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The Refusal of Blood Transfusions by Jehovah's Witnesses

(Continued from February 1955 LINCACE QUARTERLY)
JOHN C. FORD, S.J.

III. LEGAL LIABILITY

When physicians or hospital authorities have undertaken the care of a Jehovah’s Witness, or the child of a Witness, the refusal of a transfusion which is judged to be imperatively provided to prevent imminent death, may arise. Particularly trying are those cases in which the Witness refuses for self or child a transfusion which is judged to be imperatively provided to prevent imminent death.

A series of hypothetical cases may be imagined. One can include among criminal or civil liability or both: about the case of the adult or the case of the child; about the case where the transfusion is given or where it is omitted; about the case where there has been an explicit agreement not to give a transfusion, or the case where no such agreement exists; about the case where the patient survives and resents the transfusion, or the case where he dies but the transfusion was omitted, or even where he dies as a result of a surgical accident connected with the transfusion itself.

By combining these cases in various ways, and including cases where the surviving relatives take civil action or attempt criminal complaints, one can imagine a large number of hypothetical legal problems. A further twist could be introduced by supposing that the doctor himself is a Jehovah's Witness: who by his advice about the accept of a transfusion, or, especially, abets the patient who refuses it for a young child.

It is my intention or my project to try to cover all that laboratory-mind-in-and-outs of these problems. The attempt would be solely speculative anyway, seeing that previous cases are hard to find. I mention the possibilities in order to illustrate the multiplicity of the legal problems that could conceivably arise. My present purpose is merely to recall some generally admitted legal principles which are apropos, and to make some general suggestions, leaving it to the individual physician or hospital to get professional advice when faced with an actual dilemma.

A recent article has reviewed the state of the law on "Criminal Liability in Faith Healing." This interesting essay deals not only with faith-healing cases strictly so-called, but also with cases involv-

13 Reynolds vs. United States, 98 U.S. 145 (1878).

... could it be seriously contended that the child is denied a medical benefit or is being neglected? Is there not available some legal means of preventing the child's suffering? In Chicago, in 1951, in the case of Labrenz, the courts found a method, authorized by the law, of compelling the transfusion against the parents' wishes. The parents, a Mr. and Mrs. Labrenz, refused to permit the transfusion of blood to their sick child, who was bleeding internally and who was, therefore, in serious danger. The court, however, in doing so, was really taking upon itself to decide two questions which in a given case, or in a given jurisdiction, or in a given state, or in a given country, or in a given family, might be open to dispute: the question of fact: "Is this transfusion absolutely necessary?" and the question of law: "Is this transfusion part of the reasonable medical care which the law requires of the parents (and others) to provide?" And finally, as mentioned above, he would be violating the well-established rule that to operate without consent is to be guilty of assault and battery.

In this dilemma it would seem that the physician's only complete legal security is in a court order empowering him to go ahead with the transfusion even against the parents wishes. But in the absence of such an order, in a clear-cut desperate case, I should imagine that a physician would have little to fear legally from giving the transfusion. It does not seem likely that he would be made to suffer legally if he should do so. The child was the life of the child was really at stake, and that the parents refusal of a transfusion constituted criminal neglect on their part. But conversely it might involve him in a troublesome and expensive litigation.

In all it is necessary to hold that the courts for manslaughter if the child dies but is there not available some legal means of preventing the tragedy? In Chicago, in 1951, in the case of the child Cheryl Lenore Labrenz, the courts found a method of circumventing the persistent refusal of the parents. A petition was filed in Family Court to the effect that the child was dependent upon the right to consent to necessary blood transfusion. These were given and the child's life was saved. Cawley, 1, in the appeal to the doctrine of parents' patriae in this Illinois case, and in similar cases in Texas, Missouri, and New York. Sometimes, however, the legal machinery cannot and cannot be put into effect with sufficient dispatch to save a child.

