Bioethical Perspective: Organ Transplant and Donation in the Philippines

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Throughout the world today, there is a great scarcity of human organs for transplant. The limited supply of organs for transplant comes mainly from organ donations.

In the Philippines, the problem of organ transplant and donation is focused at present on kidney transplant and donation. In our study, we shall center on kidney transplantation. We consider the topic as a chapter of bioethics and from an ethical and Christian perspective.

We shall develop six main points. In the first place, we describe the main terms used in our discussion. In the second place, we present the current situation of kidney transplant and donation in the Philippines. In the third and fourth parts, we reflect on the issues of deceased donors and of living donors respectively. In the fifth section, we reflect on the ethical issue of organ sale. Finally, in the sixth part we focus on the recipient of organs.

We begin our journey with the question, *what is the nature and what are the kinds of organ transplant – and organ donation?*[1]

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[1] See Pontifical Council for Health Care, *Charter for Health Care Workers* (Vatican City; 1996), no. 84; Thomas O'Donnell, S.J., *Medicine and Christian Morality*, 2nd Ed. (New York: Society of St. Paul, 1991), pp. 118-124; Karl H. Peschke, *Christian Ethics 2*, Revised Ed. 7th Printing (Manila: Logos Publications Inc., 1994), pp. 270-274; Calvin R. Stiller, "Organ and Tissue Transplants: Medical Overview," *Encyclopedia of Bioethics*, ed., Warren Thomas Reich (New York: MacMillan and Simon & Schuster MacMillan, 1995), 1871-1882.

Significant Notions and Distinctions

The issues of organ transplant and organ donation are obviously closely interconnected. *Organ transplant* implies the surgical removal of an organ from a deceased or from a living being (donor), and its implantation into another living being (recipient).

The three main kinds of transplants are autoplastic, heteroplastic and homoplastic transplants. *Autoplastic* or *auto graft transplants* imply the transfer of a tissue from one part of the body to another part of the body of the same human person. These transplants consist of explants from and implants into the same person.

Heteroplastic or xenograft (heterologous) transplantation (xenotransplantation) refers to the transplantation of organs from one species to another, from a non-human animal into a human person.

Homoplastic or *homograft (homologous) transplantation* means the transplantation of organs from a human person into another human person. We distinguish the transplantation of an organ between genetically non-identical persons *(allograft),* and between genetically identical twins *(isograft).* (In our reflection, we speak of homoplastic allograft transplants).

Organ donation refers to the gift of an organ freely donated by a human being (or, in case of deceased donor, also by next of kin or representative) to another human being or to an institution. *(Organ sale* refers to the selling of an organ for a price. The source of the organ is the vendor or seller.)

After presenting the basic notions and distinctions related to organ transplant and donation, we make another stop on our journey to face this question: *What is the situation of organ (kidney) transplant and donation in the Philippines?*

Organ Transplant and Donation: The Philippine Situation

In this section, we present some significant legal and ethical directives from Philippine authorities and results of surveys on the status of kidney transplant and donation in the Philippines.

The first successful live kidney transplant (an *isograft*) was performed in Boston, in 1954. In the Philippines, the first

successful kidney transplant took place at the Hospital of the University of Santo Tomas, Manila, in 1969. Well-known sources of organ donors, including kidneys, are Brazil, India, Moldova, Egypt, China... and the Philippines, and – until recently – India and Brazil.[2]

In the Philippines, as in many other countries, the scarcity of kidneys for transplantation is acute: the waiting time for a recipient of a kidney may take as long as five or more years, and the majority of these patients cannot afford dialysis.[3] Compared to dialysis, kidney transplant is preferred: it generally offers a better quality of life, more years of survival, and it is usually less costly. At present, there are about 10,000 Filipino patients with chronic kidney disease needing a kidney. Moreover, thousands of foreign kidney patients come to the Philippines for a possible kidney transplant.[4]

How do Philippine authorities face the issue of organ transplant and donation? Republic Act (RA) No. 7170, known as the *Organ Donation Act of 1991* regulates the problem of brain dead cadaver donors. Organ donation is considered an act of liberality and the donor, before his/her death, may donate all or part of his/her body. After or immediately before the death of the organ donor, the closest relative or guardian or, in special cases and under

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[2] See "International Figures on Organ Donation and Transplantation – 2004," *Newsletter Transplant,* Vol. 10, No. 1 (September 2005), pp. 5-22. See also "The who, what, where, why of organ trafficking," *The Philippine Daily Inquirer:* August 7, 2007; "Pakistan aims to control organs trade," *The Philippine Daily Inquirer:* August 19, 2007; Edward Pentin, "Blood Money," *National Catholic Register:* November 4-10, 2007 Issue.

[3] According to a recent study by Linchu et al, the survival rate of patients on dialysis in the Philippines is only 30% after 30 months. See Enrique T. Ona, M.D., "Kidney Transplant and Donation in the Philippines," in *Celebrating the Gospel of Life: Basic Issues in Bioethics,* ed. Fausto B. Gomez, O.P. (Manila: UST 2006), p. 227; Mimeographed Proceedings of the Symposium on *Towards a National Consensus on the Living Non-Related Donor in Kidney Transplantation:* Mandaluyong City, Metro Manila, February 10, 2007.

[4] At the National Kidney and Transplant Institute (Manila), there is a national registry of organ recipients. See Paul Ehrlich, "Organ Donation: The Gift of Life," *Readers' Digest* (November 2006), pp. 27-33; Angeles Tan Alora, M.D., "Organs (Kidneys): For a Fee or for Free?," in Fausto B. Gómez, O.P., ed., *Celebrating the Gospel of Life: Basic Issues in Bioethics, l.c.,* p. 214.

certain conditions, the physician in charge gives substitute consent for the removal of organs from a deceased person. RA 7170 does not consider the problem of living organ donors. In these cases, the general civil law principles apply.[5]

In 2002, the Department of Health (DOH) issued Administrative Order (AO) 124, entitled *National Policy on Kidney Transplantation from Living Non-Related Donors*. The policy is "against the sale and purchase of kidney organs." AO 124 sets the general guidelines and ethical principles on Kidney Transplantation from Living Non-Related Organ Donors (LNRODs). AO 124 created also the *Philippine Organ Donation Program* (PODP) under its Health Operation Cluster, and established the National Ethics Committee (NTEC).

