Conscientious objectors to a medical treatment - what are the rules?

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Abstract

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Patients who refuse a specific medical treatment for religious reasons must often overcome strongly entrenched presumptions held by physicians and judges, presumptions frequently based on personal values. A case in point is the refusal of blood transfusion therapy by Jehovah's Witnesses.

This paper rests on the following theory: The sanctity of life principle is not necessarily violated by respecting the autonomous decision of a patient who, for religious or moral reasons, chooses one therapy over another that may be favored by the treating physician. Where a patient has decided for conscientious reasons against a certain treatment in any given medical situation, the need to be informed will shift from the patient to the physician. The physician must understand the nature of the religious or moral conviction, as well as his own moral and legal obligation to respect the patient's wishes by providing the best medical care under the circumstances.

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INTRODUCTION

Conscientious objectors to medical treatment are individuals who refuse a proposed treatment because of religious beliefs or for moral considerations. They will often request alternative treatment. For the purpose of this paper, we will consider the conscientious objector to be someone who objects for *religious* reasons. We will focus in particular on the case of Jehovah's Witnesses and their refusal of "blood transfusion (whole blood, red cells, white cells, platelets, or blood plasma)."[1]

While it is true that different religious groups may object to certain medical treatments or procedures for various reasons, Jehovah's Witnesses have been chosen as a case study because of the extensive worldwide[2] attention that they have received both in medical and legal journals.[3] Since blood transfusion therapy is a standard medical procedure, the Witnesses' objection to this particular treatment is an ethical and legal challenge for medical communities in nearly all major countries.[4]

To introduce this subject, we will examine the nature of their refusal. What is the basis for their particular belief regarding blood? Are there circumstances, in their view, which would justify overriding this belief? What are the consequences for one of Jehovah's Witnesses if this belief is violated either voluntarily or involuntarily? What have they done to inform the medical community of their objection to blood transfusion

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[1] Medical Directive card carried by Jehovah's Witnesses. See *infra* at 56.

[2] According to the *1999 Yearbook of Jehovah's Witnesses* (New York: Watchtower Bible and Tract Society of New York, 1999) at 31, in 1998, there was a maximum of 5,888,650 Witnesses in 233 lands worldwide.

[3] For example, a search via the Internet in 45 medical journals from 1966 - 1999 on the site MDConsult.com produced 2911 articles referring to medical, ethical and legal issues raised by the refusal of allogeneic blood transfusion by Jehovah's Witnesses.

[4] However, recent scandals involving contaminated blood have caused both the government and the medical profession to reevaluate issues arising from blood transfusion therapy. See H. Krever, "Interim Report" in *Commission of Inquiry on the Blood System in Canada* (Ottawa: Canada Communication Group, 1995) as well as "Proceeding and Recommendations from the Symposium" *Building a Blood System for the 21st century*, held on November 3 - 4, 1997 in Toronto published by Health Canada.

and the availability of alternative treatment? It will also be helpful to briefly consider the history of the use of blood in medicine, as well as the development of blood transfusion therapy into standard medical practice.

Following this examination, we will proceed to certain ethical and legal considerations upon which rest our analysis of the question: What rules should apply when a patient, deemed to be in a life-and-death situation, chooses for religious or moral reasons alternative treatment or no treatment at all?

Chapter 1

JEHOVAH'S WITNESSES AND BLOOD TRANSFUSION

A. THE BASIS FOR THEIR BELIEF

While different religious groups have their particular reasons for objecting to certain forms of medical treatment,[5] Jehovah's Witnesses are unique in their firm objection to blood transfusion. We shall examine the theological basis for this objection, not with a view to agreeing or disagreeing with their belief, but in order to understand the reasons for their refusal of this particular form of medical treatment.

Among the tenets of their faith is the belief that God forbids humans to consume human or animal blood. They believe this to be a divine commandment that applies to any form of consumption, whether it be the ingestion of blood or the receiving of it through intravenous means. Hence, they request medical alternatives to blood transfusion therapy. As stated in their most recent publication addressed to the medical profession and produced to assist their members when in a hospital setting:

> "They highly value life, and they seek good medical care. But they are determined not to violate God's standard, which has been consistent: Those who respect life as a gift from the Creator do not try to sustain life by taking in blood."[6]

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[5] S. Manners, "When religious faith dictates treatment" (December 1984) Can. Doctor 16; P. Lammers, "Dealing with other cultures and religions emphasized at recent ethics conference" (1987) 45 AORN J. 1211; D. Atighetchi, "Bioethics and Islam" in Proceedings of the 10th World Congress on Medical Law (Jerusalem, Israel, August 1994) 26; E. Howe, "Influencing a patient's religious beliefs: mandate or no-man's land?" (1995) 6 J. Clinical Ethics 194; See article by M. Stevenson, "Refusing measles vaccine may put others at risk: study" *The Gazette* (7 July 1999) A12. (This article refers to Canadian provinces that allow exemption from mandatory vaccinations on religious or philosophical grounds.) See also R. Macklin, "Ethical Relativism in a Multicultural Society" (1998) 8 Kennedy Inst. of Eth. J. 1 for a description of cultural and religious issues in health care.

[6] *How Can Blood Save Your Life?* (Georgetown: Watch Tower Bible and Tract Society of Canada, 1990) at 6.

