_ESSAY_____

Are Organ Transplants Ever Morally Licit?

A commentary on the address of Pope John Paul II to the XVIII International Congress of the Transplantation Society

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On August 29, 2000, Pope John Paul II delivered an address to the XVIII International Congress of the Transplantation Society. While we are grateful for his teachings, we believe that certain points need further clarification.

Some members of the medical profession have interpreted the Holy Father's address as a tacit unconditional approval for organ transplantation. We believe this interpretation of the Pope's teaching is profoundly wrong. In fact, we read the Pope's address as a strong condemnation of the inhumane procedures and violations of natural moral law that presently occur with the transplantation of certain organs. We further argue that all men of good will must properly understand and explicitly follow the applicable theological and moral laws.

These laws are:

- No unpaired vital organ can morally be removed from a living human person;
- There should be no commercial traffic in human organs;
- People—especially the young—must fully comprehend that when they agree to be organ donors, they give transplant surgeons a license to terminate their lives.

Some members of the medical profession have heralded the Pope's speech as an affirmation of their procedures, when in truth the Holy Father set forth stricter guidelines. These stricter guidelines are currently being violated, misinterpreted, or ignored.

In this essay we have taken selected segments from the Pope's address, and interspersed our own medical, scientific, philosophical, and theological commentary. (***Unless otherwise noted, the indented quotations below are excerpts of the papal address***.)

As in his encyclical letter ***Evangelium Vitae***, the Holy Father suggested ways "which build up an authentic culture of life." One way "is the donation of organs, performed in an ethically acceptable manner, with a view to offering a chance of health and even of life itself to the sick who sometimes have no other hope." (86)

When he says that donations should be "performed in an ethically acceptable manner," the Pope refers to the natural moral law. We can summarize that law in two essential principles. 1) Good ought to be done; evil must be avoided. 2) Evil may not be done that good might come of it. An example of a morally licit action is the charitable donation of one of a person's two healthy kidneys to another person. In such a case, the excision of the donor's organ does not result in death or disabling mutilation and the recipient is given a chance of prolonging his life.

The ***Catechism of the Catholic Church*** (2296) teaches that the removal of organs that would "directly bring about the disabling mutilation or death of a human being" is intrinsically evil. Yet this is what occurs when the surgeon makes the incision to remove the donor's healthy live organs (usually the liver or lungs are taken first, followed by the heart and kidneys). The donor's body reacts with moving, grimacing, and squirming, unless the donor is first given a paralyzing drug. However, even with the paralyzing drug, there is an increase in blood pressure and heart rate. The heart continues beating until the transplant surgeon stops it—a few moments before cutting it out.

Causing death to sustain life

In response to the increasing number of protests from nurses and anesthesiologists, who sometimes react strongly to the movements of the supposed "corpse," and because these movements sometimes make it impossible to continue the operation, transplant surgeons have come to rely on the use of paralyzing drugs. These drugs are used in the same manner and dosages as with living patients, but here they are used in order to suppress signs of life—and in order to dissipate the protests and objections of the medical, nursing, and pastoral personnel who are increasingly uncertain that the organ donor is truly dead.

The donor is treated and prepared for surgery in a way similar to any other living patient going to the operating room. After the removal of healthy vital organs, what is left is an empty corpse. Such removal is ethically unacceptable. It is the removal of the organs that changes the living person to a dead one.

Anyone familiar with the moment of death knows that once death has occurred, there is no more breathing, moving, grimacing, or squirming and that there is no longer a heartbeat or blood pressure. The argument of some physicians—that such movements in an organ donor are caused by "leftover energy" in the body—has no scientific validity. It is, therefore, unethical for transplantation surgeons to continue performing such procedures that mutilate a living human body. These procedures treat the donors as if they were artificially sustained biologic entities, rather than human persons worthy of dignity and respect. Later in the Pope's address, he confirms this principle by stating that "the human body cannot be considered as a mere complex of tissues, organs, and functions. . . ."

