The Ethical Crisis of Organ Transplants
In Search of Cultural "Compatibility"

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There is no concept, no matter how strange, in which human beings are not willing to believe fervently, so long as it offers some comfort from the knowledge that one day they will no longer exist, so long as it gives him them hope of some form of eternal life.

Norbert Elias[1]

In the convent of San Domenico in Florence, Fra Angelico painted a miracle of topical interest. In it, we see a monk's cell and the holy surgeons Como and Damien who are attaching a healthy leg onto the body of an amputee. The progress of science has made it possible to realize bold dreams that have been expressed in the myths of seemingly antithetical cultures. Insofar as transplants can now be carried out on all the vital organs of the body, except the brain, modern medicine holds what would seem to be almost a promise of immortality, thus flattering human desire. How then can we explain the fact that, after a period of enthusiasm created by surgical feats, the anticipated spread of the operation has been frustrated by a marked reticence concerning organ donation?[2] This phenomenon, widespread in the Western countries in which most transplants take place, indicates a "malaise of civilization."

Reflected in the gap between supply and demand, this crisis brings up the ethical question of transplants, which has already been posed before:[3] Under what conditions is it morally legitimate to perform a transplant that is a double act, a removal from the donor, living or dead, and a grafting onto the recipient?

This discrepancy between the cumulative progress of science and the anthropological logic of existential choices – choices that are always open to revision – could have been expected to arise before now. However, for years the focus of society's efforts was on the scientific problem of rejection and research into the means

of transgressing biological individuality, while the problem of other kinds of transgression left society indifferent. Nor was it a question of total blindness to the social dimensions of transplants. On the contrary, the medical culture of transplantation called on society to legitimize and "nourish" these practices. The ideology of organ donation, grandiloquently called the "gift of life," has developed in Western countries in step with medical technique. Many sociologists have seen transplants and transfusion as a precious means of restoring a declining solidarity.[4]

Thus science and morality pointed in the same direction. Transplants seemed able to reconcile two contradictory ways of thinking: the mechanistic, which conceived of the human body as a mechanical reservoir of organs,[5] and the symbolic, which thought in terms of a symbolic and material exchange between members of the social body, both living and dead.

The Limitless Rationality of Western Medicine and the Crisis of Transplantation

In Cartesian philosophy, transplantation is perfectly conceivable. The thinking substance is fragmented into as many souls as there are individuals. At the same time, bodies are so many interchangeable fragments of one divisible matter. They function like watches, indefinitely repairable if one has at one's disposal enough spare cogs. The process of immortalization of the human species is intellectually set into motion.

Transplantation is first of all a surgical act. But the most radical progress, if not the most spectacular, has come from biology. In 1912, Alexis Carrel, a virtuoso surgeon, declared himself to be defeated not by surgical difficulties but by the formidable obstacle of biological identity itself, which science alone could explain. In contrast to the ease with which a graft of tissue from the patient's own body could be performed, a graft of tissue from another individual of the same species was impossible.

Attention was thus focused on the problem of rejection. This was, in the years which followed, interpreted immunologically, that is, related to the natural differences between persons that are

expressed in a system of cells and molecules dedicated to the defense of the organism and the maintenance of its integrity.

The solution to the problem of rejection was found in two approaches. On the one hand, immune response to the graft was minimized by means of drugs, called immunosupressives; on the other hand, donor and recipient were matched as closely as possible. Although it is true that each individual is unique, this individual nevertheless shares with others a certain number of molecular motifs carried in his cells. Attesting to the importance of the immunologic paradigm in medical categories,[6] research in the 1960s was generally oriented toward the study of *compatibility*, that is to say the minimal resemblances required for the transfer of an organ from one individual to another.

Transplantation found its first state of equilibrium when criteria for selection were defined in the form of the law of HLA. HLA (histocompatibility locus antigens) groups are based on differences linked to antigens present on the surface of white blood cells. It was hoped that these groups would play the same defensive role in grafts that red blood cells played in transfusions. The allocation of organs (at that time, exclusively kidneys) on the basis of HLA proximity ("shared identity") was accepted, particularly in certain countries in Europe, notably France.[7] The distribution of kidneys based on HLA suitability represented an arbitrariness that was acceptable, since it was linked to the potential success of the transplant.

