of the excision of healthy tissue or organ, the moral question is not so easily answered. Before we attempt to discuss the moral implications of organ transplantation, let us consider briefly the implications of excision of healthy or nonpathologic tissue. Tissue transplantation covers a broad variety of transference of organic living matter – from tissue itself, as in corneal transplantation, skin grafting, etc., to tissue derivatives, as in the case of the hormones. The procedure of transplantation itself may involve: a) an *autograft*, where tissue is taken from one's own body; b) a *homograft*, which involves a "tissue donation" from another man; c) a *heterograft*, which utilizes tissue or tissue derivatives from different species.[22]

The transplantation of tissue taken from one's own body (autograft) presents no moral problem since the procedure is in keeping with the principle of totality – a mutilation of a part in order to secure the well-being of the entire body. Generally speaking, a heterograft (animal to man) is morally permissible.[23] In the case of a homograft (man to man) a distinction must be made between a graft or transplant taken from one who is living as opposed to one who is dead. There is no moral problem presented by homograft from the dead, such as transplants from the recent dead or tissue obtained from "bank" resources. However, homograft from the living admits of moral qualification as follows:

> If the mutilation does not destroy the functional integrity of the donor, it is morally permissible according to good opinion. Examples are blood donation and kidney transplantation. If the mutilation destroys the functional integrity of the donor, it is immoral. An example would be the donation of both corneas.[24]

It is obvious that our present discussion is concerned with the homograft from a living person together with its consequent implications.

THE LICEITY OF TRANSPLANTATION

Following an analysis of the "obligation of charity and the order of charity in man's duties to his neighbor, especially the recognized liceity of sacrificing one's life for the sake of the neighbor's temporal welfare," Father Cunningham draws the following conclusion as a "sufficiently probable opinion": "*Per se operations which involve the transplantation of organs or of sections thereof are licit; they involve no opposition to the natural or supernatural moral law.*"[25] He is quick to speak of possible exceptions to this principle and allows for the same in two specific instances:

> First of all, if a person's being a donor for an isoplasty would certainly or very probably cause his own death, then it would not be licit for him to allow such a mutilation . . . it does not seem consonant with traditional moral teaching to admit the liceity of his submission to a mutilation which

would certainly or even very probably cause his own death. . . . The second exception to this: if the result of such an operation would be sterility for the donor, then it would be illicit to permit or perform such a mutilation.[26]

"The bases of Father Cunningham's opinion are: (a) the unity of men in specifically the same human nature; (b) the unity of men in the Mystical Body of Christ; (c) the resultant mutual relationships between men which involve their bodies and bodily members; (d) the observance of the precept of charity to one's neighbor in need."[27]

Father Cunningham's mention of the first instance of exception would seem to substantiate the principle basic to all mutilation which does not allow for any procedure, medical or surgical, which would directly cause the death of the individual. "A direct mutilation which would very likely cause a man's death would be direct cause of that death."[28] Exposure of oneself to such danger would be tantamount to suicide. Hence, "if there is true and solid probability of his dying as a result of the mutilation, then we cannot admit the liceity of that operation no matter what good might accrue to the neighbor as a result of it."[29]

Mutilation is licit only when the organic or functional integrity of the body or its members is not permanently impaired or destroyed so as to jeopardize the health or life of the corporeal totality. However, in virtue of the body's ability to repair itself and the compensatory nature of the twin organs it possesses when one such twin is diseased or removed, the principle would allow for the removal of tissue which can be replaced by the ordinary process of nat l or extrinsically induced body re ir, as well as the removal of tissu or an organ which can be ad uately substituted for by the latent potentiality of homologous t ue or organ present in the body.