The Philippine Organ Donation Program (PODP), which was signed in 2003, was asked to develop policy guidelines for a rational and fair kidney organ program. PODP component units are: National Transplant Advisory Board (NTAB), National Transplant Ethics Committee (NTEC), Kidney Donor Monitoring Unit (KDMU) and the regulatory Bureau of Health Facilities and Services (BHFS).

In 2003, Republic Act (RA) 9208, called the *Anti-Trafficking in Persons Act 2003* was approved. This trafficking includes organs and the law punishes the so-called middleman or broker in the removal and sale of organs.[6]

In March 2006 a MOA was signed by the Kidney Foundation of the Philippines, the Department of Health and the National

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[5] See Justice Renato C. Corona, "The Legal Implications of Organ Donation and Transplantation under Philippine Law," in text of his lecture: Symposium on *"Towards a National Consensus on the Living Non-Related Donor Kidney Transplantation"* (Mandaluyong City, Metro Manila; February 10, 2007), pp. 2-6.

[6] See Justice Renato C. Corona, "The Legal Implications of Organ Donation..." *l.c.*, pp. 6-7. In 2003, moreover, the Department of Health (DOH) issued Administrative Order (AO) 41 on *Philippine Organ Donation Program* under the Department of Health. In the section of Policy Statements we read: Kidney organ donation program shall be guided by these principles: Equity, Justice, Benevolence, Non-maleficence, Solidarity, Altruism and Voluntarism" (III, 2). In AO 81, 2003, the Department of Health presents the *Rules and Regulations Governing Accreditation of Hospitals Engaged in the Conduct of Kidney Transplantation*. In the Philippines, there are at present about 10 hospitals and medical centers that do kidney transplant operation.

Kidney and Transplant Institute (NKTI) making the Kidney Foundation of the Philippines (KFP) the sole implementing body to extend support to living kidney donors.

As stated in Administrative Order No. 124 (2002), ninety per cent of transplants in the country were from living donors, and only ten per cent from cadaver donors. Of the total number of living donors, 12 per cent were then from Living Non-Related Donors. The increasing number of living non-related organ donors (most of them poor men) meant also unfortunately, the growing number of vendors of kidneys.

To address the issue of kidney sale and the need of new legal and ethical guidelines the Philippine Organ Donation Program sponsored a symposium, held in Mandaluyong, Metro Manila on February 10, 2007 under the heading: "Towards a National Consensus on the Living Non-Related Donor in Kidney Transplantation." The main objective of the symposium was to initiate the discussion of new legal and ethical guidelines for "donation" of living non-related kidney donors.[7]

From September 1, 2002, to April 30, 2004, 231 individuals donated one of their kidneys for transplant at the National Kidney and Transplant Institute. Fifty one of these living kidney donors (most of them related-donors, including 79% who were first degree relatives) participated in the cross sectional study entitled *Perceptions of Filipino Living Donors on the Health, Psychological and Economic Effects of Kidney Donation.* Introducing their study,

[7] The whole day gathering was attended by the heads of Kidney Transplantation Teams from different hospitals, by members of Hospital Ethics Committees and by other concerned social groups and associations, including the South East Asian Center for Bioethics (SEACB), which presented its Statement, and the Catholic Bishops' Conference of the Philippines (CBCP). The main speaker and resource person was a British philosopher-bioethicist, Janet Radcliffe-Richards, Ph.D., who favored organ sale by the poor, was for the legalization of organ sale and – it would seem – for the exclusion of religions from the debate: they are according to her a "constraint." Other speakers from the Philippines presented some reflections on the sociological, legal and ethical dimensions of organ transplant and donation in the Philippines. Hereafter we present relevant data from surveys presented at said symposium. For a fine report on the symposium, see Jose B. Lugay, "Kidneys Not for Sale but Donated to Save Lives," *CBCP Monitor,* Vol. 11, No. 4 (February 19-March 4, 2007), pp. 7, 10 and 12.

the researchers stated that "proposals to increase organ donation include presumed consent and financial incentives, all of which deserve further discussion." Presenting the results of the study at the symposium, Dr. Benita Padilla said: "There were generally good emotional and social effects, as they reported a feeling of pride in having helped someone in need." Furthermore, "the donation experience was rated positively by 90% of the donors, and 94% of them do not regret the decision to donate." The researchers were unable to extend the same conclusion to the living non-related donors: only a limited number of non-related donors were included in the study.[8]

The results of two other significant surveys were presented at the same symposium. Both were administered practically nation wide, to 2000 respondents in 2001, and 2140 in 2005. The abstract of the surveys is entitled *Acceptability of Giving Compensation or Incentives to Organ Donors in the Philippines.* The respondents distinguished well between compensation (organ sale) and incentives (organ donation acknowledged with a gift or token of gratitude). The researchers concluded that the principal difference between the two surveys is this: in the 2001 survey, 63% of the respondents disagreed with giving either compensation or incentives to organ donors while in the 2005 only 20% disagreed. Of the 80% who agreed with some form of reward (2005 survey), 61% agreed with incentives, 35% agreed with either incentives or compensation, and only 4% agreed with compensation. There were more willing organ donors among those who disapprove of compensation (89%) than among those who approve it (82%). The preferred form of compensation was cash payment – between 50 and 100 thousand pesos for an organ. The great majority of the respondents who disapprove of compensation were against it because it is a donation (46%), which is voluntarily given (20%), and to help recipients in need (19%). It was noted that the monetary compensation was favored by more males and by those with lower

[8] The presenter concluded with a significant point: "The poor medical follow-up and apparent lack of interest or refusal to participate in follow-up studies should be addressed urgently" *(Perceptions of Filipino Living Donors on the Health, Psychological and Economic Effects of Kidney Donation,* Abstract: Mandaluyong City, Metro Manila: February 10, 2007, pp. 1-20.

educational attainment. The researchers concluded: "It is likely that Filipinos will find a program offering incentives to organ donors an acceptable means of increasing the rate of organ donation."[9]

At present kidney sale is illegal in the Philippines. *Is the law respected as it should be?* In spite of the prohibition for health care professionals and facilities, organ sale is real and is, perhaps, apparently permitted by some physicians, Kidney Transplant Teams and hospital authorities. At present, there are some currents in the Philippines advocating a change in the guidelines to open the door to incentives for organ donors and, even, perhaps, to compensation. *How do we face this situation ethically and theologically?*

After highlighting some points of the situation of kidney transplant in the Philippines, including the appropriate directives on the matter, we are ready to reflect ethically and theologically on organ transplant and donation, beginning with the organ donors.