Jehovah's Witnesses take this belief very seriously. It is fundamental to their faith. They believe that, since the Creator[7] has given the gift of life to all living creatures, to respect God's teaching regarding the consumption of blood, is to respect the sacredness of life itself.[8] To consume blood, either orally or through a transfusion, is a rejection of their Creator's law, thereby incurring his disapproval. Their everlasting life and happiness is at stake. As we will see further on,[9] they do not hesitate to obtain medical assistance when necessary. They aggressively seek alternative treatment to blood transfusion and have gone to great lengths to support their members in their effort to abide by what they perceive to be God's standard on blood.

1. Theological reasons for their conscientious objection

Jehovah's Witnesses refer to biblical quotations[10] to support their belief that it is forbidden for humans to consume the blood of humans or animals either by eating it or through blood transfusions. They believe the Bible is God's word and His revelation to mankind of His purposes and standards.[11] Basic to their faith is the belief that abiding by God's word is necessary, even when temporal life is threatened, to obtain His approval and gain salvation. It is their view that God's laws, having been given for the good of all mankind, will help them stay healthy and content in the present world.[12] Thus, they see

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[7] On the question of creation by God, see their publication: *Is there a Creator Who Cares About You?* (New York: Watchtower Bible and Tract Society of New York, 1998).

[8] Some see here a contradiction when life threatening situations arise. How can refusing what a doctor may consider a *life sustaining* treatment be considered respecting the sacredness of life. We will consider that issue in *infra* Chapter 2, section A: 'Life is Sacred' Principle.

[9] See *infra* c. 1, sec. C: Alternatives.

[10] Unless otherwise indicated, all references from the Bible will be from the *New International Version of The Holy Bible* (East Brunswick, New Jersey: International Bible Society, 1984).

[11] On the question of whether the Bible is God's Word, see their publication: *The Bible, God's Word or Man's?* (New York: Watchtower Bible and Tract Society of New York, 1989).

[12] According to their publication *Knowledge That Leads to Everlasting Life* (New York: Watchtower Bible and Tract Society of New York, 1995) at 11: "Life's deepest and most disturbing questions are answered in the Bible.

in recent scandals involving tainted blood, a vindication of what they believe to be a prohibition by God on the consumption of blood.[13]

According to them, the prohibition on the use of blood first appears immediately after the account of the flood in the Bible book of Genesis 9:3-6. In this first Biblical account in which humans were officially[14] authorized to eat animal flesh, a specific commandment[15] regarding the blood of animals was given by God to Noah:

> "Everything that lives and moves will be food for you. (...) But you must not eat meat that has its lifeblood still in it. (...)"

However, this was not only a prohibition on the consumption of blood. According to Andrew Fuller (English Baptist minister and theologian, 1754-1815): "Blood is the *life*, and God seems to claim it as sacred to himself."[16] Jehovah's Witnesses explain that: "Blood had a symbolic meaning. It stood for life provided by the Creator. By treating blood as special, the people showed dependence on him for life. Yes, the chief reason why they were not to take in blood was, not that it was unhealthy, but that it had a special meaning to God."[17]

Accepting its guidance will help you to develop a friendship with God. What a grand privilege! And this will enable you to enjoy the peace that God alone can give;" at 21: "(...) when we read the Scriptures and apply their counsel, we are exercising wisdom that humans cannot achieve on their own, for the Bible is the book that reveals the knowledge of God that leads to everlasting life;" and at 217: "So you know that it is in your *lasting* best interest to serve God."

[13] See "Canada's 'Tainted Blood' Inquiry" (8 June 1995) Awake! 20.

[14] Some authors were of the view that animal flesh was already being consumed before the flood. For example, F. Delitzsch states: "Certainly men had already eaten not merely vegetable food and milk, but flesh also; this they had done however arbitrarily, they are now authorized to do it by Divine announcement." F. Delitzsch, *A new Commentary on Genesis* (Edinburgh: T. & T. Clark, 1888) at 283.

[15] Regarding this specific commandment, Adam Clarke wrote: "After the deluge it was prohibited, as we find above; and, being one of the *seven* Noahic precepts, it was not eaten previously to the Mosiac law. (...) This command is still scrupulously obeyed by the oriental Christians, and by the whole Greek Church; and why? Because the reasons still subsist." A. Clarke, *The Holy Bible, Containing the Old and New Testaments* (New York: Carlton & Porter, 1856) at 78.

[16] A. G. Fuller, *Complete Works of the Rev. Andrew Fuller, with a Memoir of his life* (London: G. & J. Dyer, 1846) at 363.

[17] *How Can Blood Save Your Life? supra* note 6 at 4; See also F. Delitzsch, *supra* note 14 at 284 : "(...) a sacred reverence for that principle of life flowing in the blood, which even as that of the animal is derived from God, who bestows a participation in His all-animating life."

Noah and his family were authorized by God to eat the flesh of animals, however they were not to consume their blood.[18] Jehovah's Witnesses understand this commandment to apply not only to Noah and his family, but also to their descendants.[19] They support this belief by pointing to different occasions when this same prohibition was repeated down through history. For example, several centuries later, when Moses outlined God's Law Code to the ancient nation of Israel, he repeated the prohibition with regards to blood. Leviticus 17:10 states:

> "Any Israelite or any alien living among them who eats any blood – I will set my face against that person who eats blood and will cut him off from his people." [20]

In ancient Israel, slaughtered animals had to be bled if they were to be eaten. In the Law that he transmitted to the Israelites, Moses gave clear instructions to hunters as to what they were to do with the blood of animals. It was not to be consumed. According to Leviticus 17:13, 14:

> "Any Israelite or any alien living among you who hunts any animal or bird that may be eaten must drain out the blood and cover it with earth, because the life of every creature is its blood. That is why I have said to the Israelites, 'You must not eat the blood of any creature, because the life of every creature is its blood (...)'"