The moralist makes the di nction between the *substanti* and *nonsubstantial* integrity of t body. From the foregoing we can e that submission to or performa of a medical or surgical proced which would result in a substanti loss of bodily integrity would illicit. However, if we employ the nciples of *reasonable proportion* y and *fraternal charity* we find th loss of nonsubstantial integrity is metimes permissible. Donation of a si le organ such as a heart or liver woul result in a complete suppression organic function in the corporeal ality of the donor. Such a donati would result in a loss of substan l bodily integrity and hence is illicit lowever, in the case of double orga such as the kidneys, ovaries lungs, mechanisms of the eye and r, etc., it has been shown that the l s of one organ may result in loss of nonsubstantial integrity only

Theologians and mora sts have traditionally permitted e osure of one's life to risk for the sa of one's neighbor. Fr. Cunningham els that it is within the bounds of th principle of fraternal charity that one may make the smaller sacrifice of don tion of an organ to his fellowman in eed. There is substantial agreement among those concerned with the morality of organic transplantation that "minor mutilations" of bodily integrity are licit when there is present some proportionate reason for permitting them. "Certainly, the assistance of the neighbor who is in need . . . does

afford a sufficiently just cause for the permission of such injuries to integrity . . . And when the skin-graft or the blood-transfusion is not dangerous for the donor, then they seem to be perfectly licit minor mutilations, permitted for the purpose of charity."[30] And even cases of "experimentation involving minor or accidental mutilation or suppression of an organic function is not a violation of man's guardianship of his life and bodily integrity, and therefore is morally permissible for good reasons."[31]

Article 40 of the "Ethical and Religious Directives for Catholic Hospitals" states:

> Any procedure harmful to the patient is morally justified only insofar as it is designed to produce a proportionate good.
>
> Ordinarily the "proportionate good" that justifies a directly mutilating procedure must be the welfare of the patient himself. However, such things as blood transfusions and skin grafts are permitted for the good of others. Whether this principle of "helping the neighbor" can justify organic transplantation is now a matter of discussion.

It is seemingly beyond controversy that minor mutilations are justifiable under the principle of fraternal charity. However, whether a donor may submit to a major mutilation as in renal transplant which is not necessary for the good of the health of the body but rather for the good of one's neighbor does present a moral controversy.

Pope Pius XI in his Encyclical *Casti connubii* presented a statement of the traditional Catholic teaching on the subject of mutilation as follows:

> Furthermore, 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 than 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.[32]

The Pontif's statement would seem to make no allowance for the use of one's body in any manner whatsoever except for the sustaining of an individual's bodily integrity alone. However, it has been suggested by Father Gerald Kelly that the Pope was not treating of mutilation as such but rather of the rights which the state and the individual have in relation to sterilization.[33] Pius XI declared that the state has no power whatsoever over the members of innocent citizens and added that the individual had only limited powers in this regard. In but a brief paragraph he incorporated the existing theology on the subject of self-mutilation. Fr. Kelly persues this line of reasoning by stating that the theologians of that time "commonly recognized only one natural purpose of organs, namely, to serve the person who possesses them."[34]

But suppose that theologians today, after having carefully considered the facts concerning organic transplantation, would conclude that, since an organ or section thereof can function vitally in another body, this may also be called a natural (though secondary) purpose of such organs or sections. . . . If such an extended meaning is permissible, Father Cunningham's thesis can be harmonized with the encyclical; for if only a section of an organ, or only one

of a pair of organs, is transplanted, this transplanted part fulfills a secondary natural purpose (helping the neighbor) without defeating the primary purpose (the good of one's own body).[35]

Father Charles Curran in an interesting dialogue between himself as theologian and Dr. Robert White, director of Brain Research Laboratories at Cleveland Metropolitan General Hospital, discussed the principle of fraternal charity as follows:

> The general principle would be that one has administrative power over one's own body, and provided he does not appreciably maim himself or open himself up to the risk of grave personal injury, he can give what he has to help someone else.[36]