The donor of organs may be a deceased person or a *cadaver donor*, or a living person or a *living donor*. Let us make another stop on our journey to approach this question: *May we be deceased donors of bodily organs?*

The Deceased Donor

In this section, we try to answer that question by responding to these other two questions: *Is the cadaver donor of the organ really dead? Did he/she or his closest relative give informed or substitute consent respectively to donate an organ?*

We now tackle the first essential question: *Is the cadaver donor of the organ really dead?* There is a large opposition to

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[9] Amarillo MLE, Padilla BS, Uriarte RB, Ona ET: *Acceptability of Giving Compensation or Incentives to Organ Donors in the Philippines,* Abstract (Mandaluyong City: February 10, 2007), pp. 1-2. At present the running rate for a kidney is 150,000 Pesos. The transplant costs between a half and one million Pesos. Anti-rejection medications – to be taken for life – cost between 360,000 to 600,000 Pesos a year. The Philippine General Hospital performs a few transplants for the poor for 60,000 Pesos (Angeles Tan Alora, M.D., "Organs (Kidneys): For a Fee or for Free," *l.c.*, p. 214). Government figures: "3,000 Filipinos have been involved in illegal transplants" (Santosh Digal, "Oppressed by Poverty, 3,000 Filipinos Sell Their Organs," *CBCP Monitor,* Vol. 11, No. 4 (February 19–March 4, 2007), p. 1.

express donation after death: people are afraid that they might be declared dead when they are not, or that their death may be hastened to procure the needed organ.[10] Before the removal of any organ may take place, the diagnosis of death ought to be given.

Scientifically and medically speaking, *death* is usually defined as the total and irreversible cessation of cardiopulmonary function, or of the function of the entire brain, including the brain stem. The two criteria for declaring death are, then, circulatory-respiratory criteria (the patient's heart stops beating and he/she no longer breaths) and the neurological or "brain death" criteria.

Brain death, or "total cerebral death," appears as a scientific form of declaring death with moral certitude. The procurement of organs from deceased donors can only begin after the donor has died.[11]

John Paul II affirms:

> 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 brain activity, if rigorously applied, does not seem to conflict with the essential elements of a sound anthropology. 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 consi-

[10] Not to respect "objective and adequate criteria which verify the death of the donor in order to increase the availability of organs from transplants" would amount to a form of euthanasia – or murder (John Paul II, *Evangelium Vitae: EV,* 15).

[11] See James M. DuBois, "Organ Transplantation: An Ethical Road Map," *The National Catholic Bioethics Quarterly,* Vol. 2, No. 3 (Autumn 2002), pp. 413-453, especially for cadaver donation pp. 417-434; Elio Sgreccia, *Manual de bioética* (México: Editorial Diana, 1996, pp. 572-574; Ramón Lucas Lucas, *Explícame la bioética* (Madrid: Palabra, 2005), pp. 190-198; Lino Ciccone, *Bioética. Historia. Principios. Cuestiones.* Segunda Edición (Madrid: Ediciones Palabra, 2006), pp. 321-323. By the way, the declaration of death belongs not to philosophy or theology but to competent and responsible science. Let us add here that we agree with other ethicists on this point: for the application of the notion of the "brain death" to children, other supplementary criteria should be added.

dered necessary and sufficient basis for an ethically correct course of action.[12]

We pose now the second question: *Is there informed/substitute consent for the donation of an organ by the deceased donor?* Before his/her death, the capable donor gives explicit free and informed consent for the removal of an organ, perhaps through an advance directive or living will or a donor's card. If he/she explicitly expressed refusal to donate the organs no organ may be procured from the body of the deceased person.[13]

When there is no explicit consent for donation or explicit refusal to donate, the next of kin of deceased person may give *substitute consent.* The family of the deceased should be informed by the staff of the hospital of the opportunity to donate organs from their deceased loved one. In cultures that are primarily family-oriented, like in the Philippines, the family decides: throughout an illness, the family of the sick person is usually informed and consulted.

How about presumed consent? Presumed consent or *presumed donation* is lawful in many European countries and also in Singapore. There is a current proposal in the Philippines to accept presumed consent as a path to increase organ donations. James

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[12] *Address to International Congress on Organ Transplants* (Vatican City: August 29, 2000). To the Pontifical Academy of Sciences (Vatican City: February 3, 2003), John Paul II said: "Within the horizon of Christian anthropology, it is well known that the moment of death for each person consists in the definitive loss of the constitutive unity of body and spirit. Each human being, in fact, is alive precisely insofar as he or she is *"corpore et anima unus" (GS,* 14), and he or she remains so for as long as this substantial unity-in-totality subsists... The death of the person, understood in this primary sense, is an event which no scientific technique or empirical method can identify directly." Pius XII had said earlier, on November 24, 1957, that the declaration of death is under the competence of the doctors and not of the Church (quoted by Lino Ciccone, *o.c.,* p. 321). See also John Paul II, *Signs of Clinical Death for Organ Transplants* (Vatican City: February 1, 2005); Id., *Evangelium Vitae,* no. 86. See also R.J. White et al, *Working Group on Determination of Brain Death and its Relationship to Human Death* (Pontificia Academia Scientiarum. Vatican City, 1992); Theodore I Steinman, M.D., "Case Study: A Dangerous Argument against Organ Donation," *The National Catholic Bioethics Quarterly,* Vol. 2, No. 3 (Autumn 2002), pp. 473-478.

[13] See Calvin R. Stiller, "Organ and Tissue Transplants: Medical Overview," *Encyclopedia of Bioethics, l.c.,* p. 1874.

