

THE MORALITY OF MUTILATION: TOWARDS A REVISION OF THE TREATISE

GERALD KELLY, S.J.

St. Mary's College

IN RECENT years I have heard many moral theologians express the opinion that the treatise on mutilation, as usually given in the manuals, needs extensive revision. Needless to say, a satisfactory revision could hardly be the work of one man. The purpose of the following pages is merely to suggest, for constructive criticism, a number of points that ought to be considered in making the revision. I have found it difficult to arrange these points in a perfectly logical order. I believe, however, that most of the ideas can be conveniently grouped as follows: (1) the doctrinal value and use of papal pronouncements; (2) the main definitions and divisions; (3) other divisions; and (4) the moral principles. A concluding section can be devoted to a discussion of some concrete problems.

PAPAL PRONOUNCEMENTS: THEIR DOCTRINAL VALUE AND THEIR USE BY THEOLOGIANs

The principal approach to any theological treatise should be the teaching of the magisterium, especially of the Holy See itself, when such teaching is available. Of specific pertinence to a treatise on mutilation I would enumerate the encyclical *Casti connubii* (Dec. 31, 1930)¹ of Pius XI, and nine allocutions by Pius XII: to the Guild of St. Luke (Nov. 12, 1944),² to blood donors (Oct. 9, 1948),³ to the midwives (Oct. 29, 1951),⁴ to the histopathologists (Sept. 13, 1952),⁵ to the geneticists (Sept. 7, 1953),⁶ to the urologists (Oct. 8, 1953),⁷ to the military doctors (Oct. 19, 1953),⁸ to delegates to the Eighth Congress of the World Medical Association (Sept. 30, 1954),⁹ and to the oculists

¹ *AAS* 22 (1930) 539-92.

² *Pio XII: Discorsi ai medici* (Rome: Orizzonte Medico, 1954) pp. 7-21.

³ French version in *Le corps humain* (New York: Desclée, 1953) pp. 89-92. This is one of several valuable collections of papal statements edited by the monks of Solesmes.

⁴ *AAS* 43 (1951) 835-54.

⁵ *Ibid.* 44 (1952) 779-89.

⁶ *Ibid.* 45 (1953) 596-607.

⁷ *Ibid.*, pp. 673-79.

⁸ *Ibid.*, pp. 744-54.

⁹ *Ibid.* 46 (1954) 587-98.

and cornea donors (May 14, 1956).¹⁰ Also of special pertinence are the decrees of the Holy Office on eugenics (Mar. 21, 1931)¹¹ and on direct sterilization (Feb. 24, 1940).¹²

To the foregoing should be added: the encyclical *Humani generis* (Aug. 12, 1950),¹³ the radio message on the formation of the Christian conscience (Mar. 23, 1952),¹⁴ the allocution on the new morality (Apr. 18, 1952),¹⁵ the two allocutions on the teaching authority of the Church given in 1954 (May 31 and Nov. 2),¹⁶ and the decree of the Holy Office on situation ethics (Feb. 2, 1956).¹⁷ I add these pronouncements because, though they do not deal with the problem of mutilation, they contain important positive and negative guiding norms that should be carefully observed in all theological discussions.¹⁸

My enumeration includes encyclicals, allocutions, a radio message, and decrees of the Holy Office—all of which are usually understood to be media of the authentic, but not infallible, teaching of the Holy See. By this I do not mean that these media either cannot or do not contain infallible moral teaching. Certainly a pope may, if he wishes, use such media for *ex cathedra* pronouncements, as well as for clear expressions of the ordinary and universal teaching of the Church. Whether the popes have actually used these media for infallible moral

¹⁰ *Ibid.* 48 (1956) 459–67.

¹¹ *Ibid.* 23 (1931) 118–19. This decree does not explicitly mention sterilization; rather it condemns the eugenics program which includes direct sterilization of the innocent as one means of attaining its end of “bettering the race.”

¹² *Ibid.* 32 (1940) 73.

¹³ *Ibid.* 42 (1950) 561–78. See also A. C. Cotter, S.J., *The Encyclical “Humani generis” with a Commentary* (Weston, Mass.: Weston College Press, 1951).

¹⁴ *AAS* 44 (1952) 270–78.

¹⁵ *Ibid.*, pp. 413–19.

¹⁶ *Ibid.* 46 (1954) 313–17, 666–77. In the first of these, *Si diligis*, Pius XII professedly treated the teaching power of the Church. The second, *Magnificate Dominum*, was explicitly directed rather to a discussion of the powers of sanctifying and ruling; but it also deals at some length with the teaching authority of the Church.

¹⁷ *Ibid.* 48 (1956) 144–45.

¹⁸ Regarding English translations: Pertinent excerpts from most of the papal statements enumerated in the first paragraph of this section, with some references to complete translations, are given in “Pope Pius XII and the Principle of Totality,” *THEOLOGICAL STUDIES* 16 (1955) 373–96. For the decrees of the Holy Office on eugenics and direct sterilization, see *Canon Law Digest* 1 (1934) 677–78, and 2 (1943) 96. For the discourses on the Christian conscience and the new morality, see *Catholic Documents* 8 (1952) 1–7, 15–20. The *Si diligis* and *Magnificate Dominum* are in *The Pope Speaks* 1 (1954) 153–58, 375–85.

teaching may be open to question; yet it is well at least to recall that many theologians think that the solemn condemnation of contraception expressed by Pope Pius XI in *Casti connubii* fulfils all the conditions laid down by the Vatican Council for an *ex cathedra* pronouncement.¹⁹ Moreover, even though a theologian should be loath to admit this, he can hardly doubt that this paragraph in the Encyclical makes it clear that the moral teaching given by the Pope is an expression of the constant and universal teaching of the Church on a matter of natural and divine positive law—a teaching which is binding on the conscience of all the faithful and which admits of no possibility of change.

