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ORGAN TRANSPLANTS:

The Ethics of Donation

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There is perhaps no other medical technology which has changed our self-perception more than organ transplant technology. Now that the procedure has by and large passed the experimental stage and it is becoming increasingly safer to apply, patients requiring an organ replacement can justifiably hope for a longer and healthier life. Yet the promise which medical progress holds in this respect depends, in the circumstances, very much on human generosity.

The core philosophical problem, relating to organ transplants, as I see it, originates precisely from a particular state of dependence in which a certain category of patients has been placed. These patients have no claim to anybody's organs. They can only wait until the organ or organs which they require is or are actually given. Yet is it not true that the greater the need the higher is the demand and the stronger is the claim for help! If people's needs play a crucial role in a theory of justice, one may find it hard to draw the dividing line between justice and generosity.

In the history of moral philosophy and theology the place of both justice and love is acknowledged. There is room for both principles because people are distinct from each other and yet they are bound with each other by the bond of common human fellowship. Justice regulates relations between people in so far as they are individual subjects of rights and duties. Love articulates the requirements of human fellowship. Justice is motivated by the respect for the rights of the other; love is motivated by the solicitude one is expected to show for the other person in need of help. The demands of justice can be enforced, while one can only appeal to human generosity.

The way we talk about the procurement of human organs assumes

that the practice should be regulated by the logic of love rather than that of justice. Organs should neither be sold nor bought, as the exchange is not of a commercial kind. Organs can only be donated. By definition, a gift cannot be enforced; it is not given, because there is a claim to it. It is given perhaps as a sign of appreciation, as a token of gratitude or simply as a concrete manifestation of solidarity with the suffering. In the case of organ donation, the freedom of disposing of one's organs is exercised in the interest of a worthy cause. It is a sign of moral and spiritual maturity when individual freedom is exercised in a responsible manner. But should we call the free response to the summons of responsibility an act of 'love', without any qualification? If there is any obligation at all of heeding to the suffering of the most vulnerable, what sort of obligation is it and in what way and to what extent should it elicit social concern?

I propose to look at this issue from the standpoint of what can be called the paradigm of ownership and that of stewardship. The general tendency is toward the former but, as I shall be arguing, it is the latter paradigm that can adequately explain the nature and scope of our responsibility in offering or procuring human organs for transplantation.

2. The Ownership Paradigm

The ownership paradigm assumes that we have some kind of right over our body, because it is our own property. In a sense this is a valid assumption, as there is nothing else which can be described as ours more than our own body. Of course, a dualistic conception of man, dividing the human being into body and soul, as if these were two separate principles, is philosophically untenable, even though it prevailed in modern philosophy and may still be implied in our view about certain medical procedures, including organ transplants. The human body is not something extrinsic to ourselves. We do speak of our body, as we speak of

our house, but the possessive pronoun does not have the same meaning in one context as it has in the other. My body is a constituent part of myself; my house belongs to me but it can be transferred to somebody else.

One can at best only speak analogically of the body in terms of private property. This is why this kind of talk has to be qualified. Some of the more obvious qualifications are the following.

The right over our body is not to be understood as a right to self-mutilation and, much less, to self-killing or suicide. It is a right implying the obligation to care after oneself and after one's physical integrity. Behind this view there is a long-established tradition. It explains the initial negative reaction to organ transplants from living donors. Removing a sick organ is obviously not the same as removing a healthy one. But removing a healthy organ to give it to someone who needs it desperately does not amount to self-mutilation but can well be quite a heroic expression of love, provided that the life and health of the donor is not jeopardised. The right over one's body, therefore, is exercised in a meaningful manner to the extent that it takes the form of care for oneself and care for the other. It does not entitle the individual to destroy or even to waste any part of himself. I shall return to this crucial point later in my elaboration of the stewardship paradigm.

The right over one's body has another, as it were in-built, restriction to which I have already indirectly alluded. Human body organs are not a commodity which can be bought or sold. The various organs of a human body should not be exchanged for money. The market is not the avenue to be sought for their procurement and distribution. In the words of the North American philosopher, Michael Walzer, they fall within the category of blocked exchanges. They are not marketable not merely on consequentialist grounds. Indeed, if human organs could be procured against payment, the consequences would be highly undesirable. The practice is very likely to give rise to discrimination in favour of the richer and

exploitation of the poorer sections of the population. But beyond these, morally unwanted, consequences there is another, even more fundamental, issue to consider. This is the principle to be followed in trying to do justice to both the patients and the actual or potential donors. In the economic sphere justice presupposes freedom of exchanging money for a good or a service. Performance in the market depends on initiative as much as on the financial resources at one's disposal. Economic justice is, however, only one form of justice. When we pass to the sphere of security and welfare, the needs of the individual, on the one hand, and the responsibility of society to make adequate communal provisions to help its weaker, sometimes, suffering members, on the other, have paramount importance.

The ethical and legal measures generally adopted against business in human organs surely presuppose that the market is ill-suited for procuring them and make them accessible. They are, nevertheless, based on justice, because in the field of security and welfare contribution according to one's means and distribution according to one's needs constitute the basic parameters of justice. The norm that human organs should only be donated and should, therefore, be subject to no financial considerations does not necessarily render talk about justice, say, in procuring human organs superfluous. Concern for the health needs of others is a constitutive principle of justice in health care. What can you and I as well as society as a whole contribute to make human organs more available for transplantation is also a matter of justice.

The demands of justice in so far as the procurement of human organs for transplantation is concerned are usually narrowed down basically to one demand. This is the respect for the freedom of the donor. The ethical guidelines, adopted by the Bioethics Consultative Committee, require that in the case of living donors:

“Free, informed and specific consent is to be given in writing before an official body or person...”