Childress writes: presumed consent or donation "assumes that the individual (and/or the family) owns and has dispositional authority over cadaver organs, and that the decedent's prior failure (or the family's current failure) to dissent constitutes consent."[14] In the case of strict presumed or silent consent, there is no informed consent, no substitute or next of kin consent, only presumed consent. The best kind of consent is express consent, given if possible by the patient; if not possible, by the family.[15]

As human beings, we are in favor of deceased organ donors: we belong to the human family and out of human solidarity and altruism, we may freely donate our organs to help other human beings. As Christians, we recommend organ donation by deceased donors, because we belong to God's family, and Christian solidarity urges us to help persons in need.

The Church strongly favors organ donation by deceased persons. We sum up the teaching of the Church in the words, first of Pius XII as quoted in the *Charter for Health Care Workers* and, second, of the *Catechism of the Catholic Church,* 1997 edition:

> 'A corpse is no longer, in the proper sense of the word, a subject of rights, because it is deprived of personality, which alone can be the subject of rights.' Hence, 'to put it to

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[14] James F. Childress, "Organ Tissue and Procurement: Ethical and Legal Issues regarding Cadavers," in *Encyclopedia of Bioethics,* ed., Warren Thomas Reich (New York: MacMillan and Simon & Schuster MacMillan, 1995), p. 1861. See Calvin R. Stiller, "Organ and Tissue Transplant: Medical Overview," *Encyclopedia of Bioethics, l.c.,* p. 1874. Regarding presumed consent in the Philippines, Justice Renato Corona says: "The question is whether the Philippines is ready for such a system." Since 1993, drivers in the Philippines may signify their intention to be donors of organs. Unfortunately, Justice Corona adds: most drivers are ignorant of that agreement between the National Kidney and Transplant Institute and the Land Transportation Office ("The Legal Implications of Organ Donation..." *l.c.;* see also José-Román Flecha, *o.c,* pp. 222-224).

[15] James F. Childress, *Practical Reasoning in Bioethics* (Bloomington and Indianapolis: Indiana University Press, 1997), pp. 265-281. See also James M. DuBois, "Organ Transplantation..." *l.c.,* pp. 441-442; Elio Sgreccia, *Manual de bioética* (México, *l.c.,* pp. 571-574. Some ethicists contend that cadavers are *res communitatis* (things of the community) and, therefore, applying the ethical principle of the common good, society has a right to cadaver organs and tissues. In a true sense, the cadaver of the loved one belongs to the family – "quasi-property" –, not to society (to society, in case of abandoned or unclaimed bodies only).

> useful purpose, morally blameless and even noble,' is a decision 'not to be condemned but to be positively justified'.
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> Organ donation after death is a noble and meritorious act and is to be encouraged as an expression of generous solidarity. It is not morally acceptable if the donor or his proxy has not given explicit consent. Moreover, it is not morally admissible directly to bring about the disabling mutilation or death of a human being, even in order to delay the death of other persons.[16]

After speaking of the deceased donor, we make another stop on our journey to face the following question: *May we be living donors of our bodily organs, for instance, a kidney?*

The Living Donor

From the part of the donor, the two principal ethical issues are related to his/her bodily integrity, and to free and informed consent. Let us tackle the first question: *May I – or you – donate an organ, for instance, one kidney?*

As a *human person,* I am an individual and a person. As an autonomous *individual,* I am indivisible and unique; I am body-soul, or incarnate spirit. I am an individual *person* and, therefore, not only an autonomous but also a (heteronomous) relational human being. I am a member of the human family. I am united to others in love.

As a *Christian,* I am the steward of my life, which belongs to God; I am also related to other human beings – creatures and children of God like me. As a good steward – a custodian, and

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[16] *Charter for Health Care Workers,* no. 87; *CCC,* 1997, no. 2296, See also *CCC,* no. 2301; "Guidelines on Organ Donation and Transplants," in *Ethical Guidelines for Medical Practice,* ed. Fausto B. Gomez, O.P. (Manila: UST Department of Bioethics, 2001), pp. 33-39. *Are we obliged to give our organs after we die?* Not really! We speak of donation, although some authors contend that, indeed, we are somehow obliged, at least with "imperfect obligation." Some authors – Christians and humanists – defend the *thesis of obligation,* that is, the donation of organs after death (cadaver donors) is an obligation (the law of love?), and some others speak of an imperfect obligation that one may demand for himself/herself but not for others. (Javier Gafo, *o.c.,* p. 370; Lino Ciccone, *o.c.,* p. 315).

an administrator –, I have to take proper care of my life and health. Generally, good stewardship requires me – positively – to care for my whole body and all its organs, and – negatively – not to mutilate my body or any of its healthy parts or organs. Circumstantially, however, I may allow the mutilation or removal of an organ, if this organ is an obstacle to my integral health: the part is for the whole and, therefore, subordinated to the whole – my life and also my health (ethical principle of *totality / integrity).*

Regarding the body as integral whole, ethicists distinguish between *anatomical integrity* (physical integrity, all organs of the body are respected) and *functional integrity* (efficient functioning of the body, the functions of the body are respected). While anatomic integrity is not required to live a basically healthy life, functional integrity is. Hence, our ethical responsibility concerns functional integrity, which is considered as "the key factor in addressing the morality of transplants between living persons."[17] A good example is the removal of one kidney: this removal does not damage seriously an essential function of the body. Only one healthy kidney is necessary to live a normal life. The second kidney, then, may be donated.[18] However, the safety and health of the donor must always be carefully considered and the principle of non-maleficence ought to be properly applied.

I may donate a kidney! But I am not really obliged to do so: it is not a question of justice – even in the case of possible relatives of the donor – but of solidarity or love, which for me may weigh more than the possible risks involved in and with the removal of my kidney. The donor gives the kidney as a gift of life. Only when given as a gift, does benefit not only the recipient, but also the

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[17] Benedict M. Ashley, O.P., Kevin D. O'Rourke, O.P., *Health Care Ethics,* 2nd ed. (St. Louis: The Catholic Health Association, 1982), p. 308-312; see William E. May, "The Ethics of Organ Transplants," *Ethics & Medics,* Vol. 21, No. 7 (July, 1996), pp. 1-2; John M. Haas, "The Totality and Integrity of the Body," in *Ethical Principles in Catholic Health Care* (Boston, MASS: The National Catholic Bioethics Center, 1999), pp. 85-88.

