

Theological and Moral Aspects of Cadaverous donation -- Heart Transplantation from the Point of View of Islam

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The concept "meaning of the life" of genetic relationship with intelligence, consciousness and self-consciousness. Only the person is capable to give sense of the life putting in it a concrete idea about the future. Each person is unique individuality. During the historical development, people vary. Varied their desires, the purpose, quality and aspiration. Parallel with it evolved and their understanding about sense of own life and life of others.

Weltanschauung - superstitious or scientific, religious or atheistic forces us to search for the purpose and meaning of the life not simply in the abstract person and in each alive person, at ill or healthy. Because matter corporal and emotional health, sexual belonging, national and individual skills, values, traditions and culture.

Some people test so-called " traditional religiousness ", others so-called " individual religiousness ". Depending on religiousness and a mental condition believing other. Meri Midow divides people into four groups:

-people of love and activity / want to reconstruct the person and the world on another /

- **neighbours** / operate according to religious love and a choice of goods in the of aspirations serve and be charitable to ибожм to uniforms /

- **Eremites** / gifted with mystical love, their purpose to give the life to a pray, worship and contemplation Absolut /

-people of asceticism / keeping a side from terrestrial pleasures, feelings and desire/.

The first and second groups are directed entirely aside people, the third and the fourth are interested in the god. The known theologian, protestant and existentialist Paul Tillich. writes: " Achievement of an extreme limit of self I is that wich pushes us to religion"

The characteristic thinking about the prophets, directed to the firther world, expresses one of the prominent aspects of their mission and the message. Trough them,

they ennoble a human idea above present, connecting her with the future and further. The death or the end of life do not mean the end in the present sense of a word, but only the passing from one stage in another. Iranian mystic the Mowlavi determined the further world as sense of the present world, as something which stands outside of his limits. As embryo leaves from maternal womb and begins new life in bigger and extensive world, so the human life is introduction to one more vast life, to one eternal and boundless world. Questions as: existence oppresses, the feeling of fault, sensation of senselessness, speak about crisis of individuality, whose basic idea is concentrated in over-human.

If from the Decart up to Kant and Heidegger " **crisis of individuality** " was determined by the term " **morals** " and " **value of life** " today its brightest individuality expressed is in confusion and a pain.

In the modern crisis human heart is still connected to his historical individuality but between his heart and essence of the person / individuality and reason / it isn't stable balance.

The Islam always was based on: a reality of unity and unity of a reality. Contrary to strong theological dependence Islam is religion which erects morals in the basic value. This religion keeps values of life and gives calmness. Allah doesn't inspire an ideal about good, he warns of evil. It is religion of set in which person should will be subordinated - devoted to the Unique, All-powerful, Charitable - to the Allah. Observance of dogma and instructions is necessity in which muslim should be. Up to metaphysical reasoning Decart " why people were feeling imperfect and powerless " Gasali given with the answer: "because they realize existence of supreme essence and they correlated to him accept idea about limitation his will and an imperfect nature. In this relation " The Allah - The Man "Gasali used not logic, but typical moral categories. The Islamic orthodoxy accepts as a sin intention instead of the act after-effect, which as. Both rationalism of Decart and atheism of Spinoza revealing, that divine truth deprived the concrete contents do not concern mind and heart of the person. The Islam owns both.

" **Doubt, that you gained a limit and trust in command of Allah because our perception are made and are created** " / **85:20** - is essence of theology based on revelation. She does not demand achievement new truth, and simply belief in established by the prophet of positions. Therefore freedom on the one hand is the fact of consciousness, and with another an opportunity which realized under the certain external conditions. As the fact of consciousness she is quality of soul and therefore is absolutely free and unlimited. Conditions at the second position do not depend on the person and limit his freedom. Or, how the consciousness about internal freedom, the less his valid freedom is stronger.

Through the knowledge the person is the "Micro-God" in terrestrial life but when he is putting in borders of religion he is irreversible moral factor. Therefore each sin is passing borders putting from Allah. Till now in the Islamic world reprimand for adultery is killing by stones. But even when muslim woman is lawfully married has not the right on abortion. Today, when in the Western Europe is discussing an opportunity of use embryo fabrics with the purpose of its transplantations in alive accepteur / for example at treatment of Parkinson /,similar wild and primitively deprivation of "x" human lifes is ridiculously.

This situation derivates a number of other questions:

whether is the property of mother already embryo which outside of her

-what rights itself embryo

- whether it is in general the subject of the right.