If I may be allowed to make some suggestions regarding cases involving children, I would stress the following points: It is legally advisable to make any agreement or contract with a parent not to give a necessary blood transfusion to a child invalid. Labrenz, the courts found a method of compelling the transfusion against the parents' wishes. The parents, a Mr. and Mrs. Labrenz, refused to permit the transfusion of blood to their sick child, who was bleeding internally and who was, therefore, in serious danger. The court, however, in doing so, was really taking upon itself to decide two questions which in a given case, or in a given jurisdiction, or in a given state, or in a given country, or in a given family, might be open to dispute: the question of fact: "Is this transfusion absolutely necessary?" and the question of law: "Is this transfusion part of the reasonable medical care which the law requires of the parents (and others) to provide?"

The only complete legal security for physicians and hospital authorities who would give a transfusion contrary to the parents' wishes would be in a court order. Conse-
When the case is desperate, and no order has been obtained, it would appear that there is not much to fear by way of legal liability in giving the transfusion. And considerations of charity for the neglected child may well weigh the balance in favor of transfusion. But one should get competent legal advice on each case as it occurs.

The case of the adult Witness who refuses consent for an imperatively necessary transfusion, does not cause such troublesome complications. The law seems to allow an adult to run risks with his own life which he may not take with the life of his minor child. In a Supreme Court decision we read: "The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children. . . ." And Cawley remarks: "Society and the courts seem to say: 'We are determined that a child shall grow up safely and in good health to maturity, and we will intervene and force a transfusion or other surgery on the basis of our opinion whether or not it is merited by the patient's needs.'" 19

In some jurisdictions attempted suicide is a crime, and one who aids and abets a suicide or an attempt at suicide is criminally liable. But there are no cases, apparently, to show that an adult who refuses a particular surgical procedure, considered by physicians to be necessary, is guilty of the crime of attempted suicide. Indeed, the difference between taking affirmative action in purpose to destroy one's own life, and merely refusing to make use of a highly technical surgical means of preserving it, is a very obvious one. And it would be far-fetched indeed, to imagine a physician who failed to transfuse a child in the face of the parents' refusal, and have to resort to the cumbersome device of a court order for legal protection, even with the child at the point of death, it seems very unlikely that they will expose themselves to legal liability by not transfusing a recalcitrant adult, who, being of right mind, positively forbids the operation. Given a case of acute appendicitis with extreme danger of death, and a patient who in his right mind resolutely refuses surgery, there is only one thing for the doctor to do: omit the surgery and take what measures he can to save the patient's life. The same thing is true of adult transfusion cases.

There does not seem to be any legal machinery by which a court order can be obtained to empower a physician to operate on an unwilling or a recalcitrant adult or by which surgical treatment can be forced on him. In my opinion this is as it should be. The bodily integrity of an individual should enjoy a very high degree of immunity from invasion by public authority, as will be asserted below. This is especially true when conscientious convictions are at stake.

Although the physician incurs no liability by omitting the transfusion, yet he may not be in a position to prove that the consent was actually refused. If the patient dies and his survivors want to make trouble, they may be able to do so unless the physician can produce something in writing to show that consent was refused. If a physician decides to undertake the care of a patient who makes a stipulation against blood transfusions, it would be wise for him to protect himself by a written, witnessed order from the patient to that effect, together with a written release from all liability in case the patient dies and his survivors want to make trouble.

Should physicians and hospitals, then, simply refuse to undertake the care of a patient who rejects or is likely to reject a blood transfusion on religious grounds? Obstetrical cases offer a special difficulty since even though one acceded to the request not to transfuse the mother, it seems legally inadvisable and morally improper to make such an agreement regarding her baby. I doubt if a universal answer can be given.