In Biblical times, Israelites were bound to observe this law as a fundamental part of their obedience to God.[21] According to McClintock and Strong, this injunction applied to Israelites as well as to non-Israelites residing among them. The penalty for

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[18] J. Hastings, ed., *Dictionary of the Bible* (New York: Charles Scribner's Sons, 1963) at 110: "Therefore though animals may be slaughtered for human food by the Noachic covenant (Gen. 9: 1-7) the blood is not to be consumed; where the slaughter is at the altar, the blood goes to God at the altar; otherwise it is poured out."

[19] They are not alone to hold this view, see *infra* endnotes 37, 36 and 38 and accompanying text.

[20] This same prohibition on eating blood is repeated several times in ancient Israel's law. See for example the Bible book of Leviticus 7:26, 27 and the book of Deuteronomy 12:15, 16, 23-25, 27; 15:23.

[21] Under the ancient Jewish law, all that was required was the draining of the blood from the animal. Jehovah's Witnesses take the view that this is in harmony with the command given to Noah. They do not believe that the command "(Y)ou must not eat meat that has its lifeblood still in it." (Genesis. 9:4) means that not a particle of blood must remain in the slaughtered animal. "It was not required that the meat be squeezed or that it be soaked; simply that the blood be poured out." See "Questions from readers" (1 November 1961) The Watchtower 670.

violation of this law was "the being 'cut off from the people,' by which the punishment of death appears to be intended."[22]

Referring to the Bible, Jehovah's Witnesses explain the main reason for this prohibition: God attached a special meaning to blood - it represented life which he grants to all living beings, "for the life of all flesh is its blood."[23] The Bible ascribes to blood "the mysterious sacredness which belongs to life,"[24] whether animal or human. Thus, life, represented by blood, is sacred. This is illustrated by God's words to Cain after he murdered his brother Abel: "Your brother's blood cries out to me from the ground."[25] The pouring out of human blood did not go unnoticed by God, since it meant the loss of a life and would eventually be formally prohibited.[26]

The Israelites of Bible times worshiped the same God as Noah and were also to consider blood as sacred. They were authorized to use it only in conjunction with worship to God, for atonement. Leviticus 17:11, 12 states:

> "For the life of a creature is in the blood, and I have given it to you to make atonement for yourselves on the altar; it is the blood that makes atonement for one's life. Therefore I say to the Israelites, 'None of you may eat blood, nor may an alien living among you eat blood.'"

While Jehovah's Witnesses do not believe that they are subject to the Mosaic Law,[27] they point to the prohibition on the consumption of blood in that law for a

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[22] "This strict injunction not only applied to the Israelites, but even to the strangers residing among them. The penalty assigned to its transgression was the being 'cut off from the people' by which the punishment of death appears to be intended (compare Hebrews 10:28), although it is difficult to ascertain whether it was inflicted by the sword or by stoning." *McClintock and Strong's Cyclopoedia*, vol. 1 (Grand Rapids: Baker Book House, 1981) at 834.

[23] Leviticus 17:14.

[24] W. Smith, *A Dictionary of the Bible* (Chicago: The John C. Winston Company, 1884) at 94; See also S.R. Driver, *The Book of Genesis* (London: Methuen & Co., 1904) at 96.

[25] Genesis 4:10.

[26] Among the laws Noah received, was the following: "Whoever sheds the blood of man, by man shall his blood be shed; for in the image of God has God made man." (Genesis 9:6).

[27] See *You Can Live Forever in Paradise on Earth* (New York: Watchtower Bible and Tract Society of New York, 1989) c. 24: "Are We Under the Ten Commandments?." Author A. D. Farr, in his book *God, Blood and Society*

specific reason. It illustrates, for them, a continued determination on the part of God to view blood as sacred and to 'withhold it from human consumption.'[28] Described as a 'covenant concerning the sanctity of human life'[29] which came into force after Noah left the ark, the holding of blood as sacred became an obligation imposed on the ancient nation of Israel and was further maintained during and after the arrival of Christ.

This prohibition on the consumption of blood was, according to Witnesses, thoroughly ingrained in the morality of first century Jews. They point to the account of John 6:53 where Jesus explained, in a figurative way,[30] to his disciples (who were Jews) that they needed to eat his flesh and drink his blood to be saved. Many found his speech to be 'shocking' and left off from following him.[31] The simple mention of drinking human blood, though common among the nations around them,[32] was sufficiently repulsive to turn away from Christ those Jews who had begun accepting his teachings.[33]

(Aberdeen: Impulse, 1972) at 73, sees this as a contradiction. In his view, by arguing that Christ's New Covenant abrogated the Mosaic law "(t)he clear implication is that the whole of the old law is abrogated, including the pre-Mosaic components," which would include the covenant with Noah. However, this seems to be incorrect for nowhere in their literature do the Witnesses take such a position. They view the covenant made with Noah as a covenant made with all of mankind, at a time when the nation of Israel did not exist. With the abrogation of the Mosaic law, the Noachic covenant remained untouched and continues to be valid; see *Jehovah's Witnesses and the Question of Blood*, *supra* note 47 at 7.

[28] J. D. Davis, *The Westminster Dictionary of the Bible* (Philadelphia: The Westminster Press, 1944) at 77: "(...) the blood of animals was used in all offerings for sin, and the blood of beasts killed on the hunt or slaughtered for food was poured out and covered with earth, because withheld by God from man's consumption and reserved for the purposes of atonement."

[29] "One Reason for God's Vengeance" (15 December 1927) The Watchtower 376.