Unfortunately not only in the Arabian world, but also in many countries which are candidates in EU there is no legal law about embryo and connected with him medical practice. A role of family in the Arabian world as well as which all authority has disposal father in family can promote about one seeming the consent to a donor service. Quite probably practised psychikally an impact / on the spouse, minor children / contrary to their disagreement and then will be seeming the consent to a donor. In many countries the law resolves transplantation from the alive donor only between alive relatives or in cases when there is a confidence that for it not payment, that is included into the contradiction with ethic and humanism and at the consent on the part of the donor. In many Arabian countries / f.ex. Egypt / from for the big poverty it is it from possible means of a survival and in practice the law is broken. In Resolution 7829 under article of 4, it is recommended limit to take out a substance from the alive donor which can not regeneration. But in practice fulfilment of transplantation without them is difficult is possible only transplantation with genetic connection. The Resolution does not determine criteria about "exceptionality". She defines evidentiary means about her, motivation of the donor, to give proof of related connections with the recipient. The Resolution enables State to forbid if will want such hypothesis in the legislation. The absence of boldness to reform Muslim law to be adequate with requirements of the modernity, is the next open door for Fundamentalism. There is also other vital issue. If to give freedom to a donor service organs from the alive donator, whether can declare the capable person that it agrees to die from the potential recipient then will make intervention. That is why as well as in Europe and the majority of the Arabian countries ages restrictions by a rule of 18 years, and at donors up to this age – who has a parental rights. The donor should be in psyhical the validity and to be very precisely informed. From for high interest of illiteracy in practice frequently it is impossible so-called " gain of competence ". The purpose of

the law / to give the information in accessible language and the consent of the donor that was in written to the form / to protect the right of both persons / the donor in default / and the recipient / at disagreement implanted to him body even when he was prepared through medical intervention from that.

Very difficultly and sadly when transplantation not only because of refusal of a donor service, but also because of conservative prejudices and shortages of sufficient literacy is failed. In the Islamic right / which it is taught in Madhahib, Department of Law and Theology / if the donor explicitical has not expressed the desire that his bodies were used / if they suitable / for rescue of other life, on the corpse after death has the right his family which should bury him solemnly. The member 5 of the Decree № 109/1983 in Lebanon fixes an opportunity in the period after death if about it there will be additional circumstances to take the consent of judicial bodies. They are penal texts for persons who delete bodies in the contradiction with texts of the decree. Punishment for it is prison from one month about one year and the fine or only one of two above-stated measures.

Always it is difficult to make the decision on the discontinuances of activity of heart when the donor is in a condition cerebral death, but with working heart. The problem is who and as far as he has the right to dispose of human heart opposes not only theologians and lawyers but also doctors. Surgeons approve, that measure of medical comes is with cessation vital activity of a brain. They, however, do not confirm it is irreversible discontinuation. Doctors are not at one with even in the statement, that brain activity forthcoming, accompanying or the subsequent to cardiac arrest. Decision making by the doctor in what precisely the moment can have this vital body is gambling decision conducting to moral and intellectual uncertainty. The moral dilemma is more strongly expressed in the Islamic world as an islam forbids to break an integrity of a body. On the similar act is looking almost as at murder. Removal of any part of a dead body is identified similarly to discharge such of an alive body and this sense the Islam formally forbids cremation.

The basic difference between the two ways of transplantation laws is in the initial presumption: "In a contracting in system the initial presumption is... *No*, organs may not be taken *unless* certain conditions are fulfilled. In a contracting out system the initial presumption is... *Yes*, organs may be taken, *but* there are exceptions."¹

First of all, a muslim considers that whatever he owns has been given to him as a trust from Allah. The Koran and the Prophetic tradition imposes the moral imperative: "The believers, in their love and sympathy for one another, are like a whole body; when one part of it is affected with pain the whole of it responds in terms of wakefulness and

¹ Michielsen P. "Informed or presumed legislative models", *Organ and Tissue Donation for Transplantation*, ed. by J. Chapman M. Dierhoi, Arnold, 1997, pp. 345-360.

fever.”² That is why, organ donation should be considered as an expression of the believer’s altruism and Islam encourages the virtuous qualities which are supportive to organ donation: generosity, duty, charity, co-operation, etc. Accordingly, the Islamic Code of Medical Ethics stresses on that human life is sacred and it must be preserved by all possible means³. On the one hand, it is permissible within the Shariat to remove the organ from one person and transplant it into another person’s body in order to save the life of that person on condition that such a procedure does in no way violate the dignity of the person from whose body the organ has been removed⁴. But on the other hand, the Koran and the Prophetic tradition do not contain explicit text in regard to the form of post-mortem donation as presumed or informed consent. Nevertheless, Muslim Arab countries formulate international ruling about transplantation that is The Unified Arab Draft Law on Human Organ Transplants (6-30 April 1987) and its Article 5 states: “Organ transplants may be performed from a dead body under the condition that... the deceased, while alive, did not object to the removal of any organ from his body.”⁵ At present, in the Middle East informed consent became the rule and all predominantly Muslim countries presumed refusal in the absence of explicit consent and adopted informed consent laws⁶.