[18] The second kidney "is not necessary for personal or procreational identity or for functional integrity and the long-term risk for renal failure or hypertension is low" (Angeles Tan Alora, o.c., p. 215). The brain and the gonads, however, cannot be transplanted because "they ensure the personal and procreative identity respectively" *(Charter of Health Care Workers,* no. 88).

donor himself/herself, and society as a whole. Organ donation is an act of altruism or of human solidarity. For the Christian in particular, it may be an expression of imitating Christ who continues suffering in others, and an act of charity as love of neighbor or Christian solidarity. Organ donation is a manifestation that the donor not only lives with others but for others![19]

For transplants of organs from one human being to another (homoplastic transplantation), some ethicists argue by using the principle of totality, still others the principle of totality linked to the principle of solidarity.[20] With many others, I opine that the principle of totality is mainly applicable to autoplastic transplants, including corrective aesthetic purposes, and the principle of human and Christian solidarity, or charity as love of neighbor in need, for homoplastic transplants.[21]

We go now to the second question: *Do I – do you – give informed consent for organ donation?* The act of donation must be decided by the donor of the kidney freely and without any coercion. The donor must be able to give a *free and informed consent.* To be able to do so, I the donor, must be informed adequately and truthfully on the nature of the procurement of my kidney, the implications of the donation for my life and my health. Moreover, I must understand these implications, and finally I give my consent for the removal of my organ freely and responsibly.[22]

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[19] See *GS*, 24; St. Thomas Aquinas, *Summa Theologica,* II-II, 65, 1; Renée C. Fox and Judith P. Swazey, "Organ and Tissue Transplants: Socio-cultural Aspects," *Encyclopedia of Bioethics, l.c.,* p. 1883; Arthur L. Caplan, "Organ and Tissue Transplants: Ethical and Legal Issues," *Encyclopedia of Bioethics, l.c.,* pp. 1888-1894; Lino Ciccone, "Transplantes de órganos," *o.c.,* pp. 311-319.

[20] For a brief but comprehensive reflection on ethical principles and organ transplants, see Elio Sgreccia, *Manual de Bioética, l.c.,* pp. 568-574.

[21] See James M. DuBois, "Organ Transplantation: An Ethical Road Map," *l.c.*, p. 435; Lino Ciccone, *o.c.*, p. 324; Ramón Lucas Lucas, *o.c.* p., 197; William E. May, "The Ethics of Organ Transplants," *Ethics & Medics,* Vol. 21, No. 7 (July 1996), pp. 1-2; Benedict M. Ashley, O.P. and Kevin D. O'Rourke, O.P., *Ethics of Health Care,* Third Ed. (Washington, D.C.: Georgetown University Press, 2002), pp. 143-146; José-Román Flecha, *Fuente de vida. Manual de bioética* (Salamanca: Ediciones Sígueme, 1999), pp. 206-225.

[22] See *Charter for Health Care Workers, l.c.,* no. 90. See James M. DuBois, "Organ Transplantation: An Ethical Road Map," *l.c.,* pp. 439-443.

John Paul II considers organ donation a heroic gesture of sharing. He writes:

> Over and above such outstanding moments, there is an everyday heroism, made up of gestures of sharing, big or small, which build up an authentic culture of life. A particularly praiseworthy example of such gestures 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 that sometimes have no other hope.[23]

One person may be a cadaver donor or a living donor of a kidney. We stop again on our journey of life to consider this question: *May a person be a vendor of a kidney?*

Organ Sale?

The kidney *donor* offers his/her kidney as a donation – a gift. He or she, however, ought not to be financially burdened by his generous deed. Living donors, then, "should not personally bear any costs associated with donation."[24] The *Philippine Policy on Ethical Guidelines for Non-Related Donors* (number 15) reads: "All medical expenses – pre-donation work-up, hospitalization including treatment of post-operative complications and post-donation follow-up – shall be provided free of charge to the donor."[25] For its part, the South East Asian Center for Bioethics asserts: "The intention of a living non-related donor (LNRD) must be to help a sick person and offer the gift of a chance to extend life. It is understood that

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[23] John Paul II, *Evangelium Vitae,* no. 86. See also John Paul II, *Dolentium Hominum* (Vatican City, 1992), no. 2; *CCC,* 1997, no. 2296; *Charter for Health Care Workers, l.c.,* no. 86; Catholic Health Australia, *Code of Ethical Standards for Catholic Health and Aged Care Services in Australia,* 3.14 (Australian Capital Territory: Catholic Health Australia, 2001), p. 30.

[24] "In addition, guidelines should be established that are similar to those for short-term disability to defray lost wages." See James M. DuBois, "Organ Transplantation...," *l.c.,* p. 439.

[25] PODP *Manual of Procedures* (2005): Part IV, *Ethical Guidelines for Living Non-Related Donors.* Ethical Guideline no. 13 reads: "The donor shall be provided with adequate and comfortable hospital accommodation and care. Management and treatment of any post-operative complication shall be provided to the donor free of charge."

the donor will not pay his medical and surgical expenses and will be reimbursed for income lost during procedure."[26]

The question persists: *How to remedy, the acute shortage of organs for transplants? By selling human organs?* Unfortunately, organ sale is a reality in our world. The poor, refugees, prisoners, slum dwellers and other marginalized groups are the ones selling their organs. China, Thailand, the Philippines, and other countries are pointed out as part of ongoing international transplant tourism.[27]

Although there are voices advocating legalized and regulated organ sale as a solution to organ shortage, practically all countries of the world condemn organ sale, including the European Council and the World Health Organization.

Why should organ sale be condemned by all and made globally illegal?[28] The practice of organ sale is condemned because organ sale is objectively unethical: contrary to the dignity, the proper autonomy and the equality of persons – and against a culture of solidarity. The main argument given by libertarians in defending organ sale is based on the *principle of autonomy:* the body is mine, its body parts are mine, and therefore, I may dispose of them freely. May we ask: *How free are the poor when they sell one of their kidneys?* The poor consent, of course, but their giving of informed consent is highly conditioned by their situation and economic need.