[30] Jehovah's Witnesses understand this passage to have a symbolic meaning. See " "Bread of Life" Available for All" (15 February 1986) The Watchtower 18.

[31] See also John 6:60; *Jehovah's Witnesses and the Question of Blood* (New York: Watchtower Bible and Tract Society of New York, 1977) at 10.

[32] See *infra* notes 48, 49, 50, 51, 52 and accompanying text.

[33] The doctrine of transubstantiation (where the bread and wine are literally transformed into the blood and flesh of Christ during Mass) was only proclaimed in 1215 A.D. at the Lateran Council. Before that time, the words of Christ – "this is my body" (Luke 22:19) were understood to be figurative. See L. E. Binns, *Innocent III* (London: Methuen & Co., 1931) at 172; R. Tannahill, *Flesh & Blood* (London: Abacus, 1996) at 77 – 84.

Witnesses explain that the prohibition did not, however, end with the death of Christ, since Christ's followers were not exempt from this law. For example, the prohibition on the consumption of blood was addressed by a council of apostles and elders of the early Christian church in Jerusalem a few years after the death of Christ. The issue brought before this council was whether Gentiles, who had converted to the Christian faith, were obliged to conform to the Mosaic Law. This issue caused a sharp debate among the church of Antioch[34] and warranted sending Paul and Barnabas to submit the dispute to the council of apostles and elders in Jerusalem for settlement. According to Acts 15:29, after hearing from the interested parties, the council decided as follows:

> "It seemed good to the Holy Spirit and to us not to burden you with anything beyond the following requirements: You are to abstain from food sacrificed to idols, from blood, from the meat of strangled animals and from sexual immorality. You will do well to avoid these things."[35]

This decision is often referred to as the "apostolic decree." Certain Bible commentators view it as stemming from the early prohibition on the consumption of blood given to Noah since the command given to Noah predated Moses. For example, John Wesley (founder of Methodism, 1703 – 1791), commented on Acts 15:29 by giving six reasons, including the prohibition given to Noah, why the consumption of blood "was never permitted the children of God from the beginning of the world."[36] Sir Isaac Newton (physicist and mathematician, 1642 – 1727), commenting on the decision of the Jerusalem council, viewed the prohibition "as being an earlier law of God, imposed not on the sons of Abraham only, but on all nations, while they lived together in Shinar under the dominion of Noah."[37] Bible commentator Andrew Fuller also held the view

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[34] Acts 15:2: "This brought Paul and Barnabas into sharp dispute and debate with them."

[35] Acts 15:28, 29.

[36] J. Wesley, *Explanatory Notes upon the New Testament* (London: Wesleyan Conference Office, 1754).

[37] Sir I. Newton, *The Chronology of Ancient Kingdoms Amended* (London: Printed for J. Tonson, J. Osborn and T. Longman, 1728) at 184: "This law was ancienter than the days of Moses, being given to Noah and his sons, long before the days of Abraham: and therefore when the Apostles and Elders in the Council at Jerusalem declared that

that the apostolic decree was to be viewed as a reinforcement of the prohibition given to Noah:

> "Here is also a special grant, which does not appear to have been given before: not only the herbs of the field, but the animals, are given to man for food. It is however accompanied with a special exception with regard to blood, which is the life. This, being forbidden to Noah, appears also to have been forbidden to all mankind; nor ought this prohibition to be treated as belonging to the ceremonies of the Jewish dispensation. It was not only enjoined before that dispensation existed, but was enforced upon the Gentile Christians by the decrees of the apostles, Acts xv. 20."[38]

Some Bible commentators did not agree. They believed that the apostolic decree found at Acts 15:29 was really "intended to obviate essential repugnance of legal Jews to Gentile customs."[39] However, the prevailing view of Bible commentators of the 18th and 19th century, with the exception of the Church of Rome, is that this decree was to be binding on all Christians.[40] Those who advocate this position point to the Bible itself as

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the Gentiles were not obliged to be circumcised and keep the law of Moses, they excepted this law of abstaining from blood, and things strangled, as being an earlier law of God, imposed not on the sons of Abraham only, but on all nations, while they lived together in Shinar under the dominion of Noah: and of the same kind is the law of abstaining from meats offered to idols or false Gods, and from fornication."

[38] A. G. Fuller, *Complete Works of the Rev. Andrew Fuller, with a Memoir of his life*, *supra* note 16 at 363.

[39] Dr. W. Moeller, *History of the Christian Church A.D. 1 - 600* (New York: The Macmillan Co., 1902) at 58; See also Rev. J. Milner, *The History of the Church of Christ* (London: Thomas Cadell, 1834) at 24, footnote: "to abstain from things strangled, and from blood, was necessary, in order to have any intercourse with Jews"; J. Calvin, *Commentaries on The First Book of Moses called Genesis* (Edinburgh: The Edinburgh Printing Co., 1847) at 294: "For the apostles, in commanding the Gentiles to observe this rite, for a short time, did not intend to inject a scruple into their consciences (...)"; *The New Testament in Both Authorized and Revised Versions*, ann. by H. Crosby (Boston: Carles F. Alden & Co., 1884) at 295: "So there were two reasons why the Gentiles Christians should abstain from these, - that they might not be drawn into idolatry, and that they might not unnecessarily shock their brethren, the Jewish Christians."

