

Letter from . . . Paris

Organs for transplant: courageous legislation

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A person's organs may be removed for transplantation as soon as he has been pronounced dead unless he has left specific instructions to the contrary. Permission need not be sought from his family unless he was a minor or a mental defective. This is the most interesting provision of a law on harvesting organs for transplantation, adopted by the French Senate on 14 December 1976, and signed by the President of the Republic on 22 December.

Caillavet law

The new law, of which the significant clauses are set out below, was introduced as a private member's Bill by Senator Henri Caillavet and is likely to be known henceforth as the Caillavet Law.

Article 1

An organ to be used for transplantation for therapeutic purposes in a human subject may be removed from a living person who is of full age and in full possession of his mental faculties, and who has freely and expressly consented to its being removed.

If the prospective donor is a minor an organ may be removed only if he or she is a brother or sister of the recipient. In this case consent to organ removal must be given by his or her legal representative, and the procedure must in addition be authorised by a committee composed of at least three experts. Two of the experts must be doctors, of whom one must have practised for 20 years. The committee will first examine all foreseeable consequences, physical and psychological, of the procedure. If the minor's wishes can be consulted, refusal on his part to donate an organ must in all cases be respected.

Article 2

An organ to be used for therapeutic or scientific purposes may be removed from the cadaver of a person who has not during his lifetime made known his refusal of such procedure.

If, however, the cadaver is that of a minor or a mentally defective person, organ removal for transplantation must be authorised by his legal representative.

Article 3

Organ removal as referred to in the preceding articles cannot be the object of any monetary counterpart. This does not exclude

reimbursement of any contingent expenses incurred (by the hospital concerned).

Article 4

A decree of the Council of State will specify:

(1) How a donor referred to in article 1 or his legal representative will be informed of the possible consequences of his decision, and how he will express his consent.

(2) How the refusal or the authorisation referred to in article 2 will be expressed.

(3) The conditions that hospitals must satisfy to be authorised to carry out organ removal as referred to in article 2 and to figure on an approved list to be drawn up by the Minister of Health.

(4) The procedures and methods to be used for diagnosing death.

In an earlier version adopted by the Senate on 18 November 1976 any minor, or a mentally defective person, was eligible as a living donor, under the conditions laid down in article 1. When, however, the National Assembly debated this text on 8 December they restricted the eligibility of minors to siblings of recipients, and made mental defectives ineligible. The Senate accepted these amendments on 14 December.

Background to legislation

What is the background to this legislation? Some 2000 renal transplants have now been performed in France, and at present over 6000 people are on haemodialysis for chronic renal failure (as compared with 1740 in 1971)—some 1800 of whom would benefit from a renal transplant. Only about 350 transplants are done each year, and only 4% of these are from living donors. The availability of trained surgeons and equipment is not a difficulty: there are 25 centres in each of which 40 transplants could be performed annually. But in a third of cases families refuse permission to harvest the deceased's kidneys. It is thought that the new law will enable about 1000 cadaver transplants to be done annually.

The principle that permission from the family is not needed for harvesting organs from the bodies of persons who have not during their lifetime voiced their opposition to the procedure is not an innovation in French law. Apart from corneal grafts, which are governed by a law of 7 July 1949, the regulations in force at present are based upon a decree of 20 October 1947 according to which removal of organs from cadavers for therapeutic or scientific purposes, without family permission, is authorised provided the owner had left no objection and provided it is done in certain approved hospitals and under certain conditions as to the diagnosis of death. Even so, possibly feeling that a decree as opposed to a law gave them insufficient legal protection, doctors have set the custom of invariably seeking permission. Whether the consolidation by a law of what previously had been expressed only by a decree will break this now long-established custom remains to be seen.

Legislation similar to that now adopted in France has been in force in Norway since 1967. But apparently under the

Norwegian legislation, if the family are against organ removal their wishes must be respected even if the deceased person himself had left no relevant instructions. The proposed French law makes no provision for this eventuality. Probably few families would take the initiative of giving advance notice of their objections, but one cannot help wondering how a French doctor who had intended to harvest an organ would react if they did. Undoubtedly under the new law he would be entitled to ignore family objections. Similar legislation is in force in Sweden and is under discussion in Italy.