At the same time, progress in medical technology had led to the appearance of "irreversible comas:" these patients, irrevocably unconscious, but whose cardiac and respiratory functions were intact, had become, by an unforeseen effect of advances in medical care, available for organ transplants. The introduction of new immunosuppressives like cyclosporin, beginning in 1985, permitted a relaxing of the restrictions of HLA[8] and made possible transplants between donor and recipient who were not immunologically similar. Freed from these biological constraints, transplant technology saw another bottleneck appear: the lack of organs.

The transplant crisis is a complex crisis. It results from the very success of a technique which is increasingly indicated, and which seems to be spreading without control. It testifies to the loss of the scientific landmarks which framed the first breakthroughs. It has

consequences both for the drawing up of waiting lists and the allocation of organs according to priorities that are no longer clear. Organs have in effect become what economists call "scarce resources."[9] The ethical idealism of the medical pioneers is contested in the name of judicial and commercial realism, which proposes to consider the body as a thing, or even to regulate its commerce. The almost universal acceptance of transplantation by society coexists with a prevarication that undermines its functioning, betraying a logical flaw at the heart of the system.

Current practice must be reorganized. However, beyond the necessary reforms, we must also face the fundamental question that has been long ignored. This "ethical question" affects not only the modalities of an enterprise founded on morally acceptable practices and obeying a distributive justice; it affects the *sense* we make of the whole enterprise. In a word, for years those engaged in human transplant have worked towards the resolution of scientific compatibility without preoccupying themselves with what I call "cultural compatibility."[10] We must now embrace upon this search.

A Profession's Unconscious

The crisis comes at a moment when the medical profession finds itself embattled and displaced from its traditional position of authority and respectability. Doctors have been surprised by these attacks. Persuaded that their science is by definition "the most philanthropic of all,"[11] and that their vocation puts them above all suspicion, if not above the law,[12] they have not noticed that the division, in law, between the tissue removers and those who perform transplants has had the perverse effect of exalting the graft, the symbol of progress, while lowering the act of removal into a region of shadows.

This impassable border between the keepers of living cadavers and the artisans of resurrection is reminiscent of another impenetrable barrier, one that allows doctors to repress that which they have forgotten, or barely learned, about the conditions under which their present knowledge was acquired over the course of the centuries. The ahistorical character of their education facilitates the asepticization of learning and the effacement of its origin.

Introduction to dissection, which reproduces the extraction of knowledge by procedures that offend public sensibilities, marked, not so long ago, the initiation of the student.[13] Its disappearance, at a time when apprenticeship in hospital has been eclipsed by bookish erudition, increases the danger of producing a generation of professionals even more forgetful of the somewhat unsavory materiality of the origins of their knowledge.

Doctors have forgotten the tradition that links them to the breaking of taboos and which made the surgeon, between demigod and executioner, one of those rather ambivalent figures like the sacrificial priest and the butcher.[14] Until the last century, by reason of the spread of dissection and the ever-increasing hunger for cadavers, doctors stayed close to the execution grounds. Ruth Richardson has written the history of this profession, ironically called the "resurrectionists," which in London constituted a veritable gang of corpse chasers.[15] The greats of medicine, like John Hunter in England in the 18th century, hired men to collect cadavers with interesting anatomical anomalies.

There is thus in the medical profession a "right-hand knowledge" and a "left-hand knowledge," as we speak of left and right Tantrism, which opposes beneficent science to reprehensible magic. The latter implies a proximity to a dubious world that again arises with transplantation. Take for example the explosion, in the popular imagination, of the specter of the trade in organs, which has been fostered by scandals in the management of waiting lists and other corrupt practices, as well as with rumors of traffic in organs and reports of a regular market involving several Third-World countries.[16]

When attention is turned from the recipient to the donor, when the two kinds of knowledge are contrasted in a way that illustrates the scientific exploitation of the human body, transplantation reminds us of its historical predecessors, such as the circulation of Christian relics[17] for healing purposes.

Relics

There existed, in ancient civilizations, a continuous scale of images that ranged from the sacrifice of a living person for the bene-

fit of a community to the post-mortem use of a corpse, of which relics are a case in point. In Greek mythology the first Dionysus, son of Zeus, was put to death and from his heart, a living transplant, was born the second Dionysus, the artisan who created man.[18] The Dionysian cult of Bacchanals commemorated the event of this god's death, and his sacrifice was honored by tearing up and devouring the heart of a goat during the ceremony. The analogies with the Eucharist, the consumption of the host which is the body of Christ, were developed by erudite Hellenism in Rohde's *Psyche*, which caused a scandal[19] and inspired Freud's *Totem and Taboo*. The idea of the socially-useful sacrifice makes possible the transition to the modern graft, while it blurs the distinction, elsewhere fundamental, between the living and dead donor, in the form of the gift of the self.