[40] See for example P. Schaff & al., *A select Library of Nicene and Post-Nicene Fathers*, vol. II (New York: The Christian Literature Co., 1894) at 25. In his Lecture IV, S. Cyrill refers to the apostolic decree "a Catholic epistle to all the Gentiles, that they should *abstain* first *from things offered to idols*, and then *from blood* also and *from things strangled*." The footnote to this comment states: "The prohibition of blood and things strangled has continued to the present day in the Eastern Church, though already disregarded by the Latins in the time of S. Augustine." J. W. McGarvey, *A Commentary on Acts of Apostles* (Lexington: Transylvania Printing and Publishing Co., 1872): "There was room for no other conclusion than the one which James deduced, that they should impose on the Gentiles, so far as the class or restrictions under consideration were concerned, only those *necessary* things which were necessary independent of the Mosaic law. Idolatry, with all the pollutions connected with it, was known to be sinful before the law of Moses was given; and so was fornication. The eating of blood, and, by implication, of strangled animals, whose blood was still in them, was forbidden to the whole world in the family of Noah. In the restrictions here proposed by James, therefore, there is not the slightest extension of the law of Moses, but a mere enforcement upon the Gentiles of rules of conduct which have ever been binding, and were to be perpetual. They are binding to-day as

it indicates that the decision of the Jerusalem council was to be considered binding on all Christians. For example, a letter to that effect, which contained the decision, was sent to the Antioch congregation[41] and eventually to the other congregations. Several years later, the disciple James, who had participated in this early decision, referred to the prohibition on blood as a binding provision for all "Gentile believers." [42] There is no evidence in the Bible indicating that this decision was ever rescinded.[43] The Latin Church, however, eventually abandoned the rule of abstaining "from blood and from things strangled" mainly due to the influence of Augustin (Bishop of Hippo, 354 – 430) who taught that this precept was given to Christians only while the Gentile Church was not yet settled.[44]

Jehovah's Witnesses for their part have adhered to the apostolic decree from their early beginnings. In 1892, *Zion's Watch Tower*, the predecessor to their periodical *The Watchtower*, commented on the decision handed down by the Jerusalem council of the apostles and elders of the early Christian Church.[45] Since that time, Jehovah's Witnesses have consistently held the view that the prohibition by God on the eating of blood has been in force from the time of Noah and continues to be valid and binding. It is, for them, a matter of obedience to God and respect for his role as creator. They reason:

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they were then. To deny this would be to despise the combined authority of all the apostles, when enjoining upon the Gentile world, of which we form a part, restrictions which they pronounce *necessary*." See also É. De Courcelles, "Diatriba de Esu Sanguinis Inter Christianos" (Discourse Concerning the Eating of Blood Among Christians) in *Opera Theologica* (Amsterdam: 1675) at 971; J. Benson, *The Holy Bible, Containing the Old and new Testaments* (New York: 1839) at 43.

[41] Acts 15: 30, 31: "The men were sent off and went down to Antioch, where they gathered the church together and delivered the letter. The people read it and were glad for its encouraging message."

[42] Acts 21:25: "As for the Gentile believers, we have written to them our decision that they should abstain from food sacrificed to idols, from blood, from the meat of strangled animals and from sexual immorality."

[43] A. Pirie, *A Dissertation on Baptism and Letters on the Sinai Covenant; together with an Inquiry into the Lawfulness of Eating Blood* (Edinburgh: J. Pillans & Sons, Lawnmarket, 1806) at 241 – 279; A. Clarke, *The New Testament of our Lord and Savior Jesus Christ* (New-York: Carlton & Phillips, 1856) commentary of Dr. Delaney at 806 – 812.

[44] P. Schaff & al., *A select Library of Nicene and Post-Nicene Fathers*, *supra* note 40 vol. XIV at 395. See also *infra* note 60.

[45] "The Apostolic Council" (15 November 1892) Zion's Watch Tower 350.

"Blood has a special meaning. It stood for life provided by the Creator. By treating blood as special, the people showed dependence on him for life."[46]

Their literature also argues that early Christians upheld this view on the sanctity of blood.[47] Interestingly, historical records show that early Christians were at times faced with the issue of the consumption of blood, even enduring hardships because of their belief that God did not permit them to consume blood in any circumstances.

2. Early Christians refused to consume blood

An analysis of ancient accounts about early Christians indicates that they adhered closely to the apostolic decree of Acts 15:29. Though they lived in a society that consumed both animal and human blood for both medical and religious reasons or as part of their diet, early Christians contentiously refused to participate in any activity which entailed the consumption of blood.

These accounts reveal that consuming blood was common during this period. Regarding this practice, Tertullian (Christian apologist, approx. 160 – 230 A.D.), speaks of the Scythians in whose case "blood was taken from the arms and tasted by both parties in forming a treaty," or how it was the custom of certain of their tribes "for every deceased member to be eaten by his relatives."[48] Roman historian Sallust (86 – 34 B.C.) tells of conspirators being bound by a covenant of blood.[49] Minucius Felix (Christian apologist, 2nd century) speaks of those who would "devour the wild beasts from the

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[46] *How Can Blood Save Your Life? supra* 6 at 6.

[47] *Jehovah's Witnesses and the Question of Blood, supra* note 31 at 13 -14; "Early Christians Under Roman Rule" (1 March 1951) The Watchtower 137.

[48] *Tertullian Apologetical Works and Minucius Felix Octavius*, trans. R. Arbesmann & al. (Washington: The Catholic University of America Press, 1950) at 32.