I mention the condemnation of contraception merely to show that infallible doctrine may be contained in an encyclical. There may be other examples; but it would not be in keeping with my present purpose to explore these. It suffices to recall here that, even when not infallible, the authentic teaching of the Holy See is of great importance. It requires both internal and external acceptance, not only on the part of the faithful but also on the part of theologians; it can be of such a decisive character that it ends actual theological controversy and precludes potential controversy.

All this is well known and evident. My only point in repeating it here is to pose the question: what is the function of the theologian regarding the authentic, non-infallible teaching of the Holy See? His first duty, as I have already indicated, is to give the required assent.²⁰ But this is a duty he shares with all the faithful. The specific function of the theologian goes far beyond this. He must study the papal pronouncements and incorporate them into his teaching and his writing. One writer has recently deplored the tendency of theologians to “interpret” the papal statements; according to him the theologians’ function

¹⁹ *AAS* 22 (1930) 560: “. . . Ecclesia Catholica, cui ipse Deus morum integritatem honestatemque docendam et defendendam commisit, . . . in signum legationis suae divinae, altam per os Nostrum extollit vocem atque denuo promulgat: quemlibet matrimonii usum, in quo exercendo, actus, de industria hominum, naturali sua vitae procreandae vi destituatur, Dei et naturae legem infringere, et eos qui tale quid commiserint gravis noxae labe commaculati.”

²⁰ Much has been written about the nature of this assent. It would be beyond the scope of the present discussion to try to analyze these writings. For a brief explanation of the assent and the effect of authentic teaching on theological scholarship, I would recommend Fr. Cotter’s commentary on *Humani generis* (cf. supra n. 13) pp. 76–77.

is to explain the papal teaching, not to interpret it. This is a distinction without a difference. To fulfil his acknowledged duty of explaining the papal teaching, a theologian must in some measure interpret it; and all that can be reasonably demanded of him is that he follow sound theological norms of interpretation. Unfortunately, we do not have an official set of norms for interpreting pronouncements on the moral law such as we have, for example, regarding canon law; nevertheless, there seem to be at least three basic norms of interpretation that are in conformity with the mind and practice of the Holy See.

One such norm concerns the verbal formulas used in the moral pronouncements. These formulas are very important and should be carefully studied by theologians. Nevertheless, the words themselves are not the ultimate criterion of the true sense of the papal pronouncement; they can be obscure and admit of reformulation. This can be illustrated by the *acta* of both Pius XI and Pius XII relative to punitive sterilization, as well as by the tenor of canon law and by the reactions of eminent theologians to certain aspects of significant moral pronouncements.

In the originally published text of *Casti connubii*, the words of Pius XI at least strongly inferred that he was condemning punitive sterilization; but a *notandum* in the next fascicle of the *Acta apostolicae sedis* contained a rewording of the passage which showed that the Pope did not intend to commit himself on the controversy among theologians about the licitness of punitive sterilization.²¹ Ten years later the Holy Office, with the approval of Pius XII, condemned direct sterilization, without qualification, as being contrary to the natural law. That was in 1940. But in 1951, and again in 1953, Pope Pius XII, when referring to this condemnation, restricted it to the direct sterilization of the innocent.²² In both these instances the Popes apparently realized that, though perfectly apt for condemning the errors at which they were aimed, the formulas were broader than their own intention.

The very fact that popes themselves have gone out of their way to clarify or restrict their moral pronouncements indicates that a theologian is not necessarily irreverent or disloyal in supposing that other such statements may need clarification or restriction or rephrasing.

²¹ Cf. *AAS* 22 (1930) 565, 604.

²² Cf. *ibid.* 43 (1951) 844; 45 (1953) 606.

This is confirmed, it seems to me, by the rules for the interpretation of canon law, as well as by theologians' reactions to some recent and very important papal pronouncements on the social order. In canon law the Church explicitly admits that the meaning of some laws may be dubious or obscure. The reason for this is surely not that the legislator wanted to be obscure but rather that he failed to make his own intention clear when framing the law. It is true, of course, that this concerns canon law, not pronouncements regarding moral law. But I do not think that this affects the point I am stressing, namely, that the words themselves may fail to express the mind of the Holy See. That this has actually been the case concerning some important moral pronouncements seems evident from the controversies among eminent and unquestionably orthodox moralists regarding the meaning of social justice, the title to a family wage, and so forth. In these cases, as in the framing of ecclesiastical laws, the popes were certainly not intentionally obscure. They must have had something definite in mind, but this was not expressed with sufficient clarity—otherwise, how explain the controversies among learned commentators?

From the foregoing it follows that the words alone do not always give us the sense, the true meaning, of a papal pronouncement. To get to the true sense, the theologian must study not only the words, but their context and the papal intention in making the pronouncement. By the context I mean not so much the verbal context as the historical setting, because it is there particularly that we are apt to find the true meaning of the statement. For example, if the pope is settling a controversy, his words should be taken in conjunction with the controversy; if he is condemning an error, the words should be interpreted with reference to the error, and so forth.²⁸

²⁸ What is said in this paragraph seems to be in keeping with the spirit of the Church as manifested in canon 18, which prescribes that words are to be taken according to their proper meaning as indicated by text and context, and that in case of doubt one should consider the purpose and circumstances of a law and the mind of the legislator.—As for verbal formulas alone, one might note the following quotation from the *Quamquam pluries* of Leo XIII, ASS 22 (1889–90) 66: "*Certe matris Dei tam in excelso dignitas est, ut nihil fieri maius queat. Sed tamen quia intercessit Josepho cum Virgine beatissima maritale vinculum, ad illam praestantissimam dignitatem, qua naturis creatis omnibus longissime Deipara antecellit, non est dubium quin accesserit ipse, ut nemo magis.*" The Pope's meaning is obvious; yet a stickler for the primacy of verbal formulas would have no little difficulty with the expressions which I have italicized.