The Pope writes:

> In this area of medical science, too, the fundamental criterion must be the defense and promotion of the integral good of the human person, in keeping with that unique dignity which is ours by virtue of our humanity.
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> Consequently, it is evident that every medical procedure performed on the human person is subject to limits: not just the limits of what is technically possible, but also limits determined by respect for human nature itself, understood in its fullness: "what is technically possible is not for that reason alone morally admissible."

The Pope clarifies his argument by stating that "this particular field of medical science, for all the hope of health and life it offers to many, also presents certain critical issues that need to be examined in the light of a discerning anthropological and ethical reflection." In response to his invitation, we maintain that the present human transplantation procedures promote the intrinsic good of the recipient while ***not*** preserving, but rather extinguishing, the life of the donor.

> It must first be emphasized, as I observed on another occasion, that every organ transplant has its source in a decision of great ethical value: "the decision to offer without reward a part of one's own body for the health and well-being of another person." Here precisely lies the nobility

> of the gesture, a gesture which is a genuine act of love. It is not just a matter of giving away something that belongs to us but of giving something of ourselves, for "by virtue of its substantial union with a spiritual soul, the human body cannot be considered as a mere complex of tissues, organs, and functions . . . rather it is a constitutive part of the person who manifests and expresses himself through it."

It is not ethical for a patient requesting euthanasia to offer his vital organs, even if his motive is to promote the health and well-being of another person. Yet this sort of organ donation is now occurring—not only with medical patients, but also with prisoners scheduled for the death penalty. At death the unity of body and soul is terminated. The soul, an integral component of the person, no longer is present in the body. What is left is a corpse, the physical remains of a once living human person.

Accordingly, any procedure which tends to commercialize human organs or to consider them as items of exchange or trade must be considered morally unacceptable, because to use the body as an "object" is to violate the dignity of the human person.

Pressure and informed consent

Not only does the zeal to procure organ donors tend to denigrate human life and dignity, but the influence of the profit motive must also be considered. In the United States, the 2,700 recipients of donated organs (or their insurance companies) now pay $3 billion each year. The 63 organizations which are approved by the federal government to procure organs collect an average of $24,000 per organ, or $70,000 per cadaver, from the ultimate medical payers.

Who actually profits from this commercialization? The answer to that question is veiled in secrecy. It is difficult to trace the flow of payments in this process. But the sheer size of the costs raises questions of social justice. Regardless of whether some individuals or organizations are making profits on the transfer of human organs (and that question certainly deserves investigation), large expenditures are clearly being made for the benefit of a select few patients. Are these resources being diverted from other types of care—perhaps less expensive, but equally likely to save lives—which could be beneficial to thousands of other patients?

> This first point has an immediate consequence of great ethical import: the need for informed consent. The human "authenticity" of such a decisive gesture requires that individuals be properly informed about the

processes involved, in order to be in a position to consent or decline in a free and conscientious manner. The consent of relatives has its own ethical validity in the absence of a decision on the part of the donor. Naturally, an analogous consent should be given by the recipients of donated organs.

"To be properly informed," the consent offered by an organ donor must include proper education about the process whereby a vital organ is taken for transplantation. The donor should be aware that an unpaired organ (that is, a heart or whole liver—as opposed to one of two kidneys or a lobe of a liver, without which the donor can continue to live) is taken while his heart is still beating, and his circulation and respiration are normal. He should understand that his heart will be stopped just prior to its removal. He should understand that paralyzing drugs may be used to suppress his bodily reactions to the transplant procedure, and to ward off the possible objections of medical personnel who might wonder whether he is truly dead. Finally he should realize that the removal of a healthy unpaired vital organ suitable for transplantation from someone who has been legally declared "brain dead," but is not truly biologically dead, is not ethically acceptable. Again, evil may not be done that good might come of it.

The Holy Father stresses that the potential organ donor must be properly informed so that he is ready "to consent or decline in a free and conscientious manner." He means, we are certain, that the potential donor must understand the entire process in the light of right reason. The liberty given to us by God requires that we must do good and avoid evil. To sacrifice a human person—even with a view to offering a chance of health or life itself to the sick—is not in accord with right reason.