The Christian church strove to preserve the sacredness of the cadaverous body, inherited from Greco-Roman civilization, while accepting its utilization by its faithful for the purpose of eliciting supernatural intervention. Christians very early on associated the cult of the Eucharist with that of the remains of saints.[20]

From the time of the conversion of the Roman Emperor Constantine in 313, the cult of corporeal relics expanded. Martyrs who had been decapitated, tortured, and torn to pieces, were the best candidates for the fragmentation and multiplication of relics. Relics traveled throughout the whole of Christendom. In the West an entire body was most often transferred in order to enhance the prestige of a church, which would then become a place of pilgrimage where miraculous cures took place. In the East transfer was often accompanied by dismemberment, the body being dispersed among several sanctuaries.

Relics permitted contact with a body that was dead but which often exhibited the characteristics of the living, a little like the "warm body" of the comatose donor before the removal of an organ. The saintly body is often endowed with incorruptibility, as the odor of sanctity testifies,[21] as does the liquidity of organic fluids, blood or tears, which flow readily.

The cult of (and the commerce in) relics was particularly prosperous at the time of the Crusades. At the death of Saint Louis, King of France, in Tunis, the faithful hurried to boil his body in order to

retrieve his bones and send them throughout Christendom.[22] The beginning of the 12th century saw what was almost a fad for the scattering of the remains of pre-canonized hermits and bishops, so as to demonstrate the *virtus*, or effective force, of their relics.

The danger of seeing the cadaver dispersed concerned the Church, which time and again tried to limit this dissolution and the multiplication of miracles in order to control popular piety. Pope Boniface VIII in 1299 forbade the cutting up of remains, evisceration, in short, all the practices that are now necessary for the transplantation of organs. The Church worried about the disappearance of the cadaver, and was concerned about keeping at least the appearance of a body in the sepulcher.

Relics seemed to be a mediation between life and death, between the here-and-now and the hereafter. They are not by nature dead; the spiritual life that animated the person is prolonged in transferable animal life. The necessity for the sick person to have physical contact with this corporal remain that is endowed with a residual life has certain analogies with transplantation, in particular the necessity of having at one's disposal a physical substratum, like a store of organs to transplant, or again a pool of donors.

In the statement by a legal scholar of the 16th century that the blood of Christ is a treasure with which the Church is entrusted, and which it may turn to profit for the salvation of man,[23] law historian Jean Pierre Baud saw the formulation of the fundamental principle of the blood bank. Doctors carried on a dialogue[24] with churchmen about the therapeutic powers linked to the ambiguity of this healing/salvation. In the past, the Church had been in frequent competition with lay doctors, and in many countries at the end of the nineteenth century the churchmen were barred from the professional medical field. In so doing, doctors perhaps failed to consider the import of the social role which they had now inherited, and the responsibilities which followed from it. They were fascinated by the increase of their power in the metropolis and their messianic mission abroad, of which contemporary "humanitarian action" is a trace. They were less attentive to the symbolic mediation that they assumed in becoming *guides from this world to the other*.

From the Judicial to the Ethical

Countries which practice transplantation have adopted either the principle of explicit consent or that of implicit consent (the Anglo-Saxon "opting in" or "opting out"). In France, the Law of 1976 was drafted to maximize the availability of organs from cadavers. If taking organs from live donors implies an always revocable consent, taking them from cadavers is based on the implicit consent of the subject, which means that the surgeon is free to operate as long as the donor did not explicitly withhold consent during his or her lifetime.

The medical profession is currently opposed to the establishment of a new right, the *right to transplants*, an idea to which medical science made a profound contribution. This right has its roots in the demand for citizen's rights (against foreigners), and that of an egalitarian distribution system. But the right to transplant exists only as one element within a broader *right to health*[25] the importance of which, in Western societies, seems to overide other fundamental rights, such as the right to food, shelter and employment, a status that indirectly reflects our faith in medicine. The right to health appeared at the end of the last century in industrial countries, as a consequence of legislation on industrial accidents and occupational illnesses, linked to the "social question" before being applied broadly with the extension of social security systems. The right to health was part of the Universal Declaration of Human Rights of 1948,[26] before being included in a large number of national constitutions. Its general framework is the tendency of the living being to want to persist in life, and on the desire for immortality that overpowers the desire for eternity.