In *Humani generis* Pope Pius XII made it clear that even a non-infallible pronouncement can close a controversy among theologians. I feel sure, however, that the Pope himself would agree that this decisive character of the pronouncement must be evident. That is in accord with canon 1323, §3, which states that nothing is to be understood as dogmatically declared or defined unless this is clearly manifested. The canon refers to infallible teaching; yet the same norm seems to apply with at least equal force to the binding character of non-infallible teaching, especially when there is question of pronouncements that would close an existing controversy or preclude future legitimate controversy.

To summarize briefly the main points of this first section: The principal basis of a theological treatise is the teaching of the magisterium, particularly that of the Holy See. In using papal pronouncements, a theologian should have regard not only for verbal formulas but also—and, it seems to me, especially—for the papal intention as manifested in the historical context of the pronouncement. When there is question of official teaching that would end or preclude legitimate controversy, this decisive character should be evident.

MAIN DEFINITIONS AND DIVISIONS

A precise and explicit definition of mutilation cannot be found in the papal documents. The definition given by M. Zalba, S.J., may be taken as typical of those usually given in our manuals: "the destruction of some member or the suppression of some function of the body."²⁴ Fr. Zalba goes on to explain that this definition includes the amputation of a hand, the removal of an eye, vasectomy, fallocotomy, etc.—in a word, anything that would destroy the radical integrity of the body. He excludes from the definition such things as blood transfusions and skin grafts because these do not permanently affect bodily integrity. This standard definition seems defective on two counts: first, it includes direct sterilization on the same plane with other mutilations; and, secondly, it excludes from the definition such things as exploratory operations, cosmetic surgery, blood transfusions, skin grafts, and so forth.

²⁴ Cf. Regatillo-Zalba, *Theologiae moralis summa* 2 (Madrid: Biblioteca de Autores Cristianos, 1953) n. 251.

That direct sterilization is a mutilation is evident from the common teaching of moralists and from papal documents. But the same papal documents also make it clear that, prescinding from the question of punitive sterilization, direct sterilization is a unique kind of mutilation—it is something more than a mutilation. Pope Pius XII defined it as a contraceptive procedure;²⁵ and both he and his predecessor have unequivocally taught that there is never any indication, even a medical indication, for contraception. The principles governing direct sterilization, therefore, have an absoluteness that does not apply to other mutilations. It is my opinion that, if some provision is made for this difference in the definition itself, much confusion can be avoided. To put it briefly: I suggest that in the definition of mutilation a distinction should be made between *contraceptive* and *non-contraceptive* mutilations.

A word now about my assertion that the standard definition is defective because it excludes from the concept of mutilation all procedures which do not suppress a function or destroy or remove an organ. It is true that these latter things (e.g., the simple laparotomy, cosmetic surgery, blood transfusions, and skin grafts) differ in some respect from the procedures covered by the standard definition; but they also have something in common. They have some effect on bodily integrity and they imply some degree of administration of one's body. Several authors recognize this by saying that these lesser things imply "some measure of mutilation" or that they are "mutilationes improprie dictae." My suggestion is that the common element be contained in the definition of non-contraceptive mutilation and that the difference be indicated by a subdivision.

The suggestions made in this section may be schematically expressed as follows:

1. *Contraceptive mutilation*: Any procedure which is either explicitly or implicitly directed to the permanent or temporary suppression of the power of procreation.
2. *Non-contraceptive mutilation*: Any procedure, except direct sterilization, which interferes either temporarily or permanently with the natural and complete integrity of the human body.

²⁵ AAS 43 (1951) 843-44: "La sterilizzazione diretta—cioè quella che mira, come mezzo o come scopo, a rendere impossibile la procreazione."

(a) Such procedures are designated *major mutilations* when they destroy or remove an organ, permanently suppress a bodily function, or cause a notable and permanent impairment of a higher function which depends on the body.

(b) All other non-contraceptive mutilations are *minor*.

I have used the word "procedures" because it is of common occurrence in the official codes for Catholic hospitals in Canada and the United States. It includes surgery, irradiation, and any other treatment, such as the use of drugs, chemicals, and so forth. The definition of contraceptive mutilation is based on Pius XII's definition of direct sterilization and on the words used by the Holy Office in the decree of Feb. 24, 1940.²⁶ The definition of major mutilation is practically the same as the standard definition of mutilation as given at the beginning of this section, except that, in keeping with another statement of Pius XII, I have added an explicit reference to the impairment of a higher function.²⁷

I am by no means perfectly satisfied with my distinction between major and minor mutilations. To some extent, the precise distinction between these two seems involved in some controversial questions to be mentioned later. At any rate, the distinction given above can be used as a basis for discussion by those who are interested in contributing to this tentative revision of the treatise on mutilation.

OTHER DIVISIONS

Authors speak of *direct* and *indirect* mutilation. According to the traditional meaning of these words, a mutilation can be called indirect only when the impairment of bodily integrity is an unintentional by-product of an act. For instance, if my hand is crushed when I attempt to stop a machine which is threatening the lives of others, this crushing of the hand is obviously not intended as a means or as an end. But mutilations as they commonly occur in medical practice (e.g., in surgery, suppression of function by irradiation) are evidently intended, both *ex fine operis* and *ex fine operantis*. It is unfortunate, and not in keeping with the papal documents, that some authors insist on calling such mutilations indirect and on resorting to the principle of the double

²⁶ The decree condemned direct sterilization, "sive perpetua sive temporanea"; *ibid.* 32 (1940) 73.

²⁷ Cf. his remarks, *ibid.* 44 (1952) 782-83, relative to the treatment of mental illness, on the "order of values."

effect to explain them. Perhaps these moralists are preoccupied with the notion of indirect sterilization. It is true that this procedure, as well as indirect abortion, requires the use of the principle of the double effect, but the reason for this is that in such cases the direct mutilation produces effects which cannot be adequately justified merely by the application of the principle of totality.