18 Loc. cit., p. 69.

the question either for the obstetrical or for other cases. In some cases the future need of transfusion is so likely that it would be foolish to undertake the case and at the same time deprive oneself of an essential element for successful treatment. I doubt, however, whether a physician's reputation (or the hospital's) would suffer to any extent if a patient is lost through his own refusal of a transfusion. But it is not an easy thing to have to stand by with hands tied while one's own patient makes a martyr of himself on such flimsy grounds. On the other hand where will the thousands of Witnesses get medical care if everyone refuses to have anything to do with them? It seems to me that acute dilemmas are going to be sufficiently unusual and infrequent so that it would be too drastic to refuse all Witnesses because of the relatively few desperate cases likely to eventuate. Witnesses may often start by refusing. But under the pressure of imminent death many will doubtless find their native common sense triumphing over their peculiar religious indoctrination.

IV. PUBLIC POLICY

It is obvious from the foregoing that general questions of State power arise whenever there is a conflict or an apparent conflict between what the individual's conscience may demand of him, and what the public good or the rights of other individuals may require. These are the questions of public policy referred to here. The general question of Church and State and religious freedom is too large for our discussion. I intend to speak of public policy only in relation to blood transfusions and closely related matters.

My reason for discussing this aspect of the matter at all is that I consider it important to defend and support the view that it is good public policy to concede to the State the power to give a necessary blood transfusion to a child against the sincere but erroneous religious convictions of the parent and that it is bad public policy to concede to the State the right to force an adult to take means of staying alive against his own sincere religious convictions.

It would be considerably easier to determine these questions of public policy if we lived in a society in which the great mass of the citizens were all in agreement as to the requirements of the natural moral law and of the positive laws of God. For in such a case there would at least be no conflict between the laws of the State and the objective law of God. But even in such a society one would still have to contend with the problem of individual erroneous conscience. One would still have to uphold the right of the individual to follow such a conscience when he sincerely believed that not to do so would be a sin offending God. And in practical cases one would still have the task of determining when a religious practice based on an erroneous idea of the will of God was so harmful to the common good or so contrary to the rights of other individuals that it had to be restrained.

In the society we live in there is no such general agreement as to the requirements of the objective moral law. Catholics believe that from reason and revelation they are in possession of those moral truths by which we are expected to conform ourselves to the will of God. And this belief is based partially on the more fundamental one that the Catholic Church was founded by Christ, who is the Son of God, and that this Church has power to teach authoritatively in matters of faith and morals. Obviously these beliefs are not shared by the majority of our citizens. It might seem at first sight therefore, a rather hopeless task to try to formulate a statement of public policy which would be consistent with Catholic teaching, acceptable to the mass of citizens and capable of being put into practical effect.

But the situation is not as bad as it seems. We have a common heritage of Judeo-Christian thought which still pervades many of our political institutions and much of our national thinking. There would be quite general agreement, in the Anglo-Saxon tradition, that the State should be allowed to interfere with the individual liberty as little as possible. And very few would object to the doctrine that the State must be empowered to protect the lives of its citizens, especially young children, against fantastic religious aberrations. It is not impossible, when people agree on general principles such as these, to achieve a considerable measure of agreement on practical problems of public concern, as to the life and health of the people. On the great majority of such problems we can hope to arrive at practical norms agreeable to the mass of the citizens and not at variance with the objective moral law. Exceptions should be of infrequent occurrence.

It is the task of moralists and lawmakers, then, to try to draw a practical line which will delimit the powers of the State and the rights of the individual—a line which will protect against religious fanaticism and at the same time do justice to natural law principles and to sincere religious convictions whether erroneous or not.

At the outset, in drawing this line, two mistakes at opposite extremes are to be avoided. The first exaggerates State power. The second exaggerates individual liberty.

State power is exaggerated when one subscribes to the proposition that any interference by the State can be justified as long as the majority opinion approves. To make public policy a mere function of the will of the majority reduces it in the last analysis to some form of the doctrine that may makes right. Such thinking was utterly foreign to the founding fathers of the American republic. But it has found some modern adherents both on the philosophical and practical level. They reduce law to the organized force of the majority that stands behind it. They use the words "undemocratic" and "divisive" to describe those who dissent from majority views.