DEFINITION OF DEATH AND MORAL SPECULATION

Among the many issues of a moral, medical, legal and social nature which are engendered by transplant surgery, the most crucial of these would seem to be the determination of the criteria of the moment of death of the donor. Recent advances in chemical and electronic cardiac resuscitation techniques, as well as the use of mechanical respirators, have created a need for redefining the concept of death. No longer is the heretofore standard definition – the complete and permanent cessation of respiration and circulation – adequate as totally descriptive of medical death. The electroencephalogram (E.E.G.) is currently used in helping to establish "death," but its findings do not always afford a conclusive indication of actual brain damage. It has been found that a barbituate overdose may result in a flat E.E.G. for four hours or more. "A report of the Royal Acad[emy] of Medicine in London reve[als] that among a group of 102 hea[d] injury victims who were still un[con]scious more than one month after i[n]jury, no fewer than 63 survived and 48 [of] them eventually went back to their [old] jobs or to less demanding [but] still productive work."[37]

Taking into account that [the] brain is not capable of [arti]ficial resuscitation, as are the h[eart] and lungs, Dr. William Lik[e], past president of the American C[ol]lege of Cardiology suggests that: "[dea]th can be defined as coming w[hen] brain function has ceased anteced[ent] to the death of cardiac function." Added to the traditional criteria [of] medical death is the *cessation of [total] brain function*. It would seem tha[t] the total "criteria of death" would [en]compass complete and permanent c[essa]tion of heart, lung and brain funct[ion]s. "But more and more doctors now [ar]gue that life ends when the brain p[er]manently ceases to function – even [though] the heartbeat and respiration [may] be sustained by artificial resp[ira]tors."[39] Is it possible that medical [dea]th is to be determined on the ba[sis] of the complete cessation of funct[io]n of one organ alone? That this may well be the case is evidenced as follows:

> Cooley (Dr. Denton A.) [no]ted that in each of three heart tra[ns]plants he has done, the heart w[as] 'faintly quivering' – although no[t] beating – at the time it was remov[ed].[40]

The acceptance of "brain death" as the sole criterion is not outside of the realm of the possible. However, at the present time it can in no way be medically accepted as so until such time as the apparati for determining cessation of brain function are brought to a new level of sensitivity and sophistication. Granted that such progress is possible in our age of scientific and technological advance, there are innumerable moral, legal and social questions which can be answered only in the light of a definitive medical statement on death. It is not only the responsibility, but the prerogative of the men of medical science to formulate such a definition. However, the definition must be fixed rather than argumentative; for unless one know precisely of medical death, crucial issues of a moral nature cannot be resolved.[41] For example, let us examine a statement by Fr. John Lynch in relation to heart transplantation:

> Under no circumstances, even if the prospective donor is certainly doomed to die within a very short time, may the doctor anticipate death and begin removing the heart from a living human subject. This statement derives from a theological view of man's dominion over human life . . . that depends on an essential distinction between the moral obligation not to kill and the moral obligation to keep alive. Only the former is absolute. In accordance with it, direct killing of an innocent human being, even if otherwise already doomed to die, still remains murder.[42]

It is stated that "the doctor may not anticipate death." But unless we know exactly what is meant by death, we can proceed no further.

It is true that a man does not have direct dominion over his life; but what is it precisely over which he has no direct dominion, his life of brain, of heart or of lungs, or all three? The principle of fraternal charity would seem to allow a dominion over at least one of a set of paired organs of the body in the interest of the physical well-being of one's neighbor. May not the principle be extended to the heart, lungs, pancreas, etc., which could no longer serve the function for which they were given to this man by the Creator since inevitable "total death" is imminent in virtue of brain death?