Another division concerns *self-mutilation* and the *mutilation of others*. This division refers not so much to the person who performs the mutilating act as to the will of the mutilated person. Thus, it is self-mutilation whether a person amputates his own hand or has a doctor do it. From the moral point of view, therefore, direct mutilation of others refers only to cases in which an individual is mutilated without at least his reasonably presumed consent.

A third division includes *licit* and *illicit* (direct) mutilation. It is unfortunate that we have no single word which designates illicit mutilation, such as we have regarding the direct killing of self or another innocent person, the taking of another's property, etc. "Suicide," "murder," and "theft" all have the technical meaning of acts performed without due authorization; but to express whether direct mutilation is duly authorized a qualifying word is always needed.

This leads to a consideration of the expression not infrequently used that "mutilation is intrinsically evil." To say the least, this expression is confusing. Certainly mutilation itself should not be called evil, because it is sometimes licit. Moreover, although unjustifiable mutilation is intrinsically evil in the sense that it is contrary to the natural law and not merely to positive law, it is not evil in the same sense as blasphemy or even in exactly the same sense as the direct killing of the innocent. Blasphemy is both *de facto* and *de jure* absolutely evil; it is not permitted and in no conceivable order of things could it be permitted. God could authorize the direct killing of the innocent; but in the present order of things no such authorization can be inferred. The direct killing of the innocent is, therefore, *de facto* absolutely evil. The same cannot be said of mutilation, since one can deduce from a study of the nature of man that in some circumstances it is justifiable. The problem of the moralist, therefore, is not to decide whether mutilation is contrary to the natural law but to determine the limits of justifiable mutilation according to natural law.

PRINCIPLES GOVERNING DIRECT, NON-CONTRACEPTIVE SELF-MUTILATION

I am limiting this section to direct mutilation: first, because in the circumstances in which this is permissible, indirect mutilation would a fortiori be justifiable; and, secondly, apart from these circumstances, problems of indirect mutilation would be solved by the application or non-application of the principle of the double effect. I exclude contraceptive mutilation because it seems to me that, with the possible exceptions of punitive sterilization and consent to compulsory sterilization,²⁸ the discussion of contraceptive sterilization belongs more properly to the treatise on abuse of the sexual faculties. Finally, I speak only of self-mutilation because the only justification for direct mutilation of others (which means, as I have previously indicated, mutilation without their consent) is found in the explanation of legitimate defense against unjust aggression—and, of course, in the principles governing the conduct of soldiers in time of war.

First, the most general of all the principles pertinent to this section is that man is not the owner, but only the administrator, of his body. Closely allied to this is the principle that his power of administration is restricted, not unlimited. These principles are both speculatively and practically certain. They are unequivocally contained in both the authentic teaching of the Church and the common and constant teaching of moralists; and both these sources make it clear that the principles are deduced from an analysis of the nature of man and of his relationship to his Creator.

Secondly, as regards self-mutilation *for one's own good*, the principle of totality is to be applied, namely, such mutilation is permitted when it is proportionately necessary or useful for the good of the whole (i.e., the person). This principle is also both speculatively and practically certain, and for the same reasons as those given above. Regarding the principle itself, there can be no legitimate controversy, although there might be some differences of opinion concerning its precise formulation and some of its applications.

It seems to me that the best criterion for the justifiable application

²⁸ Punitive sterilization would logically be treated, it seems, under the state's power to punish. And there are good reasons for saying that the innocent person's consent to unjust compulsory sterilization may be limited to the mutilation as such and need not extend to the contraceptive purpose of the law; cf. *THEOLOGICAL STUDIES* 16 (1955) 383-85.

of the principle is sound and conscientious medical practice, which would permit a mutilation only when this is for the genuine good of a patient and when this same good cannot be obtained by some simpler and reasonably available means. The application of the principle is not limited to diseased organs and functions but also includes those that are in themselves normal and healthy. Nor is it necessary for the application of the principle that there be, as some authors say, a "present" danger. From the words of Pope Pius XII that mutilations are permissible when required "to *avoid* . . . serious and lasting damage,"²⁹ I think it may be inferred that a purely prophylactic mutilation is sometimes permitted. In such mutilations, however, there must be a considered and conscientious judgment as to the *time* for performing the prophylactic operation. It is one thing, for instance, to remove an apparently healthy appendix when the abdomen is already open and another thing to perform a special operation to remove the appendix. Similarly, it is one thing to remove an apparently healthy uterus when excising malignant ovaries, another thing to perform a special operation to remove the uterus. A more serious reason would be required for the special operations than for the incidental appendectomy or hysterectomy. Here again, however, I believe that the best criterion as to the proper time for the operation would be sound and conscientious medical judgment.

Thirdly, it seems to me that a discussion of self-mutilation *for the good of the neighbor* must distinguish between a negative principle which is speculatively and practically certain and some positive rules which may be followed in practice but which do not yet have a clearly established speculative foundation.

The negative principle is that no mutilation for the good of the neighbor, even a minor mutilation, can be justified by the principle of totality. The reason for this is that the principle of totality is essentially a principle of subordination of part to whole—a subordination which exists only in a physical body, not in a moral body or even in the Mystical Body.³⁰ Catholic teaching, as expressed particularly in the

²⁹ *AAS* 44 (1952) 782 (italics added).

³⁰ *Mystici corporis*, *AAS* 35 (1943) 221–22, NCWC edition (1943) n. 61: "In a natural body the principle of unity unites the parts in such a manner that each lacks its own individual subsistence; on the contrary, in the mystical Body the mutual union, though

pronouncements of Pius XII, has constantly denied this subordination of a person to society.

