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POSTSCRIPTS

Refusal of Blood Transfusions: A Rejection of Mootness

The Summer 1964 issue of *The Catholic Lawyer* included a discussion of a United States Court of Appeals decision, *Application of the President and Directors of Georgetown College*, which refused review of a lower court determination ordering a blood transfusion for an adult Jehovah's Witness.¹ In that case the court reasoned that, since the transfusion had been made and the patient had subsequently recovered her health, the question presented had become moot. Evaluating this rationale, the author of the article stated:

In the area of the conflicting interests of the religious freedom of the individual and the police power of the state, there appears to be an increasing need for the higher courts to formulate definitive standards, thereby providing concrete guidelines for the lower courts to follow. Movement toward such clarity will only be hampered or stagnated by the mootness argument. . . .²

The decision seemed to represent the viewpoint that all original findings in this area would be non-reviewable, since the actual transfusion would result in "instant mootness."

A recent ruling of the Supreme Court of Illinois³ was based on a similar factual

situation. The lower court had ordered a blood transfusion for a non-consenting adult Jehovah's Witness, who would have died within a day without the treatment. Although the transfusion had already been made, the appellate court consented to review the order, and held it an unconstitutional invasion of the appellant's religious beliefs.

Justice Underwood, writing for the court, reasoned that, with the many religious doctrines accepted by various segments of our society, there are beliefs which may appear unreasonable to others equally intelligent and devout in their religion. He noted that much of the religious persecution of the past had been justified by the persecutors on the ground that the activity suppressed was deemed unreasonable by those in authority. Under the first amendment, these grounds do not validly support such interference, absent present danger to the general welfare:

Even though we may consider appellant's beliefs unwise, foolish or ridiculous, in the absence of an overriding danger to society we may not permit interference therewith. . . . In the final analysis, what has happened here involves a judicial attempt to decide what course of action is best for a particular individual, notwithstanding that individual's contrary views based upon religious convictions. Such action cannot be constitutionally countenanced.⁴

It must be noted that the court in this

¹ 10 CATHOLIC LAW. 260 (1964).

² *Id.* at 239.

³ *Aste v. Brooks*, 32 Ill. 361, 205 N.E.2d 435 (1965).

⁴ *Id.* at 372, 205 N.E.2d at 442.

case did not absolutely deny judicial authority to compel blood transfusions. It distinguished the present factual situation from that in *Fitkin-Morgan Memorial Hospital v. Anderson*,⁵ wherein a New Jersey court upheld an order authorizing a transfusion for a pregnant woman, basing its decision on the protection of the foetus. The *Georgetown College* case was distinguished on the fact that the patient therein was the mother of minor children who might have become wards of the state upon her death. The present case, therefore, did not deviate from former case law relating to court-ordered medical treatment justified directly or indirectly by the state's power of *parens patriae*. It is important, however, inasmuch as it rejected the basic argument of *Georgetown College* that such questions, being moot, are non-reviewable.

It has since been argued that this decision "amounted to approval of the right to commit suicide."⁶ This reasoning had previously been discussed and rejected in *The Catholic Lawyer* by Father John C. Ford:

The person who commits suicide violates a negative precept of the law of God: 'Thou shalt not kill.' The moral situation of one who fails to take affirmative measures to keep himself alive is quite different, especially when the measures concerned are artificial surgical procedures. . . . To kill oneself is one thing. Not to avail oneself of surgery is quite another.⁷

Father Ford reasoned that, even if the patient were morally bound to accept

transfusions for the preservation of life, the state is not empowered to enforce that aspect of the moral law.

Regardless of the disagreement concerning suicide, it must be admitted that it was undoubtedly appropriate for the court to consider the important issues involved in such a case, rather than to resolve the question on the basis of mootness and to dismiss the appeal, leaving a serious constitutional argument still unanswered.

Extension of the "Good Samaritan Act"

In September 1964, the New York "Good Samaritan Act"¹ became effective. This law immunizes doctors from liability for injury or death resulting from emergency treatment rendered "without the expectation of monetary compensation," provided the doctor is not guilty of gross negligence. In a timely discussion of this statute, appearing in the Autumn 1964 edition of *The Catholic Lawyer*,² the viewpoint was expressed that since the difficulty of successfully maintaining a malpractice action and the shifting of liability from individuals to insurance carriers had already alleviated much of the apprehension which discouraged physicians from rendering emergency aid, the statutory protection would not substantially further stimulate doctors to volunteer medical assistance. It was concluded, however, that:

Theoretically, there can be no question that the major benefit of the 'Good Samaritan Act' will inure to the injured party who, but for the enactment of such legislation, would go unaided. . . . Certainly, a statute
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⁵ 42 N.J. 421, 201 A.2d 537, cert. denied, 377 U.S. 985 (1964).

⁶ N.Y. Times, March 20, 1965, p. 23, col. 1.

⁷ Ford, *Refusal of Blood Transfusions by Jehovah's Witnesses*, 10 CATHOLIC LAW. 212, 225 (1964).

¹ N.Y. EDUC. LAW § 6513 (10).

² Note, *The New York "Good Samaritan Act,"* 10 CATHOLIC LAW. 322 (1964).

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(Continued)

which encourages even one physician to render assistance where he normally would not because of fear of legal action cannot be completely without merit.³

It would seem that the potential benefits which motivated the passage of the "Good Samaritan Act" would support the viewpoint that nurses, likewise trained to render aid in emergency, should be protected by similar statutory immunity. Re-

cently, Governor Rockefeller approved legislation exempting nurses from liability resulting from emergency treatment rendered without gross negligence.⁴ Although it is difficult to determine whether fear of legal action substantially discouraged nurses from furnishing emergency medical care in the past, the probability that some injured parties will benefit as a result of this statute is, again, sufficient reason to endorse the extension as appropriate and meritorious.

³ *Id.* at 328.

⁴ N.Y. World-Telegram and Sun, July 21, 1965, p. 5, col. 1.