It is obvious that transplantation of non-paired organs under the present definition of death is nothing other than homicide, pure and simple. Even the principle of fraternal charity could not be employed if the definition remains confused, for, "just as killing out of mercy to the patient would always be wrong, so too, killing to obtain a transplant (mercy to another) would always be wrong."[43] This is so, for in either case, there is the direct killing of an innocent human being (murder) for some particular end disguised under the cloak of "mercy to one's neighbor;" a euphemistic action which can in no way be morally justified. "Whatever, then, may be the acceptable indications of medical death, these must be verified before one could allow the removal of an organ so essential to life that its excision would amount to a direct killing."[44]

But let us for a moment embark on a bold venture and discuss the possibility of medical death as being determined by the criterion of "brain death" alone. It may become a reality that the E.E.G. and other related instruments will be made so sensitive that they can give an unquestionable reading of actual brain death. When the condition of the brain has indeed reached a point of no return in the sense that there is an absolute cessation of brain function beyond the ability of the organ or body to reconstitute the same, according to

current tendencies the heretofore traditional criteria of death would not constitute an essential part of the definition of medical death.[45]

If the medical world were to decide that *medical death is simply brain death*, there would be no medical or legal problem of heart, lung, kidney or other paired or non-paired transplant surgery. It would be unnecessary to discuss the moral aspects of organ donation since there would be no moral problem. The only exception to the moral permissibility of organ donation under the "brain criterion of death" would be the donation of the brain itself; and this would in itself present no problem, since the brain cannot be used if indeed it is dead.

Again, if medical certitude were made possible by a new sophistication of instruments whereby brain death could accurately be determined; and if the findings of such technology were used as the sole criterion of death, one can easily envision the haste with which transplant surgery of varied types would come about. Perhaps the prospect of an ample supply of body organs and parts which would be precipitated by the acceptance of such a unique standard would cause some to readily accept a norm based on the brain criterion above. And of course in the mind of the layman there would remain the question of whether one is being in fact murdered when a vital organ is removed from one who is "medically dead" (brain dead) but whose heart and lungs continue to function either naturally or artificially. This question I would suspect will cause the medical community to use the criteria of total or absolute cessation of the vital functions of at least the brain and heart taken together.[46] If this does not occur, then a new definition of life must be determined.

And if life is simply define as "the continued vital functioning of the brain," then removal of a vital heart, lung, pancreas, etc., after br death has been accurately establish would seem to be morally permissi . If we repeat the words of Fr. Lyn at this point, viz., "whatever, ther may be the acceptable indications o medical death, these must be verifi before one could allow the remo l of an organ so essential to *life* that its excision would amount t a direct killing," we can see that nly the removal of the brain its would constitute a direct killing nder the "one criterion" definition death.[47] And of course removal of n-paired donor organs essential to or pportive of the life of the brain s h as the lungs (in their entirety) a the heart would obviously be morall rong and medically foolish. Hence, heart or lungs or any other non-p d organs of the body could be p ured for transplantation only w n "brain death" has been un stionably established and occurs pri to "heart death."

SUMMATION

One might simply say at because of the complexity of e blishing a definitive statement on t concept of death that the "decisio of death" should be left to the rofessional discretion of the attend physician in each individual ca However practical this was prior to the current revolution in transplant surgery, it has lost certain aspects of its validity in the sense of the legal and moral complications which are contingent upon the rights of both donor and recipient which were heretofore non-existent. Perhaps the invention of an artificial heart or greater success with heterografts may solve the problems with which we are here concerned, but until that occurs, one must apply what knowledge of moral principles he has to the present situation. In summation let us look to the moral principles discussed which might be applied to the resolution of the moral complexities of organ transplantation.

1. Principle of Dominion:

> God alone has direct dominion over the person of man; and reserved to Him alone is the power of life and death.

2. Principle of Means:

> Since man is but steward of his person, he is always morally obliged to use *ordinary* means of sustaining bodily integrity; whereas under certain conditions one may use *extraordinary* means if he so desires.

3. Principles of Due Proportionality and Totality:

> The justification of mutilation rests in the proportionate necessity of sacrificing a *part* of the body in order to preserve the integrity of the *whole* when the welfare of the whole body cannot be secured by any other means.

4. Principle of Double Effect:

> In the case of a *two-fold effect act*, whereby there results a good effect which is intended and an evil effect which is foreseen but unintended, the conditions of prudent evaluation of such a unique involvement of human act as considered above must be fulfilled.