As positive rules, which may be followed in practice, I would enumerate three. First, minor mutilations such as blood transfusions and skin grafts are permitted when they do not involve excessive danger for the donor. The theological note for this would be "certain." It is clearly taught by the Holy See and by the theologians. I believe, however, that, even though the proposition itself is beyond controversy, its speculative basis needs further elucidation.

Secondly, medical experimentation for the good of others may be permitted on these conditions: (a) that the subject freely consents, (b) that no experiment which directly inflicts grave injury or death is used, and (c) that all reasonable precautions are taken to avoid even the indirect causing of grave injury or death.³¹ I would call this assertion "solidly probable," because it seems to be in conformity with the teaching of the Holy See. I would not call it certain, because some moralists apparently draw stricter conclusions from the same papal pronouncements.

Thirdly, organic transplantation, involving the donation of one of a pair of organs, may be permitted. The note on this, at the present time, would be "solidly probable, at least extrinsically." Further discussion of this question is reserved to the next section. It might be noted now, however, that, even if the controversy over organic transplantation were settled either by amicable agreement or by papal pronouncement, certain problems raised by the controversy might still be unsolved.³²

intrinsic, links the members by a bond which leaves to each the complete enjoyment of his own personality. Moreover, if we examine the relations existing between the several members and the whole body, in every physical, living body, all the different members are ultimately destined to the good of the whole alone; while if we look to its ultimate usefulness, every moral association of men is in the end directed to the advancement of all in general and of each single member in particular; for they are persons."

³¹ Cf. John C. Ford, S.J., and Gerald Kelly, S.J., "Notes on Moral Theology, 1953," *THEOLOGICAL STUDIES* 15 (1954) 76-77.

³² Many participants in the controversy are listed in *THEOLOGICAL STUDIES* 16 (1955) 391-96, 592. Discussion continues unabated, especially in Italy and Spain. Of the more recent articles which I have seen, I would cite particularly: M. Zalba, S.J., "La mutilación y el trasplante de órganos," *Estudios de Deusto* 3 (1955) 295-325; "La mutilación y el trasplante de órganos a la luz del Magisterio eclesiástico," *Razón y fe* 153 (1956) 523-48; J. M. Balirach, S.J., "Cotejo de opiniones sobre trasplantes humanos," *Sal terrae* 44 (1956) 84-91. Fr. Zalba is strongly against transplantation; Fr. Balirach

SOME PARTICULAR PROBLEMS

A treatise on mutilation would be inadequate without the consideration of practical cases. But the selection of cases must be made with an eye to the part of moral theology where mutilation is treated. As I see it, this treatise belongs under the fifth commandment (or, for those who follow the arrangement according to virtues, in the section that deals with the right and duty to preserve bodily integrity). For this reason I have suggested that a detailed discussion of contraceptive mutilation belongs elsewhere. Moreover, since mutilation is only one aspect of the fifth commandment, it would not include operations on a pregnant mother that destroy or endanger the life of a fetus. These cases belong *per eminentiam* to the section dealing with the right and duty to preserve life, because this is a more important consideration than the mutilation. In a word, the principal cases to be discussed here would be non-contraceptive mutilations in so far as they affect only the person mutilated. Indirect sterilizations are included because, by supposition, the sterilization is only a by-product and the main consideration is the mutilation itself.

I have already suggested that the best criterion for the licitness of non-contraceptive mutilation is sound and conscientious medical judgment, i.e., if a procedure is good medicine, it is also good morality.³³ This statement requires some amplification. There is no difficulty in applying the dictum that good medicine is good morality when doctors are agreed that a certain procedure is necessary or at least advisable.

(who synthesizes a long article against it) defends it. One point that seems to have escaped many writers is that the thesis in favor of transplantation is not a "minority opinion." It may be more difficult to defend, but it has as many defenders as opponents.

³³ In general, the use of this dictum—that good medicine is good morality—makes a favorable impression on physicians. In my experience, however, it has to be used with reserve, because there are still some physicians (whose number is decreasing) who think that therapeutic abortion is good medicine; and there are certainly many who think that contraception is sometimes medically indicated, that masturbation is a justifiable means of obtaining semen for analysis, and that donor insemination is occasionally indicated. Also, some would not agree with the restrictions we place on medical experimentation. But when a discussion is limited to non-contraceptive mutilations for the good of the patient, the dictum seems to be a sound and simple way of expressing the application of the principle of totality. In discussing the other topics mentioned here, one must insist on the converse of the dictum, namely, that only good morality is good medicine.

But it is well to keep in mind that, like theologians, physicians also have their "schools"; and it is my opinion that scientific men, as a group, are much less tolerant of opposing views than are theologians. It seems to me that in medically debatable cases we have to allow a physician liberty, provided his own view has sound backing and that he conforms to accepted rules for consultation and has the enlightened consent of his patient. Another point that I have found to be very practical concerns the locality in which a procedure is carried out. It happens not infrequently that in large medical centers some skilful technique can be employed to conserve an organ, but physicians in other districts might lack this skill. A practical difficulty like this must be taken into consideration when one is judging whether a simpler remedy is reasonably available. Finally, as regards sound medical judgment, the medical societies themselves admit that there are many unjustifiable operations and are vigorously campaigning against such things.³⁴ A moralist should be well informed about this campaign, and it seems desirable that one who must solve practical cases in a given locality should know something of the status of the local hospitals relative to the standards of medical societies.

With these general considerations in mind, we can return to the question of particular problems. The progress of surgery and radiology, the discovery and availability of new drugs, the tendency of physicians to experiment—these and other factors confront the moralist of today with many practical problems; and certainly some of these should be included in a treatise on mutilation. Besides these, there are old cases that are still important for various reasons. My purpose in the remaining paragraphs is merely to list a number of these cases, and to point out briefly the problems raised, and sometimes solved, by a study of them. In only a few instances will my remarks be more than an indication of the problems.³⁵

³⁴ Operations most frequently branded as unjustifiable are: removal of appendix, gall bladder, uterus, and ovaries; also cesarean section and resection or excision of fallopian tubes. By an unjustifiable operation the doctors mean "one in which either the indications were inadequate or the procedure was one which is contrary to generally accepted surgical practice." Cf. *Bulletin of the American College of Surgeons* 39 (1954) 72.