Democracy does not mean that...
the majority is right. Majority rule is a practical way of making a republic work. If it were true that mere force of numbers made the difference between right and wrong, good and bad, then mere force would be controlling. Might would make right. But if anything is clear in the fundamental political thought of our country, it is the idea that minorities have a right to exist and to propagate their ideas. It was a minority that thought slavery wrong and finally abolished it. Right and wrong are not determined by a show of hands. They are determined by a show of minds.

Now one may take the viewpoint of the practical statesman, that in our system the holders of minority views must be protected (within limits) whether they are right or wrong, and that it is hard to say which is which. Or one may take the viewpoint of the Catholic moralist who claims to know what is right and demands protection for the minority view when it is right, and for the erroneous conscience (again within limits) when it is wrong. But in both cases the principle of individual liberty is safeguarded against invasion by mere majority might. In both cases it is possible to arrive at practical formulations largely agreeable to both viewpoints.

The mistake at the opposite extreme is to imagine that any practice, no matter how immoral, or ridiculous, or dangerous must be tolerated in the interests of individual liberty if it is based on sincere religious belief. The example of human sacrifices mentioned above in Reynolds vs. the United States speaks for itself.

One may assert further, with varying degrees of assurance, that the State can and ought to prevent the Hindu widow from casting herself on her husband's funeral pyre; or the Japanese officer from committing hara-kiri; or anyone at all from committing suicide; or the Mormon from practicing polygamy; or the evangelical fanatic from exposing other to snakebite; or the Christian Scientist from neglecting ordinary medical care for a dangerously sick child; or a Hindu from going about unvaccinated in an epidemic; because he has religious scruples about using cows to produce vaccine; or a Church congregation from conducting services when a quarantine has been imposed to safeguard the public health.

But it is to be noted of all these exceptions that the justification of State interference is based on urgent considerations of the public good, or the imperative need to protect some individual person's right to life and health. The principle that the State should interfere as little as possible with individual liberty, especially where bodily integrity is involved, and most of all where conscience is affronted, is acceptable to most legislators and, I am sure, to all Catholic philosophers. Only strong, clear reasons of the common good, or the clear necessity of protecting the rights of others, especially defenseless children, can justify State intervention in such cases. Catholics, being themselves a minority group, are especially jealous of their rights in this regard and especially loath to concede to the State a power of intervention which might be turned against them.

What then of public policy where the conscientious refusal of blood transfusions is concerned? Having put the problem in its philosophical setting, where should that practical line be drawn to delimit State power and protect individual liberty in this field? My opinion and the reasons for it can now be briefly recapitulated.

The State should not be empowered to force a transfusion on an adult Witness who is in his right mind and who, because of his religious convictions, refuses it. First, because this would be an unwarranted invasion of his rights of conscience. The State cannot show that interference with individual liberty in such a case is justified. There is involved here no urgent need of protecting the common good, no pressing necessity of protecting the rights of others.

Secondly, for the Witness, given his frame of mind, the use of a blood transfusion is an extraordinary means of preserving life to which he is not objectively obliged by the moral law. This was the tentative opinion defended in Part II, above. The State should certainly not be empowered to force an individual to make use of a surgical procedure to save his own life, when the moral law itself does not oblige him, in the circumstances, to do so. If the moral law leaves him free to risk his life to that extent, the State should leave him free also.

Thirdly, if one takes the other view and considers that a transfusion is an ordinary means even for a conscientious objector, one should still deny the right of the State to intervene. The State is not competent to enforce every aspect of the moral law. The line between ordinary and extraordinary means of self-preservation is finely drawn and hard to determine. Can we allow the State, in the absence of urgent considerations of public good or the rights of others, to become the moral arbiters, with power to encroach upon the bodily integrity of the citizen? Has anyone ever thought that the State could force a man to undergo surgery for appendicitis, because he was in danger of death without it? Furthermore, in the transfusion case, there is also at stake the right of conscience.