Acknowledgement of the unique dignity of the human person has a further underlying consequence: vital organs which occur singly in the body can be removed only after death—that is, from the body of someone who is certainly dead.

The Holy Father clearly emphasizes the evil of intentionally causing death to the donor in disposing of his organs. Therefore, to sacrifice the life of a donor in order to obtain an organ for someone else violates the fifth commandment: "Thou shalt not kill."

Since the Holy Father has not defined "death" or "certainly dead," we can only presume that when he uses these terms, he is talking about true biological death, as it has been understood for centuries, rather than a

modern legal definition. The Holy Father is emphasizing that vital organs can be removed from the body only when the person is certainly dead. However, the medical community knows that unpaired vital organs taken from a "certainly dead" donor are unsuitable for transplantation. Therefore, we maintain that only one of paired vital organs or a part of an unpaired vital organ may be removed from a living human person for transplantation.

This ethical principle should be self-evident, since to violate it would mean intentionally to cause the death of the donor. But in making this apparently straightforward point, we plunge into one of the most debated issues in contemporary bioethics.

Defining death

It is vitally important to notice that in his address, the Pope did ***not*** suggest that this debate has been resolved. Nor did he give any indication that the debate is unimportant. On the contrary, he referred to "serious concerns in the minds of ordinary people. I refer to the problem of ascertaining the fact of death. When can a person be considered dead with complete certainty?" He went on to express his concerns that some people might be declared dead while they remain living, and that some surgeons might be hastening death:

> In this regard, it is helpful to recall that the death of the person is a single event, consisting in the total disintegration of that unitary and integrated whole that is the personal self. It results from the separation of the life-principle (or soul) from the corporal reality of the person. The death of the person, understood in this primary sense, is an event which no scientific technique or empirical method can identify directly.
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> Yet human experience shows that once death occurs certain biological signs inevitably follow, which medicine has learnt to recognize with increasing precision. In this sense, the "criteria" for ascertaining death used by medicine today should not be understood as the technical-scientific determination of the exact moment of a person's death, but as a scientifically secure means of identifying the biological signs that a person has indeed died.

Pope John Paul II is pointing out that the signs of death "should not be understood as the technical-scientific determination of the exact moment" of death, but that there are undeniable biological signs that appear after death has, in fact, taken place. We would add that the biological signs

which should be observed before a declaration of death ought to include destruction of the circulatory and respiratory systems, as well as the neurological system.

> It is a well known fact that for some time certain scientific approaches to ascertaining death have shifted the emphasis from the traditional cardio-respiratory signs to the so-called "neurological" criterion. Specifically, this consists in establishing, according to clearly determined parameters commonly held by the international scientific community . . .

It appears that the Pope has been misinformed about "clearly determined parameters, commonly held by the international scientific community." In fact, no such clearly determined parameters exist.

Here we must digress a bit, to provide a historical summary of the issues involved in the definition of "brain death." In 1968 the "Harvard Criteria" were published in the ***Journal of the American Medical Association***, entitled "A Definition of Irreversible Coma." This article was published without substantiating data from scientific research nor from case studies of individual patients. And the so-called science that has been used to support the notion that "brain death" and actual death are identical and equivalent has not improved since the promulgation of the Harvard Criteria.

In 1971 the Minnesota Criteria were published, using only nine patients who had electroencephalographic (EEG) evaluation. Two of the nine had EEG activity; seven did not. From this inadequate study the authors concluded that it is no longer necessary to require EEG evaluation before declaring "brain death."

The largest study on "brain death" that is currently available is the "Collaborative Study," which was conducted in the early 1970s on 844 patients. The results of the report dealt with only 503 patients. What were the results for the remaining 341 patients? In "An Appraisal," an article published in the ***Journal of the American Medical Association*** in 1977, after the data were collected, the resulting criteria for brain death were recommended for a larger clinical trial. More than 20 years later, no such clinical trial has been carried out.