[49] *Ibid.* at 386 at footnote no. 7.

arena, besmeared and stained with blood, or fattened with the limbs or the entrails of men."[50] Blood was also sometimes prescribed as a cure for epilepsy.[51] This would explain Tertullian's comments about those who "with greedy thirst, at a show in the arena, take the fresh blood of wicked criminals as it runs down from their throats and carry it off to heal their epilepsy."[52]

However, the record indicates that early Christians refused to participate in any of these activities involving the consumption of blood. Even under pressure, they refused to violate the apostolic decree of Acts 15:29. For example, when persecuted, Christians would sometimes be starved and then given food containing blood. Tertullian describes these ordeals as follows:

> "At the trials of Christians you offer them sausages filled with blood. You are convinced, of course, that the very thing which you try to make them deviate from the right way is unlawful for them."[53]

Commenting the writings of Tertullian, John Dalderby (Bishop of Lincoln, 1300-1320) concluded that "the Primitive Christians scrupulously complied with the decree pronounced by the Apostles at Jerusalem, in abstaining from things strangled and from blood."[54]

The importance early Christians attached to the apostolic decree is also seen in their response to false accusations.[55] Faced with the outrageous accusation that

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[50] A. Roberts & al., *The Ante-Nicene Fathers. Translations of The Writings of the Fathers down to A.D. 325* (New York: Charles Scribner's Sons, 1925) at 192.

[51] *Tertullian Apologetical Works and Minucius Felix Octavius*, *supra* note 48 at 386, footnote no. 9.

[52] *Ibid.* at 32.

[53] *Ibid.*.

[54] J. Dalderby, *The Ecclesiastical History of the Second and Third Centuries* (London: Francis & John Rivington, 1845) at 146.

[55] Regarding false accusations against early Christians see E. Arnold, *The Early Christians After the Death of the Apostles* (New York: Plough Publishing House, 1972) at 89-90 regarding the accusation of eating their own children.

Christians ate their own children, Minucius Felix, responded in his *Octavius*, that such a charge was impossible since, for Christians, "it is not lawful either to see or to hear of homicide; and so much do we shrink from human blood, that we do not use the blood even of eatable animals in our food."[56]

Tertullian, for his part, responded to this accusation by reminding his accusers of their own practice of wanting to eat the "(s)tag (which) has rolled in the blood of a gladiator. The very bellies of the bears, still stuffed with undigested human flesh, are the object of their search." He pointed out, as did Minucius Felix, that Christians did not even eat animal flesh that had not been properly bled, much less would they eat human flesh. He stated:

> "Let your unnatural ways blush before the Christians. We do not even have the blood of animals at our meals, for these consist of ordinary food. This is why we refrain from eating the meat of any animals which have been strangled or that die of themselves, lest we be in any way contaminated with blood, even if it is hidden in the flesh."[57]

The defense given by Tertullian against the charge of cannibalism, was also used by other Christians. For example, Eusebius (Christian theologian, approx. 260 – 340 A.D.), in his *Ecclesiastical History*, speaks of a martyr named Biblias who, before being tortured to death, refuted the false accusation of infanticide and cannibalism by saying: "how could such as these devour children, who considered it unlawful even to taste the blood of irrational animals?"[58]

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[56] A. Roberts & al., *The Ante-Nicene Fathers. Translations of The Writings of the Fathers down to A.D. 325*, *supra* note 50 at 192.

[57] *Tertullian Apologetical Works and Minucius Felix Octavius*, trans. R. Arbesmann & al., *supra* note 48 at 32-33.

[58] Eusebius, *An Ecclesiastical History*, trans. C.F. Cruse (London: Samuel Bagster and Sons, 1842) at 200; See also S. G. Hall, *Women among the Early Martyrs in Martyrs and Martyrologies* (Oxford: Blackwell, 1993) at 11.

It is not known exactly until when the early Christians maintained this firm stand regarding the consumption of blood.[59] However, early records reveal that by the time of Augustin, some Christians in Africa were not observing the prohibition as the eating of unbled animals was commonplace among them.[60] Augustin himself was of the view that the apostolic decree was of a temporary nature and would not be binding on all future Christians.[61] With time, the Latin Church followed his opinion.[62] The Eastern Church, though, maintained observance of the apostles' decree as can be seen from the Canon LXVII of the Council in Trullo, known as the Quinisext Council (692 A.D.):

> "The divine Scripture commands us to abstain from blood, from things strangled, and from fornication. Those therefore who on account of a dainty stomach prepare by any art for food the blood of any animal, and so eat it, we punish suitably. If any one henceforth ventures to eat in any way the blood of an animal, if he be a clergyman, let him be deposed; if a layman, let him be cut off."[63]

In the western world, the advent of the Reformation produced many Bible commentators and scholars who began advocating obedience to the apostolic decree

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[59] "We further see that, at the time of the Synod of Gangra, the rule of the Apostolic Synod with regard to blood and things strangled was still in force." This comment was made regarding the second Canon set forth at the Synod of Gangra (325-381 A.D.) which states: "If any one shall condemn him who eats flesh, which is without blood and has not been offered to idols nor strangled, and is faithful and devout, as though the man were without hope [of salvation] because of his eating, let him be anathema." H. R. Percival, "The Seven Ecumenical Councils of the Undivided Church" in *A select Library of Nicene and Post-Nicene Fathers of the Christian Church*, vol. XIV (New York: Charles Scribner's Sons, 1900) at 92.

[60] M. Dods, *The Works of Aurelius Augustine, Bishop of Hippo*, vol. V (Edinburgh: T. & T. Clark, 1822) at 541: In his *Contra Faustum*, Augustine states that: "(...) no Christian feels bound to abstain from thrushes or small birds because their blood has not been poured out, or from hares because they are killed by a stroke on the neck without shedding their blood. Any who still are afraid to touch these things are laughed at by the rest: so general is the conviction of the truth, that 'not what entereth into the mouth defileth you, but what cometh out of it'; that evil lies in the commission of sin, and not in the nature of any food in ordinary use."