Someone may object: If the State has the power to make attempted suicide a crime and to prevent a person from committing suicide, then, a pari, it should have the power of forcing a transfusion on an unwilling, conscientious objector. For to refuse the transfusion is the equivalent of committing suicide. In our opinion there is no adequate parity between the two cases. The person who commits suicide violates a negative precept of the law of God: "Thou shalt not kill." The moral situation of one who fails to take affirmative measures to keep himself alive is quite different, especially when the measures concerned are artificial surgical procedures. It is not inconceivable...
that there should exist a legal tradition of obligatory self-preservation, a tradition which would impose the affirmative legal duty of taking certain minimum measures to stay alive—for instance to take food and drink. But I find it hard to conceive a theory of jurisprudence in which the State would be empowered to impose an affirmative legal duty to make use of highly developed surgical techniques in order to prolong my earthly existence. To kill oneself is one thing. Not to avail oneself of surgery is quite another.

Finally, in the case of the child, I believe the State is justified in intervening and giving a necessary transfusion, even if the parents object on religious grounds. First, because the child has a certain, objective right to life and to ordinary medical care to preserve life, no matter what its parents' mistaken beliefs may be. Secondly, where there is a clear-cut case of necessity, to save an innocent person from impending death, the State can intervene even at the expense of the erroneous conscience. Thirdly, no one object to the power of the State to supply for the neglect of the parent in other, lesser matters. If the parents are cruel or sufficiently negligent of health, education or morals, the State, for the good of the child, can remove it from the custody of the parents for extended or indefinite periods. A fortiori it should be empowered to save the child's life by seeing that it receives a necessary transfusion.

This rather long inquiry into the scriptural, moral, legal and public policy aspects of the transfusion case is justified, I hope, by the importance of the problems it raises. Not the least among these is the very human one of dealing with the stubborn sincerity of the Witness. I suggest patience, when their intransigence becomes irritating, and still more patience when their mistaken zeal attacks the Church of Christ. Our hospitals and physicians can show them by example that the charity of Christ is all-embracing.

Catholic Teaching Hospitals

Frank B. McGlone, M. D.

Many of the best general hospitals in this country are conducted under Catholic auspices. But proportionately few of those Catholic institutions are conspicuous for their teaching programs. That deficiency is to our discredit and to our disadvantage. To our discredit, because it is in direct contrast to the role which the Church has always played in the propagation of scientific truth to our disadvantage, because we are thereby ignoring one of the best means at our disposal for insuring the excellence of medical standards in our hospitals for the future.

The tremendous good which is accomplished in our Catholic hospitals—thanks largely to the unselfish devotion of our nursing sisters and hospital chaplains, and to the very practical faith of Catholic doctors and nurses—is nonetheless so common a thing as to be legitimately taken for granted. But it often comes as a surprise to Catholic and non-Catholic alike to discover that the religious concerns of the Catholic hospital tend to improve rather than to dilute the quality of medical care which our patients receive. The ethical codes of our hospitals, for example, are faithfully enforced and have always forbidden those medical abuses which elsewhere are most frequently the obstacles to proper accreditation. Because our moral standards are so high, we are fortunately free from the beginning of such abuses. Or to put it another way, it is easier to practice good medicine in our hospitals because we are irrevocably committed to a sound morality.

Who else, then, is in better position to train the young physician to the highest medical standards? And what better reason for adopting an educational program than that we are most advantageously situated for the inculcation of what is best in medicine? The hospital, the staff, the trainee, and the patient—all stand to profit from such a program. And conversely, they stand to lose without one.

Our interest in medical education in private hospitals has been inspired by the growth of a fine program in Denver over the past eight years. During that length of time at St. Joseph's Hospital, the house staff has increased from six to twelve interns, with eleven residents on the various services, all actively engaged in teaching or learning the best medicine, surgery, pathology, and obstetrics. The development of the program was slow during the first few years, chiefly because the staff was not eager to participate. Now, however, with a stimulating program well established, teaching