Between 1968 and 1978, thirty sets of criteria for "brain death" were published. Many more sets of criteria have subsequently appeared. Each succeeding set of criteria has tended to be less strict than the previous ones. However, no matter the differences, none have declared any other

preceding criteria to be obsolete nor does any criterion for “brain death” state that it is equivalent to true biologic death of the person.

American law has accelerated the multiplication of brain-related criteria for the definition of death by giving the physician the authority to determine death. Every transplant center agrees that death is whatever and whenever a doctor says it is. The Uniform Determination of Death Act (UDDA) states that the determination of death must be “in accordance with accepted medical standards.” Therefore the law, not medicine, gives the physician the authority to determine his own criteria. These indiscriminate standards of judgment have given physicians excessive and unrestrained power.

In short, the “clearly determined parameters commonly held by the international scientific community” to which the Pope refers do not, in fact, exist. And since there are no “clearly determined parameters,” there is no so-called consensus “held by the international scientific community.”

Manipulation of medical terms

The acceptance of the criteria for “brain death” by those who have little or no way to critique medical articles is understandable. On the other hand, any doctor has access to and can read the literature. In many articles about “brain death,” medical terms—such as cessation of function, functions, functioning, destruction and death—are used interchangeably. Yes, it is true that when death has occurred, there is cessation of all functions. The converse is not true. A cessation of functioning merely indicates “idleness.” It does not mean that the function or the functions no longer exist, much less that the brain or any part of it has been destroyed. So how can the cessation of function be interpreted as identical and equivalent to death?

. . . the complete and irreversible cessation of all brain activity (in the cerebrum, cerebellum, and brain stem). This is then considered the sign that the individual organism has lost its integrative capacity.

Note that the language used here by Pope John Paul II is quite different from the language of “cessation of function,” or the words of the UDDA. The requirement set down by the Pope is “complete and irreversible cessation of all brain activity (in the cerebrum, cerebellum, and brain stem).” The criterion “cessation of all brain activity” is more stringent than “cessation of function.” In order for a doctor to know with moral certainty that “complete and irreversible cessation of all brain activity” has occurred, the patient’s circulation and respiration would have to cease sufficiently

that the cerebrum, cerebellum, and brain stem would be destroyed. That is, the doctor would have to know not only that the brain had lost all function, but that it could never recover function. Given the current state of medical research, as long as an intact brain remains, we cannot be certain that the brain could not recover function. And surely, in a life-or-death matter, any lingering uncertainty should be resolved in favor of life.

The Holy Father declares that there must be "moral certainty" for an ethically correct course of action. The Holy Father clearly teaches that "vital organs which occur singly in the body can be removed only after death—that is, from the body of someone who is certainly dead."

> With regard to the parameters used today for ascertaining death—whether the "encephalic" signs . . .

The Pope refers to "encephalic" indications of death. Although the problem could be traced to language differences, we must point out that there is no universal acceptance of "encephalic" signs as they pertain to the definition of death.

In an address entitled "Brain Death & Euthanasia," Dr. Josef Seifert notes: "We must also remind ourselves of an empirical proof of the uncertainty of our knowledge concerning the time of death. Think of the 'life after life' experiences of people who were declared clinically dead and still had all sorts of experiences associated with their body. Could not brain dead persons be in a similar state prior to the occurrence of actual death? The actions ***of organ-harvesting*** are based on the ***assumption*** that the event of death has occurred prior to a certain moment and can be determined [with certainty] by the medical profession before the natural phenomenon of death with all its obvious features has set in." [***emphasis added***]

Dr. Seifert continues: "Death in this classical sense does not just involve irreversible cardio-pulmonary arrest but is accompanied by many other well-nigh indubitable signs: from the cessation of all vital functions to the ***frigor*** (coldness) of death to the ***rigor mortis*** of the corpse to the actual decomposition of the body.

