Church of England Board for Social Responsibility

Response to

DEPARTMENT OF HEALTH CONSULTATION

The removal, retention and use of human organs and tissue: the law in England and Wales

and

Draft Code of Practice on the import and export of human body parts

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Introduction

1. The terms of reference of the Church of England Board for Social Responsibility require it 'to co-ordinate the thought and action of the Church in matters affecting the life of all in society'. The Board reports to the Archbishops' Council and, through it, to the General Synod.

2. The Board warmly welcomes the Government's decision to issue a consultation document on the law regarding the removal, retention and use of human organs and tissue, and on the import and export of human body parts. We wish to respond with some general comments on each of the consultations rather than answer the questions in detail.

Removal, retention and use of human organs

3. The principles that have been set out governing the proposed new legislation are very good.

4. We wish heartily to endorse the emphasis on organ donation as a gift freely given, because the concept of gift contains within it the full, valid, informed consent of the individual concerned. By the same token, a free gift should not carry conditions on its use, and we support the principle of unconditional giving (13Q). A gift is a gift, not a loan (13U). The unconditionality is, however, dependent upon the freedom with which the gift is given. Organs and tissue are donated because donors believe the cause is good. It is up to those who receive the gifts to respect and honour that belief.

5. Some have criticized the Human Tissue Act's requirement for the doctor to satisfy himself "by personal examination of the body that life is extinct". We feel that the lack of clarity is in relation to the difficulties inherent in diagnosing death, not in the – very clear – emphasis on the personal

responsibility of the doctor. This should remain. Public concern that doctors will remove organs before people are "really dead" would be allayed more by knowing that someone was personally responsible for seeing that that did not happen, than by complex definitions of death. It may be better to give that responsibility to a medical practitioner independent of the transplant team, but responsibility must lie clearly with someone (13X).

6. Health professionals must be empowered to carry out the spirit, not just the letter of any new law. This means they must be inculcated with profound respect for the dead, including the body parts of the dead; and, as articulated in one of your principles, those who seek consent for organ donation must have the necessary skills and sensitivity. There are plenty of professionals already exemplifying these qualities, and they need to be allowed to continue their excellent work. New legislation must not create so many checks and balances that administration takes over the process of organ donation. For example, in some cases, written consent may be inappropriate and ineffective (paragraph 28 of Summary Report).

7. We are very concerned at the erosion of the absolute divide the Polkinghorne committee established between consent for abortion and consent for research on the dead fetus (15A). The reasons for the separation remain valid.

8. What mechanisms will be put in place to honour the wishes of those who have a conscientious objection to being the recipient of treatment using fetal or embryonic tissue?

Interim Code of Practice on the import and export of body parts

9. Our concern here is the potential for misuse of body parts under spurious educational claims. The current exhibition of plastinated bodies in London has proved to be educational, though it is close to the boundaries of decency. A recent proposal for a television programme from the same "artist" has, in our view, stepped over the boundary. (He wishes to seek out a dying person, create a panel of experts including doctors, surgeons, architects and engineers, and invite the dying person to tell the panel how he or she would have liked to improve his or her body. Once the person had died, his or her body would be "worked on" to improve the parts requested. The results would be plastinated and put on show.) The programme makers claim the idea is educational, and will further our knowledge of how to improve human anatomy. We feel it will be a freak show. Although such a show would be outwith the scope of the Code if the person died in this country, the question it raises is relevant: how will the Code of Practice differentiate between what is educational and what is merely sensational?

Rt Rev'd Tom Butler
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Chairman of the Board for Social Responsibility
14th October, 2002

This response was prepared by Claire Foster on the basis of previous discussions of the Archbishop of Canterbury's Medical Ethics Advisory Group, and given Chairman's approval by the Bishop of Southwark on 14th October, 2002.