5. Principle of Fraternal Charity:

> One may do for one's neighbor whatever one may morally do for oneself.

The Roman Catholic church as yet has not given its official teaching on the question of organic transplantation *inter vivos*, but of course the discussions among theologians and moralists have greatly increased in the past few months since the announcement of the first human heart transplant.

"Of those who have expressed themselves publicly on the subject, the majority – it would seem safe to say – profess to see at least solidly probable grounds for declaring this form of transplantation permissible under certain circumstances."[48] There are those, however, who express a strong contradictory view and would allow mutilation only when it is necessary for one's own physical well-being. In keeping with the principle of fraternal charity, those who defend the licitness of organic transplant to assist one's neighbor proclaim one may morally do for another what one may legitimately do for oneself. But what is the transplant surgeon to do in the wake of such a variety of opinion? Fr. Lynch would grant him that course of action which would allow him the "greater liberty of medical action" when he says:

> 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 prescribe for that procedure. Or to put it more precisely . . . the doctor, who in medical prudence seeks to preserve human life by means of organic transplantation, can merit no less theologically than he does scientifically.[49]

And so the dialogue continues. And so we end our discussion.

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2. Gerald Kelly, S.J., "Preserving Life," in *Linacre Quarterly*, February, 1957, p. 3. This article represents a comprehensive treatment of the moral means of preserving life; cf., pp. 2-10.

3. Rev. Edgar Godin, J.C.L. and Rev. J.P.E. O'Hanley, *Hospital Ethics* (Canada: Hotel Dieu Hospital, 1957), p. 54.

4. Cf., Charles J. McFadden, O.S.A., *Medical Ethics*, 6th ed. (Philadelphia: F.A. Davis Co., 1967), pp. 241-242; Very Rev. Brian Whitlow, "Extreme Measures to Prolong Life," J.A.M.A., Vol. 202, No. 4, Oct. 23, 1967, pp. 374-375. William P. Williamson, M.D., in a recent issue of the *JAMA* tells us: "The physician's definition of ordinary means of preserving life are standard, recognized, orthodox, or established medicines or procedures of that era, at that level of medical practice, and within the limits of availability, and his definition of extraordinary is a medicament or procedure that might be fanciful, bizarre, experimental, incompletely established, unorthodox, or not recognized." J.A.M.A., Vol. 197, No. 10, Sept. 5, 1966, p. 140.

5. Murray, *op. cit.*, p. 154.

6. *Theologia Moralis*, III, n. 372.

7. *Summa Theol.*, II-II, q. 65, a. 1, c., trans. English Dominicans (New York: Benziger Brothers, Inc., 1947).

8. Cf., Mitscherlich and F. Mielke, *Doctors of Infamy: the Story of the Nazi Medical Crimes* (New York: Schuman, 1949), pp. xxiii-xxv.

9. See n. 7 above.

10. McFadden, *op. cit.*, p. 275.

11. "Notes on Moral Theology, 1951," *Theological Studies*, March, 1952, p. 60.

12. Cf., Address before First Inter tional Congress of the Histopatholog of the Nervous System, September 1 1952, in *The Major Addresses of P e Pius XII*, ed. Vincent A. Yzermans . Paul: The North Central Pub. Co., 1 1), pp. 225-234.

13. *Ibid.*, p.228.

14. *Ibid.*

15. *Ibid.*, p. 233; on this same ic, cf., Gerald Kelly, S.J., "The P iple of Totality," *Linacre Quarterl* August, 1956, pp. 70-76.

16. Kelly, "Totality," p.75.

17. Francis J. Connell, C.SS.R. *merican Ecclesiastical Review*, Feb. 1943, p. 143:

18. Kelly, *ibid.*

19. Vernon J. Bourke, *Ethics* w York: The Macmillan Company, 19 , p. 356.

20. Austin Fagothy, S.J., *ght and Reason*, 4th ed. (St. Loui The C.V. Mosby Company, 1967), p.

21. St. Thomas, *Summa Theol* -II, q. 64, a. 7.

22. Cf., Rev. Edward F. Hayes ev. Paul F. Hayes and Dorothy Ellen elly, R.N., *Moral Principles of Nursing* New York: The Macmillan Company 1964), pp. 135-145.