[61] In Augustin's reply to Faustus the Manichaean, he argues that the apostolic decree was given to Christians only while the Church was not yet settled, see *Ibid.* at 540. See also comments by H. R. Percival, *supra* note 59 at 395, notes on Canon LXVII.

[62] The apostolic decree all but lost its meaning for the Latin Church even though there is evidence that as late as the eighth century, Pope Gregory III (731 A.D.) "forbade the eating of blood or things strangled under threat of a penance of forty days." See H.R. Percival, *supra* note 59 at 93, notes on Canon II. See also C. H. Robinson, *The Life of Otto Apostle of Pomerania* (New York: The Macmillan Company, 1920) at 87 where Otto Apostle of Pomerania (1060 – 1139) preached that Christians should not eat the blood of animals.

[63] H. R. Percival, *supra* note 59 at 395. See also *supra* note 40 and accompanying text.

found in Acts 15:29. Martin Luther, for example, led the way when he commented on this decree by saying:

> "Now if we want to have a church that conforms to this council (...) we must teach and insist that henceforth no prince, lord, burgher, or peasant eat geese, doe, stag, or pork cooked in blood (...). And burghers and peasants must abstain especially from red sausage and blood sausage."[64]

Other Bible commentators followed suit. Some produced lengthy dissertations on this issue in order to refute what they considered "weak and ungrounded, very unlearned reasons, for believing" the apostolic decree to have been repealed.[65] Alexander Pirie's early 19th century dissertation addresses in detail the many arguments put forth by those who advocated eating blood. Using Bible references and logic, he argued in favor of observing the apostolic decree.[66] Adam Clarke, in his Bible commentary of Acts 15:29, included Dr. Delaney's article which presented forceful arguments as to why the apostolic decree was still binding on Christians.[67]

Interestingly, in his commentary on Genesis, Clarke invokes scientific and medical research to support the prohibition on the consumption of blood.[68] Both Genesis[69] and Leviticus[70] taught that blood was prohibited because 'life was in the blood' and this life belonged to God. Referring to Harvey's experiments in 1628 on the circulation of blood and research done by Hunter, professor of anatomy, regarding the 'vitality' of blood,

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[64] *Luther's Works* (Church and Ministry III) (E. Gritsch ed. N.d.) at 28.

[65] A. Clarke, *The New Testament of our Lord and Savior Jesus Christ*, *supra* note 43 at 812.

[66] A. Pirie, *supra* note 43 at 241 – 279. In his dissertation, Pirie justifies his long discussion of the question by the fact that "disputes on this point have run high, and many arguments have been offered on both sides of the question."

[67] A. Clarke, *The New Testament of our Lord and Savior Jesus Christ*, *supra* note 43 at 806 – 812. For a more recent comment see also *The Interpreter's Bible* (Nashville: Parthenon Press, 1952) at 549 – 550.

[68] A. Clarke, *The Holy Bible, Containing the Old and New Testaments*, *supra* note 15 at 565 – 567.

[69] Genesis 9:4: "But you must not eat meat that has its lifeblood still in it."

[70] Leviticus 17:11: "For the life of a creature is in the blood (...)."

Clarke argued that scientific research supported the view that blood "possesses a *living principle*, and that life of the whole body is derived from it."[71]

3. Jehovah's Witnesses and the use of blood

The theological reasons explained above[72] regarding the prohibition on the consumption of blood form the basis of Witnesses' refusal of blood transfusion therapy. From their early beginnings, they considered themselves to be under divine commandment to abstain from blood, whether as food or otherwise, and so educated their members through the magazine *The Watchtower*, as well as other publications. In 1892, they discussed the apostolic decree found at Acts 15:28, 29, regarding the necessity to "abstain from blood, from the meat of strangled animals", and considered it to be a repetition of an earlier law of God: "The same command was given to Noah."[73] In their view, this law spanned the time from the new beginning of mankind after the flood, right up to and beyond the establishment of the Christian Church. The prohibition on eating blood was part of the Witnesses' early teachings and, as we will see later on, was eventually applied to the medical use of blood.

Subsequently, in 1909, in an article discussing the apostolic decree, the Witnesses reasoned that "there may be other, sanitary, reasons connected with the matter, which are not yet known to us."[74] They believed that God's law on this matter, even if not completely understood at that time, was for the eventual benefit of mankind.[75] In the

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[71] A. Clarke, *The Holy Bible, Containing the Old and New Testaments*, *supra* note 15 at 565.

[72] See *supra* c. 1, sec. A, part 1.

[73] "The Apostolic Council", *supra* note 45 at 350.

[74] "Settling Doctrinal Differences" (15 April 1909) Zion's Watch Tower 117.

[75] They eventually took the view that the 'other reasons connected with the matter' related to the "practice of blood transfusion." See "By Man's Way or by God's Way – Which?" (1 December 1967) The Watchtower 721, where, regarding the 'reasons connected with the matter' mentioned in the 1909 reference, it is stated: "Today, fifty-eight

same article, they highlighted the fact that blood "was made a symbol of life" under the Law of Moses, and could only be used on the altar, for the atonement of sins. It was forbidden to consume it. In their view, it was not difficult to observe this prohibition since, as they reminded their readers, "nearly all the butchering for our markets is in harmony with the Jewish regulations."[76]

In 1927, they again considered the subject by describing the command given to Noah regarding blood as a "covenant (...) made with Noah and applied to him and every living creature."[77] It would be several years before the issue regarding blood came up again in their literature.