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[26] SEACB, *Statement on Organ Donation,* in *Bioethics Notes & News,* Vol. XIX, No. 2 (April-June, 2007), p. 16.

[27] See Francis L. Delmonico, M.D. & Nancy Scheper-Hughes, "Why We Should Not Pay for Human Organs," *The National Catholic Bioethics Center,* Vol. 2, No. 3 (Autumn 2002), pp. 384-385. Bioethicist Alastair Campbell comments: "The sellers are always going to be the desperate poor; to trade the human body as some sort of material possession like a car or house is crossing an unacceptable line." Alasdair Campbell, quoted by Sebastien Berger: "Singapore's compulsory organ transplants," Telegraph Media Group Limited: http://www.telegraph.co.uk. March 3, 2007). "A few nations, including India, Turkey, Haiti, the former Soviet Union, the Philippines and Brazil permit – or have at least tolerated – the offering of financial incentives to living donors or to the families of cadaver donors" (Arthur L. Caplan, "Organ and Tissue Transplants: Ethical and Legal Issues," *Encyclopedia of Bioethics, l.c.,* p. 1893).

[28] See Javier Gafo, *Bioética teológica* (Madrid: Universidad Pontificia de Comillas, 2003), p. 384.

Certainly, we are *autonomous* human beings: our autonomy is part of our human nature and an expression of our freedom. However, we are also *heteronomous* or relational beings, that is, we are related to other human beings. Autonomy is not an absolute but limited autonomy: it is limited by the principle of communion and solidarity (the ethical principle to defend organ donation not sale), and, for believers, by the principle of stewardship (as a steward of my body and its parts or organs, I respect the sovereignty of God, my creator and savior).

Our body composed of many organs is not a commodity or an object I may dispose of at will, but a personal body, which is a constitutive part of our individual identity: each one of us is body-soul, spirit incarnate, embodied person. The *Catechism of the Catholic Church* states: "The human body shares in the dignity of the 'image of God': it is a human body precisely because it is animated by a spiritual soul and it is the whole human person that is intended to become, in the body of Christ, a temple of the Spirit."[29]

Why poor people sell one kidney? Reasons of 12 Filipino vendors of a kidney are the following: "2 used the money to help a sick relative, 4 began a business, 1 built a house, one paid a debt, one used the money for his wedding, and another wanted to feel what it was to 'live with money' and used it for *shabu* (a drug: metamphetamine) and girls." Dr. Alora comments: "There was no improvement in their lives."[30]

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[29] *CCC*, no. 364; see Vatican II, *GS*, 4. Major religions are generally in favor of organ donation and against organ sale, including in particular Judaism, Christianity, Islam, Buddhism and Hinduism. See Paul Ehrlich, "Organ Donation: The Gift of Life," *l.c.*, pp. 29-30; Meter A. Ubez, Mary B. Mahowald, "Organ and Tissue Procurement: Ethical and Legal Issues regarding Living Donors," *Encyclopedia of Bioethics, l.c.*, pp. 1865-1870. "Because of the charitable motivation that justifies transplantation of an organ by a living person, it follows that selling organs is unethical" (Benedict M. Ashley, O.P., Jean deBlois, C.S.J., Kevin D. O'Rourke, O.P., *Health Care Ethics. A Catholic Theological Analysis,* 5th Ed. (Washington, D.C.: Georgetown University Press, 2006, p. 105).

[30] Angeles, Tan Alora, *o.c.*, p. 216. In a 2003 survey, 237 Filipinos were asked their opinion on organ sale. 120 thought that financial aid was a good reason to sell; 69 opined that they would sell their kidney if they had no other way to raise money for their needs.

We are told by some of the authors who favor kidney sale by the poor: there are many wrong things in the world, and somehow society allows them, such as slavery, prostitution, child labor, offensive war, etc. *Why not allow organ sale?* Obviously, ethically speaking one evil cannot be a reason for another evil: evil has to be fought or at most in some extreme cases tolerated as a "lesser evil."

May organ sale be, circumstantially, a "lesser evil"? May the poor not sell one kidney if they have to choose between two kidneys and survival or between two kidneys and educational help for their children? Certainly, there are other ways to solve the problem of poverty![31] Nevertheless, we do not blame the poor, nor do we justify the sale of organs by them. We try not to be paternalistic! Certainly, society is obliged to provide legal and ethical sources of kidneys. It is interesting to note that RA 9208 or the "Anti-Trafficking in Persons Act of 2003" (Philippines 2003) does not punish the poor donor, who is considered "a victim or a trafficked person." We do strongly accuse those who take advantage of their economic vulnerability and their forced poverty: mainly but not only the organ "brokers."[32] (I am also against the donation of organs by prisoners to be executed. Radically, because I strongly believe that the death penalty is inhuman and unchristian!).

Some ethicists even argue that precisely because there is "a black market" in human organs, let us legalize sales and let the government control and regulate the compensation of living

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[31] See Peter A. Ubez, and Mary B. Mahowald, "Organ and Tissue Procurement: Ethical and Legal Issues regarding Living Donors," *Encyclopedia of Bioethics, l.c.*, pp. 1865-1870. (Those of us who are vigorously opposed to the sale of kidneys by the poor should try to contribute a bit more, perhaps, to the substantial solution of forced poverty in our communities!).

[32] Another repeated argument against the sale of organs by the poor is that the rich or wealthy will be the ones to afford an organ and the ones to receive the organs of the poor. Is this a strong argument? For some, it is not. They contend that this is not necessarily so: society could be the one to purchase and then distribute transplantable organs according to equitative justice. See James F. Childress, "Organ Tissue and Procurement...," *Encyclopedia of Bioethics, l.c.*, p. 1861.

– and deceased – donors.[33] For many of us who consider organ sale unethical, this is the argument of the veil of compassion, of false compassion – also used to wrongly allow abortion and euthanasia in "extreme" cases! *Is not the sale of organs, organ trafficking, on the same path of coercion and exploitation with trafficking of persons, or sex trafficking?*[34] As the French bishops said, the terrible market in organs implies "an exploitation of others' poverty and a denial of their dignity."[35]

We saw that in the two surveys administered in 2001 and 2005 by Amarillo et al., the majority of the respondents who were in favor of organ compensation or sale only (let us not forget: only 4% of the respondents!) were those with lower educational attainment. Of course, results of surveys are eye openers, but do not make the moral truth.