Now, I take the following stand: If the problems of organ donation are discussed as emotional, territorial or religious determinate, then the donorship as beneficence cannot be bound to the general essence of human morals. Therefore, the problem of the altruistic basis of the beneficence in Islam is a special case of universal moral philosophy on condition that Kantian ethics is the only perfect moral philosophy. The subject of this paper is to show that the altruism is a pragmatic motive for the beneficence as organ donation but the true metaphysical reason of beneficence is the practical moral use of the pure reason. A pragmatic act, for instance an altruistic act, is bound to the concrete conditions “here and now” while a practical act, for instance a benefaction, is a prescription “always and for everyone”⁷. Obviously, deontological theory uses a paradoxical concept of “practical”⁸ since the so called practical ethics is not able to be identified in any way with its application to the practical problem as heart transplantation.

² Ebrahim A. “Organ Transplantation: Contemporary Muslim Legal and Ethical Perspectives”, *Bioethics*, Vol. 9, N3/4, 1995, pp. 291-302.

³ Daar A. Habgood J. Spagnolo A. “Religious views on organ and tissue donation”, *Organ and Tissue Donation for Transplantation*, ed. by J. Chapman M. Dierhoi, Arnold, 1997, pp. 25-29.

⁴ Ebrahim A. Ibid.

⁵ Daar A. Habgood J. Spagnolo A. Ibid.

⁶ Michielsen P. Ibid.

⁷ Kant I. [1781] Critique of pure reason (Sofia, Bulgarian Academy of Sciences, 1992), p. 719

⁸ Adorno T. [1963] Probleme der Moralphilosophie (Moskow, Republic, 2000) p. 7.

According to deontological ethics the moral category is a prime source of the moral act and not the vice versa order which Kant possibly treats as epigenesis⁹ of the system of the pure reason. In other words, the intelligible world or the world “always and for everyone” is a much more significant than the visible world where individuals reveal themselves as egoists or altruists.

In this paper the opting-in system of cadaverous donation is defined as an autonomous use of will while the opting-out system is defined as a heteronomous moral decision. The explicit consent or the refusal to donate organ is a materialization of intelligible moral imperative. If a legislator imposes the contracting-out model of donation then it is moral justifiable and the lack of active moral decision is a universal moral standard. On the contrary, if a legislator imposes the contracting-in model then only the active explicit moral decision is a fundamental worldly, juridical and moral principle in a concrete society. Of course, the presumed consent has a great number of utilitarian reasons and it is more salutary from the point of view of the physicians and the patients. I do not claim at all that one country that uses informed consent is more civilized than another one that uses presumed consent. But I claim that the co-ordination of action with the moral law has higher moral value than the co-ordination of action with pragmatic motive. In fact, the presumed consent provides twice as many donors than the informed one that is obvious in case of such country as Belgium that has changed the two legal forms¹⁰. In this way, the question of organ donorship’s form reveals the main disadvantage of Kantian ethics that is its abstract formalism or the insuperable contradiction of the real moral experience with the metaphysical moral law.

According to Kant, all human activity consists of acts that are opposed to moral duty and acts that conform to it; the latter being of two kinds¹¹:

1. An act, which conforms to the moral duty and some mercenary motive, at the same time.

2. An act, which conforms only to the moral duty without any mercenary motive.

The former contains a pragmatic imperative and the latter - a moral imperative. This moral prescription or the categorical compulsion is a supreme principle of morals while the pragmatic imperative is a hypothetical compulsion and that is why it is indirectly immoral¹². I note once more that both forms of donorship are equally humane but the pure morals excels the pragmatic one in a metaphysical sense. Also, I do not deny that the

⁹ Kant I. Op. cit., p. 217.

¹⁰ Michielsen P. Ibid.

¹¹ Kant I. [1788] Critique of practical reason (Sofia, Bilgarian Academy of Sciences, 1993), p. 125.