The reintegration of the human body into the legal system is thus done through the intermediary of *human rights*, an autonomous ensemble at the fringes of moral philosophy and law that takes into account biological needs. These rights, theoretically universal, are in fact linked to concrete situations which either do or do not permit application, and cannot receive a purely formal definition. In the phrase "human rights," "right" does not refer to the fullness of the classical judicial form, but to a term inter-

mediate between right and custom, between the particularity of law and the universality of essence. It designates a mediation between the real and the imaginary, the manifestation of a universal aspiration that constitutions transcribe differently from country to country.

The right to health reflects an aggregation of rights, strongly medicalized (access to primary medical care or to the healthcare available on the market). Can it include the right to transplants? Since the cure is found in the body of another,[27] such an affirmation amounts to a recognition of our rights over that body,[28] which suggests slavery and prostitution. The recourse to the mediation of a collective body here intervenes.

In France, the state evades the ethical question by guaranteeing certain conditions for transplants (consent, institutional control), without clearly stating in the name of what philosophy it solicits individuals. At best, it is based on a vague sense of solidarity that the philosopher François Dagognet suggests we strengthen to the point of making it a civic obligation to donate organs.[29] Can we go so far as to make the right to transplants a constitutional matter, and which would then be the object of a regulated application? In other words, can we define public health as a collective good which can be redistributed to all members of society?

In Anglo-Saxon countries individualistic utilitarianism favors the practice of using living donors[30] and considering as a real contract between individuals. This practice can be extended to liver transplants with the possible recourse to segmental ablations. The State's role would be reduced to that of matchmaker.

A real right to transplant is thus improvised and turned into a somewhat cannibalistic right that increases the medicalization of the living flesh. However, the crisis of transplants is not linked only to a void or some *judicial inadequacy:* it is also a *yawning cultural gap,* for the collective experience of death is not taken into account in the official procedures for transplantation, and in countries in which the program is still not very developed, we may expect the appearance of problems similar to those experienced in countries more advanced in transplantation.

The Anthropology of Death and Transplantation

First, contrary to medical procedures, which all come down to fixing a point of no return[31] and a legal time of death, death is not universally understood as a straightforward break.

The idea of a material afterlife has long been made palpable by certain details of Western penal law, for example the customs of displaying the severed heads of criminals and quartering corpses, suggesting a physical suffering and an infamy that may be inflicted after death.

In most cultures, there is an intermediate period, which may even justify a second burial, sometimes several months later.[32] For the first centuries of the Christian era, the soul of the deceased only slowly crossed the "boundaries of heaven" before really entering the other world.[33] In Sunni and, above all, Shiite Islam, analogous funerary rituals take place on the fortieth day.

Respecting an intermediary period appears to be linked, for one thing, to uncertainty about the actual moment of death. In the 18th century, we have the example of those Enlightenment Jews who opposed the precipitous burial that tradition called for, demanding instead a delay which would permit the scientific verification of death.[34] For another thing, the suspension of time corresponds to the necessities of mourning facilitated by the materialization of the cadaver. In their ancestor worship, the Chinese offer up the favorite dishes of the deceased for two or three years.

At the same time, most cultures feel the need to mark a break, as radical as possible, between the two worlds. In ancient Greece, an obol was placed in the mouth of the corpse to give to Charon, without which the deceased would wander as a ghost and importune the family. In Bali, the coffin is shaken violently to disorient the dead man, so that he can no longer find his way back to his house ...

Transplants overturn these rhythms. The donor's cadaver, somewhat effaced in the official ideology of the gift, weighs more and more heavily on the collective imagination.

The organization which took shape in the 1960s in most European countries worked for the regulation of organ circulation which is a basic requirement of modern transplants. Transgression was masked, in many countries (including France), by the inter-

vention of the State, whose job it was to organize the conduct of transplants on the basis of moralization, using the sacrosanct principles of anonymity and freedom so as to avoid abuses, of which the most feared was the rise of a trade in body parts.