23. For possible exceptions , *ibid.*, p. 143.

24. *Ibid.* Certain moralists and theologians speak of a mutilation which destroys functional integrity as a *major* mutilation, while those which do not, are called *minor* mutilations; and hence, all major mutilations are considered immoral. It is to be noted that in the case of paired organs, the functional integrity of both organs is not always required for adequate performance of the functions specific to these organs and proper to bodily well-being. Thus, excision of one paired organ or the removal of a non-substantial portion of a non-paired organ is morally permissible in that functional integrity necessary for bodily well-being in such cases is not lost.

25. Rev. Bert J. Cunningham, C.M., *The Morality of Organic Transplantation* (Washington, D.C.: The Catholic University of America Press, 1944), p. 100. This work represents a comprehensive treatment of the subject according to theological and moral opinion up to that time.

26. *Ibid.*, p. 101.

27. John P. Kenny, O.P., Ph.D., *Principles of Medical Ethics* (Maryland: The Newman Press, 1952), p. 196, n. 59.

28. Cunningham, *op. cit.*, p.101.

29. *Ibid.*

30. *Ibid.*, pp. 47-48.

31. Godin and O'Hanley, *op. cit.*, p. 129.

32. America Press edition, pp. 21-22.

33. Gerald Kelly, S.J., "Notes on Moral Theology, 1946," *Theological Studies*, March, 1947, cf., pp. 97-101.

34. *Ibid.*, p. 101. In that organs of the body have more than one purpose, cf., Murray, *op. cit.*, p. 162, wherein he states: ". . .in an organic transplantation the transplant does function vitally in another body, and this may also be called a natural (though secondary) purpose of such organs."

35. *Ibid.*

36. "The Morality of Human Transplants," *The Sign*, March, 1968, pp. 23-29.

37. Edwin Diamond, "Are We Ready to Leave Our Bodies to the Next Generation?," *The New York Times Magazine*, April 21, 1968, p. 120.

38. *Ibid.*

39. "Redefining Death," *Newsweek*, May 20, 1968, p. 68.

40. *Ibid.*

41. The problem of arriving at a definition of death is further complicated in that one must first define the meaning of "life" itself.

42. John J. Lynch, "Ethics of the Heart Transplant," *America*, Feb. 10, 1968, p. 195.

43. *Ibid.*

44. *Ibid.*

45. It would only seem reasonable that cardiac and respiratory activity be supported artificially only if there has been no irreversible damage to the brain. Pius XII has indicated that it is permissible for the family of a patient to request that the physician interrupt his efforts at "reanimation" even if this would require stoppage of blood circulation. On this cf., H. Hamlin, "Life or Death by EEG," J.A.M.A. 190: 112-114 Oct. 12, 1964.

46. See Likoff above.

47. Emphasis is that of the author. Perhaps this use of Fr. Lynch's statement may be construed as a misuse of a statement taken out of context; however, if one looks to the possible new concept of life as related to "brain life" alone, its use by the author in this sense seems justified.

48. John J. Lynch, S.J., "Ethical Implications of Renal Transplants," J.A.M.A., April 10, 1967, Vol. 200, No. 2, p. 187. See also the discussion on the same topic by Dr. Joseph E. Murray, M.D., who speaks of the possible reward of kidney donation: "The volunteer kidney donor may. . .derive a certain spiritual benefit from the act of donation, probably the purest form of charity next to the giving of one's life. For a truly unpressured volunteer, this spiritual satisfaction can more than compensate for the physical trial of a nephrectomy." *Ibid.*

49. *Ibid.*

* For complete listings of the *Moral Code* of the Canadian Hierarchy and "Ethical and Religious Directives for Catholic Hospitals," see Godin and O'Hanley, *op. cit.*