¹² Kant I. [1775-89] Lectures on Ethics. *Philosophia practica universalis*. Groundwork of the Metaphysics of Morals. (Moskow, Republic, 2000), pp. 239-265.

legal regulation of transplantation considers not only the pure moral maxims but the corresponding cultural and historical traditions of the concrete society, at the same time. In case of opting-out system a person executes the moral duty for beneficence but this beneficence proceeds from the external compulsion of the public standard of donation. The presumed consent is an execution of the will of the majority and not of someone's personal will and the approbation of the majority is a mercenary motive of the individuals. The contracting-out model contains heteronomous external motive which contradicts the purity of the moral law as a person does not harmonize his own action with morals but with the legal regulation. Individual is a post-mortem donor not because of his own decision but because of the repressive measure of the law. As a matter of fact, that sort of the beneficence is an accidental gift or it is a gift by force because true beneficence represents a self-compulsion and not an external compulsion. In terms of Kant, presumed consent has an external goodness and not an internal one¹³ and for that reason it is not deserving any respect. The presumed consent can be defined as an autonomous moral then and only when categorical imperative is the common rule of human behaviour but the real moral life is not subordinate to the laws of the reason as man is not a member of the intelligible world only but he is a member of the animal kingdom¹⁴, too. Evil is an inborn characteristic of human nature¹⁵ and that is why the actual moral behaviour needs an external compulsion like the public legislation.

It is my contention that the contracting-in model of donorship satisfies perfectly the three Kant's characteristics¹⁶ of internal morals, namely the moral use of the pure reason:

1. It is an action because of a moral duty and it is not an action because of an empirical inclination.
2. It has a moral value because of its maxim and not because of its supposed empirical purpose.
3. It is a necessity of acting in a respect of the moral law without any external cause.

According to Seneca, there is a situation when a man faces death, when a man forgets any matter of interest and he contemplates pure morality¹⁷. The beneficence in the face of death is not guided by any heteronomous purpose and it is an execution of the autonomous moral law. If the formula of the presumed consent is translated in terms of Kantian ethics then this hypothetical imperative reads: "Be a post-mortem donor

¹³ Kant I. Op. cit., p. 49.

¹⁴ Kant I. Anthropology from the pragmatic point of view (Sofia, St. Kliment Ohridski, 1992), p. 226.

¹⁵ Kant I. [1790] Critique of Judgment (Sofia, Bulgarian Academy of Sciences, 1993), p. 339.

¹⁶ Kant I. [1775-89] Lectures on Ethics. *Philosophia practica universalis. Groundwork of the Metaphysics of Morals*. (Moscow, Republic, 2000), pp. 48-49.

¹⁷ Lucii Annaei Senecae De beneficiis. De clementia. RIVA, 2001, p. 122.

whenever society considers it necessary". Of course, this formula does not have general validity. Conversely, informed consent means: "Be a post-mortem donor because of the morality of your own action". This formula is a categorical imperative and it has general validity. If a man fulfils the autonomous moral duty then he submits to his own legislation which is a common legislation, at the same time. True beneficence is a benevolence of a man towards himself and the rest. Through the autonomy of will person is simultaneously a subject and a legislator in the sphere of morality or the kingdom of freedom and dignity¹⁸ that Kant describes in "Groundwork of the Metaphysics of Morals". While the opting-out system as a representative of hypothetical imperative does not have any dignity but it has a market price and it conforms to the sphere of the empirical inclinations or the kingdom of happiness. The main defect of the hypothetical imperative is its particular validity¹⁹, as in such a case, any beneficence is not obligatory and it submits to the market principle of contracting. Nobody can expect any gift if he himself is not prepared to be an unpaid benefactor for someone else²⁰.

In conclusion, the internal morality as an explicit consent for donation has higher moral value than the external morality of the presumed consent. But the contracting-out model of donorship is morally justifiable, as man belongs not only to the kingdom of the ends but to the kingdom of happiness or natural world. Two-fold human nature or man as a natural creature, and man as a moral agent is a fact and this contradiction cannot be solved in the framework of the Kantian tradition. Under the existing circumstances the presumed consent is life-saving means for hundreds of chronic-sick patients and human life is of the same value as the purity of the moral law. We just can hope that autonomous moral or the informed consent will turn into basic principle of beneficence as organ donation. The same thesis is a fundamental suggestion of Kantian ethics that human race increases its morality in the historical progress²¹.

¹⁸ Kant I. Op. cit., p. 259.

¹⁹ Kant I. [1788] Critique of practical reason (Sofia, Bilgarian Academy of Sciences, 1993), p. 50.

²⁰ Kant I. Selected works in 6 Vols., 4 vol., part 2. Metaphysics of Morals (Moskow, Misl, 1965), pp. 381-384.

²¹ Kant I. [1798] Streit der Fakultaelen. Paedagogik. (Sofia, Hristo Botev, 1994), pp. 91-113.