Nevertheless, in a secular state that took no official position on the posthumous fate of the dead, the official ideology of the gift[35] was hardly clarified. "Gift" has always been an inadequate expression, because what is meant is a gift without any possibility of return, above all in the case of the dead donor. Therefore it is society and not the State alone that exercises the indispensable function of mediation. Legislation, of whatever sort, starts from the fact that the body of the deceased is not that of an isolated individual, but a member of a community. But of what community? Do we mean global society in the sense of the nation-state, or must we take into account the ethnic or religious community to which the deceased belonged? In France the Jacobin, centralizing State has inspired transplant institutions which are a copy of its political model. This is not the case in the United States. In the short term, the question may arise of obedience of all within the framework of citizenship, and the difficulty of making a pluralist state work whose communities hold different values. Engelhardt raises the possibility of civil disobedience in the name of an individual liberty which he portrays as the foundation of ethics.[36]

A sociological survey has shown that the different social classes do not react in the same way to the idea of receiving and above all donating living tissue.[37] Higher education seems to encourage a more permissive attitude, inspired by respect for modern technical accomplishments. Those younger and less-educated are less favorable to tissue removal. Ironically, it is these young people, under-educated, potentially unemployed and enthusiasts of strong emotions, who have the greatest statistical chance of furnishing the young, strong cadavers most suitable for tissue removal: in the final analysis, that which is taken to be a cultural reflex could, with some reason, be redefined as a class-based reaction to an aggression that only exacerbates inequalities already evident elsewhere in society.

Implicit consent is evidently a way to keep the dead quiet. Legal experts have emphasized, in the context of what are essentially

rights, the anomalous nature of an idea of implicit consent capable of overriding family wishes, just as submission to a family veto, without judicial valor *stricto sensu*,[38] is anomalous. In France, in spite of the continued applicability of the law of 1976, the benefits of which are dwindling, the idea of consent to organ donation in advance and received – why not, since they are already accustomed to keeping all sorts of records? – in hospital has been raised. Many European countries have already set up similar procedures.

During a colloquium in Paris, an economist proposed the inclusion of a retaliatory clause in such a process of registration: a refusal to be a donor could lead to the refusal of the eventual access to transplants. This idea was rejected on the grounds that the medical community, in applying this rule of retribution, would fail in its duties to the sick. However, the dilemma of egalitarian distribution remains.

By making death more present, which is unbearable to modern civilization, transplantation upsets the common experience of death. In spite of the warnings of those medical practitioners who emphasize the need for decency, the extent of tissue removal is starting to lend credence to the nightmare of a body emptied of the greatest part of its substance. Such a body is to be viewed as fundamentally good and fully usable[39] How will we define the minimal cadaver?

The importance of the integrity of the body is a function of the belief in resurrection, the central dogma of the great Western religions. The conception of resurrection varies from Muslim's material body, capable of experiencing carnal pleasure in the gardens of paradise (*jenna*), to the Christian's glorious, idealized body. Even in the case of the latter, medieval theologians spent a great deal of time discussing details that are only apparently pointless. On the day of Judgment, will a circumcised man get his foreskin back? Will a pregnant woman give birth to her fetus? Will the lame, the deformed and the disabled be returned to their perfect form?[40]

Within Christianity itself there is a fundamental division between those who, with St. Thomas, make the body play a role in the definition of the person, and those who, to the contrary, with Aristotle, hold that the soul is merely conjoined by force with its fleshly abode, and for whom this connection is instantly severed at the moment of death, freeing the soul from its gross neighbor.

The Neoplatonic approach, coinciding with an ascetic trend in Christianity, also undermined the cult of relics by denying all efficacy to a material substratum which has ceased to be animated. On the other hand, it harmonizes well with the Cartesian view of the body, in which brain death, like the stopping of a watch, clearly and distinctly defines death:

> Death never happens by a fault of the soul, but only because one of the principal parts of the body has become corrupted; and we believe that the body of a living man differs from a dead one just as a watch or other automaton, when it is set into motion and when it has in itself the corporal principle of movement for which it is designed ..., and the same watch or other machine, when it is broken and the principle of its movement has ceased to act.[41]

For Neo-Thomists, on the other hand, the brain-dead subject is still identifiable, in spite of the cessation of cerebral function. Neither life nor identity, despite the current ambitions of neuroscience, can be purely cognitive.