Reactions to proposed law

In the preamble to his Bill, Senator Caillavet pointed out that even in the eyes of the Roman Catholic Church "the intangibility of the cadaver is not a dogma." He recalled that in 1956 Pope Pius XII, speaking about corneal grafts, had said that the public needed educating in these matters and that it should be explained to them that "to consent expressly or tacitly" to mutilation of a body in the interest of suffering humanity is no infringement of the pious respect owed to the dead. The Pope's use of "tacitly" indicated, the Senator said, that His Holiness did not consider the "express" consent of the defunct or of his family to be indispensable.

One of the most vigorous advocates of this law is the famous nephrologist Professor Jean Hamburger. In giving evidence before the senatorial commission studying the text, Professor Hamburger pointed out that the fact that permission for organ removal must be sought from families at the same time as they are informed of the death is prejudicial to their giving the permission. A few days later, when emotional tension is less, they often regret their refusal.

One notes that whereas removal of organs for scientific or experimental purposes from living subjects is excluded (article 1), it is authorised from cadavers (article 2).

Speaking during the Senate debate, Madame Veil, Minister of Health expressed her belief that the text satisfactorily harmonised the needs of medical treatment with the respect for the wishes of potential donors. Preparation of the decree (clause 2 of article 4) defining how doctors would be informed if a patient had refused to be a donor would, Madame Veil thought, be difficult. She added that much would have to be done to educate public opinion to ready acceptance of this legislation.

In a comment in *Le Monde* (19 November 1976) Professor Georges Heuse of Belgium, Secretary-General of the International Institute of Human Biology,* said the Caillavet Law was a logical counterpoise to the law legalising abortion; it would "restore the balance of biological ethics." The law would give new hope to the many French men and women awaiting renal transplants and to thousands of blind persons who could recover their sight by keratoplasty. France would even be able to donate corneas to countries in which trachoma was endemic. Professor Heuse recalled that in 1965 a regulation on the same lines as the Caillavet Law had been introduced in the teaching hospital of the University of Ghent, Belgium, on the initiative of Professor R Dierkens, Secretary-General of the World Association for Medical Law. Since then it had been regularly applied and had served as a model for other Belgian teaching hospitals.

*The International Institute of Human Biology, Hôpital Cochin, 75014 Paris, is a non-governmental, non-profit-making organisation that conducts surveys in preventive medicine, occupational medicine, school medicine, sports medicine, life-assurance medicine, and geriatrics. It is also responsible for the International Thanatological Programme.

Contemporary Themes

Manpower planning—the teachers' tale

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No sector of the higher education system in this country has undergone so severe a recession, or so traumatic an institutional experience, as that which is currently afflicting the colleges of education—the old training colleges.

For many years—for about as long as anyone can remember—till very recently, there has been a shortage of teachers. In fact, the excessive size of classes and the need to step up the supply of teachers were among the basic tenets of faith in postwar education. The objectives of the 1944 Education Act could be attained only with an increase in the teaching force. The postwar era opened with two developments which underlined this fact. Firstly, the minimum school-leaving age was

raised from 14 to 15 in 1947; and, secondly, in the immediate years after the end of the war the birth rate climbed sharply in what became variously known as the baby boom or the bulge.

I think it is impossible to understand—and draw the correct lessons from—the errors which have been made with regard to teacher training and teacher supply, unless the psychological attitudes engendered by the prolonged period of teacher shortage is fully borne in mind. Teacher employment was virtually guaranteed. A quota system was developed by the Ministry of Education and the local authorities, in an attempt to ration out the limited number of teachers available. It was customary to speak of shortage areas (which had difficulty in recruiting their quota, like parts of the Midlands) and the "lush" areas which attracted more than their share (in the south).

Educational planning

Training and supply went hand in hand in educational planning. The assumption has always been—and still is—that