³⁵ Brief solutions to most of the modern problems noted here are contained in the second edition of *Ethical and Religious Directives for Catholic Hospitals*, published by the Catholic Hospital Association of the United States and Canada (1438 South Grand Blvd., St. Louis 4, Missouri). A more complete treatment of these and other cases can be found in

Amputation of Healthy Hand to Avoid Threatened Death

This case, as presented by de Lugo, supposes that a tyrant has given a person the gruesome option of cutting off his own hand or of being put to death.⁸⁶ De Lugo cites authors for and against the licitness of the amputation. His own opinion is that the amputation would be a reasonable, therefore licit, administration of the body. This opinion is easily the more common; and even among its opponents the main objection seems to be based more on illicit cooperation with the sinful command than on unjustifiable mutilation.⁸⁷ In itself, the case is hardly realistic and very likely it never was. But discussion of it has helped to clarify two points: first, that justifiable mutilation need not be limited to diseased members; and, secondly, that there need not be an intrinsic connection between the mutilating act and the saving of one's life. The first of these points is now certain; the second is at least solidly probable, if not certain.

Although this particular case is hardly realistic, a fairly close parallel to it exists in many of our states. I refer to the laws that give an innocent and harmless mental defective the alternative of either "consenting" to a sterilization or of enduring lifelong institutionalization. This problem has already been amply discussed in these pages.⁸⁸

Blood Transfusions and Skin Grafts

Vermeersch very modestly suggested that the speculative justification for these things might be the unity of the human race which makes

the booklets, *Medico-Moral Problems*, published by the same association; also in such up-to-date books as *Medical Ethics*, by Charles J. McFadden, O.S.A., and *Morale et médecine*, by Jules Paquin, S.J., as well as in the surveys of moral theology published periodically in this review. I shall not refer further to these sources unless some special reason makes it advisable. It might be added here that, besides the problems indicated in my text, the following are of no small interest to the moralist: prophylactic appendectomy, routine circumcision of infants, cosmetic surgery, and the so-called "sex-changing" operations; also hypnotherapy, narcotherapy, and shock treatments. The last three may be called mutilations in the sense that they temporarily impair the use of the higher faculties. All these problems are also treated in the sources just mentioned.

⁸⁶ *De justitia et jure*, disp. 10, n. 22.

⁸⁷ Cf. Prummer, *Manuale theologiae moralis* 2 (1933) n. 116, footnote. He refers not only to the case of the tyrant, but also to the adulterer whom an irate husband threatens to kill if he does not castrate himself.

⁸⁸ Cf. THEOLOGICAL STUDIES 15 (1954) 605-6; 16 (1955) 383-85.

us in a sense one with our neighbor. At the end of his brief paragraph he asked: "Nonne quaedam ordinatio nostrorum membrorum ad proximi corpus admitti potest?" He has been unjustly misrepresented by those who say that he taught that the principle of totality can be applied to the members of a moral body. The principle of totality is based on the *subordination* of a member to the whole. Vermeersch spoke of an "ordinatio" to one another, a mutual relationship which is inherent in our common nature and which—as no one can deny—is the basis for natural love of neighbor. By reason of this relationship one's neighbor is neither superior nor inferior, but rather "another self." That is entirely different from the subordination that exists between the members of a physical body and the whole body.

In making this suggestion, Vermeersch at least offered a positive explanation for the licitness of transfusions and skin grafts. The reason frequently given by authors—that the blood or skin restores itself—is not completely satisfying; taken by itself, it would seem to justify even the useless letting of blood or removing of skin. The ultimate speculative justification of blood transfusions and skin grafts must include some reference to the purpose of these acts, for it is only by knowing the purpose that one can determine whether the acts qualify as reasonable administrations of one's body.

Castration

A classic case concerns the castration of children to preserve their boyish voices. If one had only the text of St. Alphonsus as his guide, one could not deny all probability, at least extrinsic, for the practice;³⁹ yet it was strongly repudiated by Benedict XIV,⁴⁰ and it seems safe to say that no moralist of today would attempt to justify it. For the modern moralist, the one practical aspect of this historic case is the necessity of showing that the Church did not foster the practice; and the point of perhaps greatest speculative interest is that the castration would not be a direct sterilization, but rather an unjustifiable indirect sterilization.

Also of ancient vintage is the question of castration as a means of suppressing vehement temptations. The tendency of older authors

³⁹ *Theologia moralis* (Gaudé ed.), I, 3, n. 374.

⁴⁰ *De synodo diocesano*, I, 11, c. 5.

was simply to deny the necessity of the mutilation; some modern authors are inclined at least to consider the possibility that an abnormally strong sexual urge may be caused by abnormal gonadal function, in which case castration might be licit if there were no simpler way of quieting the urge. It is my impression that most doctors would deny the effectiveness or need of such drastic treatment. However, in defence of a state law that permits castration of certain sexual criminals, a doctor has argued that men thus castrated have become peaceful citizens, psychologically stabilized, and even happily married.⁴¹ Whatever may be said of the first two effects, a theologian would insist that such marriages, whether happy or not, are invalid.

Some interesting and practical modern problems concern castration for excessive uterine bleeding, and as a palliative treatment in cases of cancer of the breast or prostate. In the first case, medical experts would allow the procedure only as a last resort. They would be somewhat divided in their opinions on the second case, but in pronounced agreement that some form of castration is recommended when cancer of the prostate is discovered too late.