For some Muslim theologians, after the rapid dissolution of the body, only the preservation of the coccyx matters, which on resurrection day will reconstitute the whole body.[42] The coccyx, the last vertebra at the base of the spinal column, seems to be the reservoir of energy and reproductive force. In many traditions, the confluence of sexual and vital energy is situated in the lower back. Bones are thought to produce semen, which, by impregnating women, assures the ancestor's immortality.[43]

For other Muslims, the integrity of the body remains a prerequisite to resurrection, and makes the removal of tissue, even for the purpose of autopsy, problematic. Evelyn Savage-Smith has shown that it is not possible to prove that there was ever a prohibition on tissue removal in Muslim countries, but that it is likely that the practice was tolerated rather than condoned. For some doctors today, the prohibition can be lifted in deference to the common interest (*Istislah*), which takes precedence over the interests of the individual.[44]

Once again, it is difficult to reflect on the contemporary causes of the crisis of transplants without then questioning the choice of transplantation by societies that have given it precedence over other options, which we cannot yet see clearly, except through the eyes of other cultures, whether or not they are present on their national territory.

The Case of Japan

The case of Japan in this respect is extremely interesting. Japan is the only non-Western country which has acquired the degree of organization and technology that makes transplants possible. However, the practice is still little-practiced on Japanese soil, as a consequence of constant opposition to the current medical selection of criteria for defining death.

The Japanese attitude raises a series of questions. Can we ensure objective criteria for brain death? Does tissue removal interfere with the eventual afterlife of the deceased? Does it manifest a disrespectful impiety on the part of the heirs or the medical community?

In the final analysis, the real question only appears when attention is focused on the donor and not, as in the West, on the beneficiary: is transplantation a valid technological choice? Do we not have other priorities? Is there a natural end to life, and should medicine help to determine and to respect it? The debate is complicated by the fact that the Japanese themselves want to avoid a discussion about cultural values. They reject any view of their civilization as traditional, especially since the nationalist extreme right has chosen culture as its battle-horse. They simultaneously require the problem-free coexistence of a flourishing modern technology and values which are specific, immutable and essential to the Japanese identity.[45] But if transplantation is synonymous with progress and modernity, the contradiction is obvious.

An analysis of the Japanese case is equally interesting for a critical understanding of the ideology of the gift that Western societies like to think of as universal. There is indeed a philosophy of giving in Japan, one which is particularly institutionalized and formalized, but it differs fundamentally from the current Western idea as regards transplants. The philosophy of *giri* is not easily applied to the matter of tissue donation. The gift in Japan is understood as an interaction between individuals that requires reciprocity, even in relationships of inequality (by definition, the countergift is of lesser value; it is not a matter of a *potlatch*). However, the gift of an organ (from a cadaver) is by definition anonymous[46] and can have no real reciprocity, since it is the "gift of life." The Japanese consider such a gift to be unseemly, to constitute a

physical and moral burden that is clearly incompatible with their upbringing, and which verges on an unspeakable degradation. The protests of some Japanese patients or of their families nevertheless show that this opinion is not universally shared.

By the same token, the debate sheds new light on the supposed consensus of our societies, and the way in which the medical establishment has organized transplantation, taking for granted that the prolongation of life is an absolute imperative, and transplantation a no less absolute means. Time and again, and in particular with the increasing shortage of organs, Western doctors have actively solicited the representatives of other disciplines to help them to understand the crisis and find a solution: the possibility of a moratorium hardly figures on the agenda of the dialogue. In any case, the solution must be based on a reintegration of death into our society.

A great deal has been written and said about the expulsion of death, "ensavaged," from our society.[47] All the same, what doctor would not dare admit that he recites from time to time a memento for the dead, that many of his departed patients inhabit his memory, and that, with a kind of piety, he visits them sometimes in his dreams. These memories are a "song of accompaniment,"[48] the *basso continuo* that accompanies everyday life, and which makes, at least for a time, the dead not altogether dead. If we exclude, at least for some more time, artificial organs and heterografts, modern transplantation finally brings us back to the strong links between the living and the dead, the past and the future.

On the subject of the techniques of assisted procreation, Françoise Heritier has enlarged upon the idea that, long before the era of biotechnology, culture engaged in numerous experiments in filiation that had nothing to do with the biological.[49] "Pure" adoption is itself the negation of the biological, since it comes down to establishing the strongest of natural ties, those of filiation, between two beings who begin as strangers to each other. This is a moment when the arbitrary nature of culture and judicial creativity are at their peak.