"Even when faced with the 'whole body death,' one should wait for some time after actual death sets in before one dissects a corpse. To declare death when the first undoubted marks of death have set in, is not presumptuous. Yet to act or to dissect a corpse on the first declaration of death is presumptuous. It is much more pretentious, however, to

determine the occurrence of death by means of a mere set of scientific facts and theories about the portion of body-tissue which contains the person, while the body as a whole still lives."

What is "irreversible?"

But let us return to the words of Pope John Paul II:

> With regard to the parameters used today for ascertaining death—whether the "encephalic" signs or the more traditional cardio-respiratory signs—the Church does not make technical decisions. She limits herself to the Gospel duty of comparing the data offered by medical science with the Christian understanding of the unity of the person, bringing out the similarities and the possible conflicts capable of endangering respect for human dignity.
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> Here it can be said that the criterion adopted in more recent times for ascertaining the fact of death, namely the complete and irreversible cessation of all brain activity, if rigorously applied, does not seem to conflict with the essential elements of a sound anthropology.

What is meant by "irreversible?"

"Irreversibility" as such is not an empirical concept; it cannot be empirically determined. Both destruction of the brain and the cessation of its functions are, in principle, directly observable; such observations can serve as evidence. Irreversibility, however, is a property about which we can learn only by inference from prior experience. It is not an observable condition. Hence, it cannot serve as evidence, nor can it rightly be made part of an empirical criterion of death. To regard irreversibility of cerebral (or brain) function (at best, a deduction from a set of symptoms) as synonymous or interchangeable with death is to commit a compound fallacy: identifying the symptoms with their cause and assuming a single cause when several are possible.

The Holy Father stipulates that any criteria involving the "complete and irreversible cessation of all brain activity" must be "rigorously applied." But rigorous application of the criteria implies that such criteria exist. None of the brain-related criteria can fulfill this prerequisite for death. Thus, since they do not exist, they cannot be applied in any fashion—much less "rigorously."

Perhaps the Pope has been advised that if the criteria are "rigorously applied," this is sufficient for a determination of death. But no published set of criteria has been "rigorously applied." Some criteria have been

recommended for a larger clinical trial, but this trial has never occurred. There are many sets of criteria. None of them are supported by accompanying data to establish "complete and irreversible cessation of all brain activity."

The Pope's Address was delivered in English, so when he says that the use of brain criteria "does not seem to conflict with the essential elements of a sound anthropology," the use of the word "seem" is intentional. Thus he indicates that the matter has not been completely resolved. (The word "seem" has been deleted in one published Italian translation. Perhaps this was a simple mistake, but in any case it should be corrected.)

The benefit of the doubt

The Pope continues:

> Therefore a health worker professionally responsible for ascertaining death can use these criteria in each individual case as the basis for arriving at that degree of assurance in ethical judgment which moral teaching describes as "moral certainty." This moral certainty is considered the necessary and sufficient basis for an ethically correct course of action.

Here the standard of "complete certainty" used earlier by the Pope has been changed to "moral certainty"—a lower standard. Moral certainty comes when the individual's judgment is free of all ***reasonable*** doubt of error but it does not require the elimination of ***all*** doubt. When dealing with certain absolute rights of a person—especially the right to life—absolute certitude would seem to be required. Since one may not act with a doubtful conscience, then either the doubt must be eliminated or the action delayed. Definitions of death used today are probable but do not remove clear and present doubt. If there is doubt, surely the Church will always protect life. Clarification on this important matter of *doubt* is urgently required.

> Only where such certainty exists, and where informed consent has already been given by the donor or the donor's legitimate representatives, is it morally right to initiate the technical procedures required for the removal of organs for transplant.

Certainty of death and informed consent are essential prerequisites. Informed consent would include information about the fallacies in the definition of death, (that is, the difference between a legal definition of death and true biologic death); reactions to the pain of incision, and the

many, many conflicting sets of criteria. The numerous sets indicate the lack of agreement and confirm the doubts about death prior to taking vital organs.