Cesarean Section

Medical literature makes it clear that this operation is not infrequently performed without justification. But it is also clear that it is sometimes indicated for the safety of the mother and/or the child. The question of cesarean section for the welfare of the fetus alone is of special interest because of its pertinence in the controversy over organic transplantation. Those who deny the licitness of transplantation usually take the firm stand that direct major mutilations are never permitted for the good of the neighbor. Perhaps some of these authors have already answered Fr. Connery's shrewd observation that all moralists would undoubtedly permit a cesarean section, or even a complete hysterectomy, if necessary for the welfare of the fetus; but I have not seen the answers. I frankly doubt that the opponents of transplantation can give a satisfactory explanation of the problem raised by Fr. Connery. Moreover, the problem might remain, and even become more difficult of solution, if there were an official condemnation of transplantation.

⁴¹ Cf. C. C. Hawke, M.D., "Castration for Sex Crimes," *Journal of the Kansas Medical Society* 51 (1950) 470-73.

Experimentation

That there have been widespread abuses in medical experimentation seems unquestionable; that these abuses often stem from false philosophical attitudes seems also unquestionable. For these reasons the strong papal statements on the moral limits of medical research and experimentation were welcome. But the papal pronouncements have not left us without interesting problems to be discussed and solved. There is, for instance, the matter of interpretation of the statements themselves. My own opinion, as I have expressed previously, is that the condemnation of the attitudes of totalitarianism and of unrestricted individual liberty is absolute, but that the limits assigned by the Pope are practical norms for ordinary medical experimentation which would not necessarily apply to exceptional and extreme cases. Moreover, there are some problems that are not clearly covered by any official statements: for example, the use of control groups in which one group is not given some medication that may be needed; also public health policies, such as the fluoridation of water.⁴²

Fallectomy and Vasectomy

With one possible exception, it seems that ligation or resection of the fallopian tubes is always a direct sterilization. The possible exception is the Falk Operation, which consists, as I understand it, in the resection of previously infected tubes to prevent re-infection from below and in leaving the tubes *in situ* to preserve the ovarian blood supply. The medical status of this operation is not clear. Generally speaking, vasectomy is also a direct sterilization. Exceptions might be ligation or irradiation of the *vasa* in the treatment of an enlarged prostate (a case explained by Fr. McFadden) and vasectomy with prostatectomy to prevent serious post-operative infection of epididymes and testicles.

Hysterectomy

There is perhaps no operation that involves so many interesting, and sometimes very intricate, moral problems as hysterectomy. In some instances it is difficult to determine whether the operation is a direct sterilization. This is certainly the point of prime importance

⁴² For an exposition of medical views and moral issues pertinent to fluoridation, see Fr. Lynch's remarks in *THEOLOGICAL STUDIES* 17 (1956) 174-76.

in the dispute over the licitness of removing a uterus that has been so badly damaged by previous cesarean sections that it can very likely not function safely in another pregnancy. It seems to me that those who defend the licitness of the procedure have made this issue so clear that it is plain misrepresentation of their position to say that they hold that the woman is already sterile. Why would they argue that the sterility is only indirectly induced if they held that the woman is already sterile? Besides this and a few other cases in which the main issue is whether the hysterectomy is a contraceptive procedure, there are the numerous problems which concern the medical indication (or, in theological language, the proportionate reason) for the operation, e.g., in the treatment of prolapse of the uterus, in the repair of such conditions as cyctocele and rectocele, in some cases of bleeding, and as a prophylactic measure when malignant ovaries are removed. A treatise on mutilation could hardly be considered modern if it did not include at least brief discussions of such problems.

Lobotomy

Number 44 of the revised edition of *Ethical and Religious Directives for Catholic Hospitals* reads as follows:

Lobotomy and similar operations are morally justifiable when medically indicated as the proper treatment of serious mental illness or of intractable pain. In each case the welfare of the patient himself, considered as a person, must be the determining factor. These operations are not justifiable when less extreme remedies are reasonably available or in cases in which the probability of harm to the patient outweighs the hope of benefit for him.

There can be little doubt that the conditions outlined in this practical principle are sometimes fulfilled today; nor is there serious doubt that in some instances the operations are performed without justification. A truly up-to-date treatise on mutilation must include this topic, with an explanation of the conditions, and with examples of both justifiable and unjustifiable operations. In a sense, this shouldered the moralist with an exceptional burden: first, because there is constant progress in operative techniques; and, secondly, because research into other methods of treating mental illness and pain might render all these operations obsolete within another generation or two.

Transplantation

As I have mentioned previously, organic transplantation involving a living donor is a highly controversial topic, especially in Italy and Spain. My own interest in the controversy concerns not so much the special question of transplantation as the larger problem of the licitness of serious self-mutilation for the good of the neighbor; and it is this point that I wish to stress in the following brief remarks. As I see it, the main points to be considered are contained in these four charges leveled at the defenders of transplantation: (a) they unjustifiably argue from indirect sacrifice of life for the neighbor to direct mutilation for the sake of the neighbor; (b) they attempt to justify an act which is intrinsically evil by the extrinsic motive of charity; (c) they contradict what theologians of the past have consistently defended as an immutable principle; and (d) their thesis is contrary to the teaching of Pius XI and Pius XII.

As for the first objection, traditional moral teaching draws a sharp line between direct and indirect sacrifice of one's life; the former is never permitted, the latter is permitted for a proportionate reason. Is the saving of a neighbor's life a proportionate reason? The answer to this apparently simple question has confronted theologians with a knottier problem than most people seem to realize. On the one hand, there is a sort of intuitive judgment that this sacrifice ought to be both licit and laudable; and, on the other hand, there is the commonly accepted principle that, in the same order of values, love of self takes precedence over love of neighbor. Fortunately, the acute mind of Aquinas long ago solved this dilemma by showing that in giving one's life for the neighbor one really prefers his own good of a higher order, i.e., the *bonum virtutis*.⁴⁸ His solution has stood the test of centuries. All authors give it, and because of it many have introduced some kind of qualification in their statement of the order of values. Thus, Busenbaum says: "Ordinarie non licet vitam suam postponere alienae."