Finally we ask, *should the poor,* as Flecha suggests, *not be given some sort of help, a sort of social subsidy? How about "rewarding a gift" to the organ donors?* If the poor are in solidarity with the sick, *should not the recipients or society be also in solidarity with them?* If organs for transplant are needed, *why not give some incentives to motivate organ donation?* Another question, *should not recipients or society reward the gifts of organs by showing gratitude with a gift – a gratitudinal gift – to the donors?* On the other hand, *will the social subsidy, or the incentives, or the act of gratitude be another name for organ sale?* We are afraid to say that it might be so, but not necessarily! We are strongly against organ sale or compensation. Still we have to ask: *Is any educational or financial help to the donor (particularly the poor*

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[33] See F. Delmonico & N. Scheper-Hughes, *l.c.,* pp. 385-386; Renée C. Fox, and Judith P. Swazey, "Organ and Tissue Transplant: Socio-cultural Aspects, *"Encyclopedia of Bioethics," l.c.,* pp. 1882-1887.

[34] See Larry Rohter, "Tracking the Sale of a Kidney on a Path of Poverty and Hope," *The New York Times:* May 23, 2004. According to Bruce Reed of the International Organization for Migration (IOM), there is a rising intercontinental trafficking of human organs, in particular in China and impoverished states in Southeast Asia, like Philippines, Cambodia, Laos, Burma and Vietnam (Elson C. Tandoc Jr., "Rising trade in human organs alarms international group," *Philippine Daily Inquirer:* June 8, 2007).

[35] French Bishops, as quoted by *The Tablet:* November 6, 1993, p. 1463.

donor) absolutely unethical? Pope Pius XII said that it is not necessarily a fault to accept recompense.[36]

Certainly, the teaching of the Church after Vatican II favors organ donation and condemns organ sale:

> Love, communion, solidarity, and absolute respect for the dignity of the human person constitute the only legitimate context of organ transplantation.
>
> In effect, the human body is always a personal body, the body of a person. The body cannot be treated as a merely physical or biological entity, nor can its organs and tissues ever be used as items for sale or exchange. Such a reductive materialist conception would lead to a merely instrumental use of the body, and therefore of the person. In such a

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[36] Let us quote the well known text of Pope Pius XII: "Is it necessary, as often happens, to refuse any compensation as a matter of principle? The question has arisen. Without doubt there can be grave abuses if recompense is demanded; but it would be an exaggeration to say that any acceptance or requirement of recompense is immoral. The case is analogous to blood transfusion; it is to the donor's credit if he refuses recompense, but it is not necessarily a fault to accept it" (Pius XII, *Address:* May 14, 1956, AAS 48, 1956, p. 465; quoted by *Charter for Health Care Workers,* no. 90, footnote no. 185). We ponder the following words: "Would it be just to give nothing (to the poor who offer a kidney for transplant)? In an organ transplant, everyone involved except the donor clearly benefits. The patient has a longer and more fruitful life. The doctor has his professional fee. The middle man and hospital make their profit. The nurses and surgical support staff get their pay. Without intending to belittle the psychological and spiritual benefits of having helped another, it may be unfair to have nothing to show except a surgical scar and one kidney. Foreign governments offer different rewards to donors: tax rebates, priority in healthcare or in getting organs for themselves or their families, cash donations to designated charity, early parole, funeral expenses, even a kidney swap. Is it fair that the donor, the most critical component of the process not be paid?"(Angeles Tan Alora, *l.c.,* pp. 223-224. See SEACB Statement: *Bioethics News & Notes,* Vol. XIX, No. 2 (April-June, 2007), p. 16; José-Román Flecha, *o.c.,* p. 216; James M. DuBois, "Organ Transplantation: An Ethical Map," *l.c.,* p. 441. In Philippine culture, gratitude is a very important value or trait. The recipient would want to express gratitude to donor with a gift, or an act of gratitude – or with many gifts! If the recipient knows the donor, there is the possibility that a poor donor might want more "gifts" and the recipient may feel obliged for life to continue rewarding gift for life. Then gift giving may become a tyranny – "the tyranny of the gift." See Renée C. Fox and Judith P. Swazey, "Organ and Tissue Transplant: Socio-cultural Aspects," *Encyclopedia of Bioethics, l.c.,* p. 1884.

> perspective, organ transplantation and the grafting of tissue would no longer correspond to an act of donation but would amount to the dispossession or plundering of a body.[37]

We continue our journey and make the final stop to consider this question: *May I be a recipient of an organ from a donor?*

Organ Transplant: The Recipient

From an ethical perspective, the three main questions for the recipient are: *Will the organ transplant be beneficial to the recipient? Does the recipient of the organ consent freely to the transplantation of the kidney? Who should receive the available kidney?*

The first question to be answered is the following: *Is the donated kidney beneficial to the recipient?* The transplant of the kidney appears as *beneficial:* there is no better therapeutic alternative; the benefits of the transplant outweigh the burdens and risks involved for the recipient; the kidney to be received is compatible with the recipient's body; there seems to be a good prognosis for the recipient of the organ.

The second question we face is this: *Does the recipient consent freely to the transplant of the organ?* After being duly informed and understanding well the information given, the recipient gives free and *informed consent.*

Another important question: *Who should receive the available kidney?* There is no major ethical problem regarding related recipients. There should not be big problems concerning non-related donors who choose whom to give their gift.[38] The problem

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[37] John Paul II, *Address* to the First International Congress of the Society for Organ Sharing: "Organ Transplant: New Way of Sharing Life with Others," Vatican City: June 20, 1991, nos. 3 and 4. See also United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services,* 4th ed. (Washington, D.C.: USCCB, 2001), no. 30.