The example of transplantation also strengthens the idea that biology is not the foundation of culture, but rather, to a certain extent, that culture determines biology. Nature only furnishes

rough guides: pregnancy, presented as a graft of the father's sperm inside the maternal body, served as an argument to encourage the first experiments in transfusion in the 19th century.

There is a striking anomaly in the miracle[50] of Como and Damien. The black leg comes from a servant, a Moor, and it is grafted onto the body of a white patient. In modern transplantation we see not the realization of a "miracle" by modern science, but the culmination of a medical rationality that developed by paths other than the *Lives of the Saints*. Como and Damien, famous doctors, never act as practitioners. The leg is magically transported from the tomb to the sickroom, without even the simulacrum of human intervention.

It is clear that the Renaissance transplant is not fictional. But the legend of the black leg tells us something else. It recounts the quest for *miracle*, which is one of the driving forces behind general interest in modern medicine. The incongruous detail of the black leg is there to underscore the presence of the extraordinary.[51] For another, the leg belongs to a Moor, a servant, as if it were simpler to make an appeal to an inferior over whom one has rights. The legend indirectly warns us about a system of exploitation that threatens the system of fair *exchange*, implicit in the apparently absurd restitution of the (gangrenous) white leg in place of the healthy but dead leg in the tomb ... The miracle of Como and Damien teaches us that the body can be a remedy, and that cemeteries can act as reliquaries or organ banks.

Towards a Culture of Transplantation?

Partially repudiated by the rejection implicit in the shortage of organs, transplanters seek official and collective approbation for their work. Henceforth, they will have to seek legitimacy for transplantation in other ways than the merely endless increase of their means of intervention. The simple affirmation of the gift does not seem sufficient to exorcise a conception of the human being as raw material for endless transplantations, in order to avoid the entry of a cycle in a culture dominated by the primacy of the individual and his or her individual historical destiny.

The importance of attaining individual and social consent is not only a function of the need to respect the coherence of the law, but also because transplantation can only work if we revive the notion of individual responsibility at the heart of a social entity which transcends it. Transplantation is thus not only subject to biological compatibility, but to a *more general compatibility* which is its harmonization with culture. We must re-root the sciences and technology in their cultural environment, if we want to avoid exposing ourselves to a rupture. Science, which thought it had conquered an autonomous space for itself, finds that it must take into account an ensemble of representations heterogeneous to it.

The crisis of transplantation marks a turning-point in our societies. This is an ethical crisis affecting not only a profession but also, and perhaps especially, a civilization. I will conclude with the concrete suggestion that a *culture of transplantation* be developed. This idea presupposes an inversion of the terms of the problematic. The support of the subject, like that of society, must be explicit, not implicit. The gap separating the activism of transplanters and the social response is an opportunity to reflect on a more general fact, human solitude. As Norbert Elias has clearly shown, contemporary philosophy, spurred by the disasters of totalitarian states, encourages an exacerbated individualism, the wide diffusion of the idea that the individual constitutes an autonomous world. In such conditions, the proclaimed philosophy of the State's decision-makers and legal experts fails to correspond to that of its citizens. At the same time, there is a striking similarity in the way solitude is experienced by the general public – and also by those excluded from society, whose numbers continue to grow – and by those who perform transplants themselves: what we call 'meaning' cannot be understood in relationship to a single person; what constitutes 'meaning' for us is a multiplicity of persons, living in groups, who depend on each other, and who communicate among themselves."[52]

Can we not ease the general anxiety by officially recognizing exchanges between the living and the dead, and by recognizing, in the heart of the living, the existence of a collective body, at once social and physical, that transcends the individual? Awareness of the risk of contagion provides an opportunity to return to these

exchanges, and to balance the risk of known and unknown germs with the recognition of the positive value of biological exchanges, of which the sexual act is perhaps the most astonishing paradigm.

At the same time, we must reflect on the fact that, due to the multiplicity of cultures, the "culture of transplants" can be neither universal nor obligatory. If morality is founded on the freedom of beings, it does not consist of pure rational deduction alone, but also a free choice among many possibilities. The recognition of a culture of transplantation, imperative if we choose actively to advance the therapeutic graft in society, must proceed from the idea, sacrilegious in the eyes of some, that it is possible, and not necessarily immoral, not to transplant at all.

Notes

1. *La Solitude des mourants*, Paris, 1987, p. 17.
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