“The doctor removing the live organ must take reasonable measures to ensure that no undue psychological or moral pressure has been exerted on the donor, and that the consent is indeed free and informed.”

“A donor is free to withdraw consent at any time prior to intervention.” “Refusal to give consent must be respected at all times.”

Given the obvious importance of respect to the freedom of donors, the relative guidelines provide also for the setting up of a special Board “to ensure that all potential donors are adequately informed, and that no undue pressure is brought to bear on the donor”. Besides, they prohibit as a rule transplantation of organs from persons incapable of giving consent, although in exceptional circumstances, children under the age of maturity may donate organs subject not only to the consent of their parents or, in their absence, to the authority of a competent court and to the approval of the special Board, but also on condition that they are adequately informed and are free to give consent.

The reason for requiring, in so categorical terms, free and informed consent from living donors, I believe, is not founded merely on the modern awareness of individual autonomy as a basic human value, but also on the consciousness that the body is mine in a unique sense. Any interference with it is only morally legitimate if I consent to it. The fact that the relative ethical guidelines prohibit individuals, who are incapable of giving consent, from being considered as potential donors confirms the seriousness with which the matter of free and informed consent is taken. There is nothing to argue about on this point. Living donors have unquestionably the right of determining what to do with those organs of their body they can give, without serious prejudice to their life and health.

As transplantation of organs from cadaver donors gradually becomes the rule, ethical attention has to focus more and more on this manner of procuring human organs for transplantation. The most sensitive issue in this respect has been the criteria to follow in certifying an individual to be dead. I do not intend to raise this issue, because it is too complex to deal with in the context of this short paper. I am interested rather in the other conditions for removing organs from cadaver donors, particularly those relating to consent, which again feature prominently in ethical guidelines. This is certainly an important ethical issue to address. In fact, once the individual is dead, why should it be unjust for any organs to be removed and given to those who need them? The principle of respect for individual freedom is obviously in-applicable. What one can require is, at best, to find out whether the individual has given or refused consent during his or her life-time. Having a properly signed donor card can be taken as an expression of consent on the part of the deceased. But what happens in the absence of any previously expressed wish? One way of solving this problem is to refer the matter to the relatives of the deceased person. This is the solution which the Bioethics Consultative Committee is actually proposing.

Now relatives do occupy a very important place in the whole picture. They are the ones who generally suffer most, particularly in cases of premature death, very often through some accident. In practically every culture the family, as a basic unit of society, enter, generally on a very profound level, into all the major transitions of the individual life-cycle. It is particularly present at the final phase. Removal of organs from a deceased person, however laudable it may be in itself, without asking for the consent of relatives, will harm our deepest feelings.

There is another side of the picture, however, which is equally significant to look at. These are the needs of patients who can benefit from medical progress only if there are enough human organs available. When one argues, as is generally the case, from

the stand-point of the right of the individual over his or her body, the right of the individual to dispose any of his or her organs as one thinks fit has to be affirmed. This principle is assumed to imply the right of the individual to determine what use is to be made of the body after one's death and, in the absence of any expressed intention, this right is extended to the relatives. It is, in my opinion, the ownership paradigm which is making such an emphasis on individual consent, even in the case of cadaver donors, plausible. But is not the right of ownership itself, even in matters related to one's body, subject to a higher norm? Do not the goods which we happen to own have a universal destination? Are they not meant ultimately to serve the interests of all? Are not property arrangements that exclude people from those goods that they need, at the cost perhaps even of losing their life, unjust? The ownership paradigm should be seen in the light of the paradigm of stewardship to serve as a basis for sound ethical guidelines on organ transplants.

The Stewardship Paradigm

The stewardship paradigm assumes that what we have is entrusted to us to manage and administer in the interest of ourselves and of others. Strictly speaking, we are not owners of anything - a discourse which, I concede, is not altogether meaningful outside a religious context in which life is acknowledged as a gift from God. On this premise, we are bound not to waste anything but to make the best possible use of it, taking into account our own needs and those of others.

An obvious conclusion that can be drawn from this paradigm concerns the philosophy that should animate the education of the public on the need of organs for transplantation. By all means, appeals to generosity should continue to be made but they can be more educationally effective, if generosity is presented as a virtue which is itself anchored in justice. The image of ourselves as 'trustees' of anything we happen to possess can bring out clearly

and forcefully enough the link between love and justice, organ donation as an expression of generosity and, as a requirement, of justice towards others.

The implications of the stewardship model for public policy may be harder to draw out and draft into appropriate legislation that takes seriously into account the responsibility of society to provide its sick members with the health care they need. That there should be the strictest possible measures to guarantee full respect to the freedom of living donors is too obvious to argue for. It is the issue of consent relating to cadaver donors that can be controversial. With the help of educational programmes which explain that behind every act of love there is also sense of justice to be acknowledged, the way can be opened for more effective social intervention in the procurement of human organs for transplantation. For instance, one may consider that in those cases where a deceased person had not expressly forbidden the removal of his/her organs, consent is to be presumed. This may hurt the feelings of relatives but it may also relieve them of a burden to have to decide themselves, very often in not so ideal circumstances.

Conclusion

The responsibility of donating organs for transplantation may lose most of its ethical relevance in the coming years with the development of animal - to - human organ transplants. Of course, the procedure needs to be developed not only from the technical side. The technique itself will have also to be assessed from an ethical viewpoint. This point I have not discussed here. Reports such as that produced recently by the Nuffield Foundation on the principal ethical aspects involved in this kind of technology are a helpful source. In the meantime, patients requiring an organ transplant will have to rely on human generosity. Generosity is a species of love. But love presupposes and perfects justice. Recognising that an act of free giving is also an act of justice does not make the gift less worthy of praise and thanksgiving, for whatever else it is, love for the other is also a duty.