[38] "Ultimately, the one who has control over the organ disposal is the one who makes the decision" (Donald G. McCarthy and Edward J. Bayer, eds., *Handbook on Critical Life Issues,* Braintree, MASS.: Pope John Center, 1989, p. 133. See James M. DuBois, "Organ Transplantation: An Ethical Map," *l.c.*, pp. 443-451; Renée C. Fox and Judith P. Swazey, "Organ and Tissue Transplant: Socio-Cultural Aspects," *Encyclopedia of Bioethics, l.c.,* pp. 1883-1884.

arises when the organs are donated to a kidney center, and this ought to distribute available organs for transplants. The legal and ethical issue then refers to the *allocation of organs for transplants.*

Considering the scarcity of organs and the long lists of potential recipients, *who should receive the organ: a member of my community, a citizen of my country, or a citizen from another country?* Are we for local or national boundaries for the recipient of a kidney, or for unrestricted international boundaries? Some prefer no boundaries, while others argue for restricted national boundaries; still others are for regional boundaries – though not exclusively – like the Scandinavian countries. We argue in favor of national boundaries partly open to foreigners: charity begins at home, but does not end there!

What is the guideline in the Philippines? According to the PODP Manual of Procedures 2005, Filipino patients have first priority in available donated organs; some foreigners may receive a donated organ; however, foreign recipients shall comprise not more than ten percent of annual transplantation procedures done in a particular hospital. *Are these guidelines strictly followed?* Reportedly, not always!

What matters most is that there is within the country or within the region, or within the world social justice: no discrimination against groups of people by reason of their ethnicity, their religion, their gender, their age, or their socio-economic status. Within a country, all citizens are fundamentally equal in rights and dignity, and, therefore, must be treated equally: *equal cases deserve equal treatment!*

Who would accept the organ better ("medical utility")? *Who is the neediest among the needy?* Need and the therapeutic criterion should help decide who the recipient must be. Bioethicists point out the following specific criteria: "urgency, efficacy, and health status and prognosis of recipient" (Marie T. Nolan, 2002).

When recipients are in similar situations, *how about the norm, "first-come-first-served"? How about using the method of lottery?* In any case, the ethical principle of *distributive justice* – equitable distribution of benefits and burdens – ought to be taken into consideration. It is important – even necessary – that

competent authorities, after due public discussion, come out with clear criteria and policies regarding the allocation of organs.[39]

An unavoidable question today: *Should the recipient pay to the known donor?* In the Philippines the question is: *kidneys for a fee or for free?* As we said earlier, the fundamental answer, from a humanist and/or Christian perspective is in the negative: no to the sale and commercialization of human organs!

Not only the poor vendors (vulnerable in so many other ways) but also the potential recipients are "vulnerable targets" of organ sale and market. The recipients of kidneys in the Philippines are generally the rich, particularly when the donor is a non-related donor – and poor. Only the rich recipients can afford the fight against organ rejection and the continuing need of expensive immunosuppressive treatment. It is important to note that in the Philippines, the rich recipients, including foreigners, are asked to contribute financially to absorb the expenses of poor persons who need a kidney.[40]

We close this section with a text from John Paul II:

> From the moral standpoint of view, 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, *judgment 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

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[39] Writes Childress: "The public's perception that these policies are fair, equitable and just appear to influence quite significantly its willingness to donate organs" (James F. Childress, *Practical Reasoning in Bioethics, l.c.,* p. 299). See James M. DuBois, "Organ Transplantation: An Ethical Map," *l.c.,* pp. 443-451. In the Philippines, the Organ Donation Program (ODP) is in charge of developing guidelines for "a rational and equitable program of kidney organ sharing and exchange" (DOH, Administrative Order No. 124 s. 2002).

[40] It is said that thousands of rich foreigners with renal disease are waiting for a kidney from a poor Filipino. Hopefully, the coming ethical and legal guidelines will face this issue properly. (See Jose B. Lugay, "Kidneys Not For Sale But Donated To Save Lives," CBCP *Monitor, l.c.,* pp. 7, 10, 12).

the intrinsic value of each human person as such, a value that is independent of any external circumstances.[41]

Conclusion

As *human beings,* we are in favor of organ transplants and donations. In human perspective, we ground our affirmative stand on the dignity of the human person: every human person is a man or a woman for others; we belong to the human family and as such ought to be just to all persons and love them all. We do oppose, however, sale of organs as a failure in the respect due to the dignity of every human being, including my dignity as incarnate spirit, and in communal solidarity.

As *Christians,* we know that our faith is not "a constraint" to organ donation but a fraternal invitation. We ought to be in solidarity with the poor and against organ sale. As followers of Christ, we have to be stewards of our life and health. Donating an organ may be an offering to Christ, who is the Way, who suffered and died for us – and continues suffering today in the sick and wounded (*Jn* 15:13). It may be an act of charity as love of neighbor, for love means to serve others in solidarity, to give ourselves to others, to share with them what we have. Jesus advises us: "The gift you have received, give as a gift" (*Mt* 10:8).

In his first encyclical, *Deus Caritas Est,* Pope Benedict XVI writes: "Christian charity is first of all the simple response to immediate needs and specific situations: feeding the hungry, clothing the naked, caring for and healing the sick, visiting those in prison, etc."[42] Donation of an organ for us Christians and for other believers and persons of good will is an act of charity as love of neighbor in need – "of caring for and healing the sick" (cf. *Lk* 10:25-37).

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[41] John Paul II, *Address to the International Congress on Organ Transplants:* Vatican City, August 29, 2000. See also John Paul II, *Address to the First International Congress on Organ Transplants,* "Organ Transplant: New Way of Sharing Life with Others": Vatican City, June 20, 1991, no. 3).

[42] Benedict XVI, *Deus Caritas Est,* (Vatican City: December 25, 2005), no. 31.

Let me close with the story of an organ donor. Liz Courain is a Christian volunteer in a hospital in the United States. She worked with a co-volunteer who at one point urgently needed a kidney to survive. After reflecting deeply and prayerfully with her husband, Courain decided to give her one. The transplant was successful for both donor and recipient. She was happy she donated a kidney as an act of charity. Narrating powerfully and humbly her experience, she concludes: "Christians should be taught that by becoming organ and tissue donors, whether in life or at death, they are performing an act of charity and self-giving love, responding to Jesus' new commandment, to 'love one another as I have loved you" (*Jn* 13:34).[43] ❑

[43] Liz Courain, "Testimony: A Living Donor's Experience," *The National Catholic Bioethics Quarterly,* Vol. 2, No. 3 (Autumn 2002), pp. 373-375.