Another question of great ethical significance is that of the allocation of donated organs through waiting lists and the assignment of priorities. Despite efforts to promote the practice of organ-donation, the resources available in many countries are currently insufficient to meet medical needs. Hence there is a need to compile waiting lists for transplants on the basis of clear and properly reasoned criteria. From the moral standpoint, an obvious principle of justice requires that the criteria for assigning donated organs should in no way be “discriminatory” (i.e. based on age, sex, race, religion, social standing, etc.) or “utilitarian” (i.e. based on work capacity, social usefulness, etc.). Instead, in determining who should have precedence in receiving an organ, judgments should be made on the basis of immunological and clinical factors. Any other criterion would prove wholly arbitrary and subjective, and would fail to recognize the intrinsic value of each human person as such, a value that is independent of any external circumstances.

A final issue concerns a possible alternative solution to the problem of finding human organs for transplantation, something still very much in the experimental stage, namely xenotransplants, that is, organ transplants from other animal species. It is not my intention to explore in detail the problems connected with this form of intervention. I would merely recall that already in 1956 Pope Pius XII raised the question of their legitimacy. He did so when commenting on the scientific possibility, then being presaged, of transplanting animal corneas to humans. His response is still enlightening for us today: in principle, he stated, for a xenotransplant to be licit, the transplanted organ must not impair the integrity of the psychological or genetic identity of the person receiving it; and there must also be a proven biological possibility that the transplant will be successful and will not expose the recipient to inordinate risk.

In concluding, I express the hope that, thanks to the work of so many generous and highly-trained people, scientific and technological research in the field of transplants will continue to progress, and extend to experimentation with new therapies which can replace organ transplants, as some recent developments in prosthetics seem to

promise. In any event, methods that fail to respect the dignity and value of the person must always be avoided.

To cut out a vital organ—a heart or a whole liver—prior to the donor's death absolutely and necessarily does not respect the dignity and value of the human person.

> I am thinking in particular of attempts at human cloning with a view to obtaining organs for transplants: these techniques, insofar as they involve the manipulation and destruction of human embryos, are not morally acceptable, even when their proposed goal is good in itself. Science itself points to other forms of therapeutic intervention which would not involve cloning or the use of embryonic cells, but rather would make use of stem cells taken from adults. This is the direction that research must follow if it wishes to respect the dignity of each and every human being, even at the embryonic stage.

A consistent pro-life argument

In a paper entitled "Brain Death is Not Actual Death: Philosophical Arguments," Dr. Seifert makes a dramatic argument when he writes:

> "During the first six weeks of pregnancy our body lives without a brain and hence our human life does not begin with the human brain. Certainly, the embryo is alive but his life is not bound to the functioning of his brain. Therefore, the thesis of brain death being the actual death of the person which ties human life inseparably to a functioning brain goes against this biological fact: the development of the embryonic body proves that the brain cannot be simply the seat of the human person's life or soul. To hold the opposite view, you have to defend the position that the human soul is created or enters the body only after the human brain is formed."

Again we return to the words of the Holy Father:

> In addressing these varied issues, the contribution of philosophers and theologians is important. Their careful and competent reflection on the ethical problems associated with transplant therapy can help to clarify the criteria for assessing what kinds of transplants are morally acceptable and under what conditions, especially with regard to the protection of each individual's personal identity.
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> I am confident that social, political, and educational leaders will renew their commitment to fostering a genuine culture of generosity and solidarity. There is a need to instill in people's hearts, especially in the

hearts of the young, a genuine and deep appreciation of the need for brotherly love, a love that can find expression in the decision to become an organ donor.

Young people in particular need guidance on the issue of the morality (or immorality) of organ transplants. The admirable idealism that is so common among young people often makes them wish to help others, while the application for a driver's license gives them an opportunity to identify themselves as organ donors. If they hear no arguments against the practice, they may become donors without the information necessary for adequate reflection. But more experienced, older people must also be educated to the truth that when healthy vital organs are taken in accordance with the legal common practice of medicine, the donor is killed. May the Lord sustain each one of you in your work, and guide you in the service of authentic human progress. I accompany this wish with my blessing.

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