⁴⁸ *In 3 sent.*, d. 29, a. 5: "Ad tertium dicendum quod tradere seipsum morti propter amicum est perfectissimus actus virtutis; unde hunc actum magis appetit virtuosus quam vitam propriam corporalem. Unde quod aliquis vitam propriam corporalem propter amicum ponit, non contingit ex hoc quod aliquis plus amicum quam seipsum diligit; sed quia in se plus diligit quis bonum virtutis quam bonum corporale." See also *Sum. theol.* 2-2, q. 26, a. 4, ad 2.

Others say this is not licit "per se loquendo," or "absolute loquendo," and so forth.

There are at least two similarities between this historic moral teaching and the contention of many modern theologians that organic transplantation is sometimes permissible. First, direct self-mutilation and indirect sacrifice of life have this in common: both are permitted for a proportionate reason. Secondly, in each case there is an apparent conflict with an accepted principle; but this conflict is solved by distinguishing between the ordinary rule and the exceptions. In these terms the basis for the opinion favoring organic transplantation would be stated as follows: "Ordinarily, direct self-mutilation is permitted only for one's own good; but in exceptional cases the law of charity allows it for the benefit of the neighbor." Because of these similarities, an argument from indirect sacrifice of life to direct mutilation for the good of the neighbor seems justifiable.

The second objection, that the proponents of transplantation attempt to justify an intrinsically evil act by an extrinsic laudable motive, seems to beg the whole question. It presupposes that direct mutilation except for one's own good is intrinsically evil—the precise point that is at issue in the controversy. Moreover, it fails to distinguish between charity as a mere *finis operantis* and the bond of charity as a qualifying circumstance, a proportionate reason for an act.

With reference to the third objection, no theologian can reasonably deny that the common opinion of moralists regarding an immutable principle of natural law is of great weight; in fact, in the absence of official teaching of the magisterium, such an opinion is a sovereign guide. Nevertheless, it is the part of a good theologian to determine when an opinion is truly common and in what sense it enunciates an immutable principle. As regards mutilation, it seems unquestionable that the moralists have been enunciating immutable principles, deduced from the nature of man, when they say that man is only the administrator of his body, and that as administrator he may destroy certain members and functions when this is necessary for the good of the whole. But whether they are still in the realm of immutable principles when they say that personal welfare is the only reason justifying serious self-mutilation is open to serious doubt. It seems to me that this is rather a practical principle, formulated with a view to ordinary cases, and patient of reformulation. If this explanation is not accepted,

it is hardly possible to give a reasonable explanation of the common teaching of modern moralists concerning maternal mutilation for the welfare of her child.

As for the teaching of Pius XI and Pius XII: in the first part of this essay I suggested three rules for the interpretation of papal statements. It may be both interesting and useful to see how these rules would apply to the controversial question of organic transplantation.

Certainly both Pius XI and Pius XII have used verbal expressions that apparently rule out serious self-mutilation for the good of the neighbor, e.g., that the bodily members exist *only* for the good of the whole; that man is *not* free to dispose of particular organs or their capacity to function *unless* this is necessary for the good of his whole being. The historical context of the papal statements, however, had nothing to do with organic transplantation. Pius XI was mainly interested in condemning eugenic sterilization, whether compulsory or voluntary; Pius XII was condemning the abuses of medical experimentation, the totalitarian attitude that subordinates the person to society, and the extreme individualism that gives man an unrestricted right to risk his life and dispose of his bodily members. A theologian who respects these condemnations and the positive principles underlying them is still at liberty to attempt an interpretation of the papal statements which allows for transplantation—unless there is a clear indication that the Holy See wishes to end this controversy. No such indication can be attributed to Pius XI, because the controversy did not exist at that time. As for Pius XII, it has been pointed out that he seems to have deliberately passed over the question of organic transplantation in his address of September 30, 1954.⁴⁴ Moreover, in his address on corneal transplants he expressly stated that he did not

⁴⁴ Thus, with reference to the address to delegates to the Eighth Congress of the World Medical Association, F. Hürth, S.J., says in his *De re matrimoniali* (Rome: Gregorian University, 1955) p. 109: "Pius XII in allegata Allocutione ad medicos totius mundi videtur deliberato consilio abstinuisse a memorandis his mutilationibus proprii corporis in proximi bonum (resultans ex transplantatione membri, ex corpore sano et vivo exstirpati). Nam postquam locutus est de mutilationibus factis *experimenti causa* in bonum scientiae et praxis medicae (quas exstirpationes damnat, quia excedant ius disponendi de proprio corpore), statim loquitur de exstirpationibus quae fiunt ex corpore *defuncti*, ut pars exstirpata cedat in favorem alicuius aegroti, silentio transiens eiusdem indolis exstirpationes ex corpore *vivo*." He then quotes from Pius XII and continues: "*Cur Pontifex abstinuerit ab explicite memorandis exstirpationibus transplantivis ex corpore vivo, ex Allocutione non apparet; constat de facto: eum abstinuisse.*"

wish to discuss the problem of transplants from living donors⁴⁶—and this despite the fact that the discourse repeats and emphasizes his previous teaching on the principle of totality. If the Pope considered that this teaching absolutely excluded transplants from living donors, why would he take pains to say in his introduction that he did not wish to speak of that subject?

One author has recently suggested that an explicit papal statement on the controversial question seems desirable. This suggestion is debatable. We are learning much from this controversy, and we can learn still more; and surely no harm can come from it as long as moralists avoid the errors at which the papal statements have been leveled.

⁴⁶ *AAS* 48 (1956) 459: "Nous nous limitons aux aspects religieux et moraux de la transplantation de la cornée, non entre des hommes vivants (de celle-ci Nous ne parlerons pas aujourd'hui), mais du corps mort sur le vivant."