Near the end of World War II, when blood transfusion was developing into standard medical practice,[78] the Witnesses took a definite stand as to whether this therapy violated God's law. Before the end of the War, on July 1st, 1945, a lengthy article in their periodical, *The Watchtower*, addressed the issue of the sanctity of blood with regard to blood transfusions.[79] This article highlighted the fact (as had been stated in the December 15, 1927 article) that the covenant made with Noah "regarding life," which included the prohibition on eating blood, was an "everlasting covenant" which continued to apply to all humans. Even though the Mosaic covenant, which incorporated the same prohibition, had been abolished with the coming of Christ,[80] this did not alter their belief that the covenant with Noah continued to be valid. Referring to the apostolic decree of

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years since then, those reasons are becoming more and more known because of medical experiences with the widespread use of transfusions. Now, what would you think of a modern medical practice that, in one year, directly kills 16,000 in a land, and leaves still more thousands infected with deadly diseases, while at the same time other thousands survive the process? That is the case with the practice of blood transfusion."

[76] "Settling Doctrinal Differences", *supra* note 74 at 117.

[77] "One Reason for God's Vengeance", *supra* note 29.

[78] R. K. Spence & al., "Transfusion and Surgery" (1993) XXX:12 Curr. Probl. in Surg. 1105.

[79] "Immovable for the Right Worship" (1 July 1945) The Watchtower 195.

[80] See Romans 7:6; Galatians 3:23–25.

Acts 15: 28,29 the article stated: "They wrote such instruction concerning blood and carcasses not drained of blood, not because Christians were under the Mosaic law covenant, but because they were under the covenant made after the flood with Noah and which embraced all mankind (...)."[81]

The article then went on to apply the prohibition on consumption of blood to the matter of blood transfusions. It relied, in part, on an excerpt from *The Encyclopedia Americana* that traced the history of transfusion from its early beginnings.[82] Witnesses adopted the view that, whether it was a matter of eating blood or transfusing it directly into the body, abstaining from all such practices was a "vital matter" for those who seek God's approval.[83] To manifest their firm decision to refuse blood therapy, some Witnesses, as early as 1950, began to carry a card in their wallet requesting "No blood transfusion."[84] It has now become a practice for all Witnesses to carry on their person an

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[81] "Immovable for the Right Worship", *supra* note 79 at 199.

[82] *Ibid.* at 200. The excerpt is taken from the 1929 revised edition of *The Encyclopedia Americana*, vol. 4 and states: "Transfusion of blood dates as far back as the time of the ancient Egyptians. The earliest reported case is that practiced on Pope Innocent VIII in 1492. The operation cost the lives of three youths and the Pontiff's life was not saved. Great strides in the research and practice of transfusion on animals were made after Harvey's discovery of the circulation of the blood in the middle of the 17th century. Physicians in Germany, England and France were especially active in the work of blood transfusion after this discovery. They reasoned that as the blood is the principal medium by which the body is nourished, transfusion, therefore, is a quicker and shorter road to feed an ill-nourished body than eating food which turns to blood after several changes. So transfusion was thought of not only as a cure, but also as a rejuvenator. Attempts were then made to cure various diseases, such as fevers, leprosy, insanity and hydrophobia. Lamb's blood was used for transfusions into human beings with varying success. Curious to relate, the Faculty of Medicine of Paris refused to recognize Harvey's discovery and also opposed any progress made in the art of transfusion. They persecuted those who were active in the research work of transfusion. It was in the end of the 18th and in the beginning of the 19th century that the most active work in establishing transfusion as a surgical procedure after hemorrhage was done." See also "Is Blood Transfusion Scriptural?" (22 September 1949) Awake! 25. In their more recent publication *How Can Blood Save Your Life? supra* note 6 at 6 they quote Thomas Bartholin (1616 - 1680): "Those who drag in the use of human blood for internal remedies of diseases appear to misuse it and to sin gravely. Cannibals are condemned. Why do we not abhor those who stain their gullet with human blood? Similar is the receiving of the alien blood from a cut vein, either through the mouth or by instruments of transfusion. The authors of this operation are held in terror by the divine law, by which the eating of blood is prohibited." The article continues: "Hence, thinking people in the past centuries realized that the Biblical law applied to taking blood into the veins just as it did to taking it into the mouth. Bartholin concluded: "Either manner of taking [blood] accords with one and the same purpose, that by this blood a sick body be nourished or restored.""

[83] "Immovable for the Right Worship", *supra* note 79 at 201.

[84] "An "Exclusion Clause" Recommended" (15 December 1950) The Watchtower 524. The article relates the experience of a nurse in a large hospital who was one of Jehovah's Witnesses and who had observed first hand

Advance Medical Directive that directs that no allogeneic blood or blood products be administered under any circumstances.

This religious stand brought them into conflict with the medical community at a time when paternalism was the norm and a patient's autonomy was often given little consideration. However, they firmly believe that the prohibition on the consumption of blood came from God and must therefore be for the good of mankind. Convinced of this, they were constantly looking for confirmation of the dangers associated with blood transfusion therapy. Whenever information became available on the hazards of blood transfusion, they made this information available through their literature. For example, in 1948, they pointed to research by Dr. Richard B. Capps which found that over 20% of patients receiving blood were being contaminated with the hepatitis virus. This research also alerted to the danger such a virus would present in pooled blood.[85]

Witnesses also printed published comments of doctors who opposed the practice of blood transfusion (although initially these were few in number). For example, in a 1949 article, Doctor Alonzo J. Shadman claimed to have practiced medicine for forty years without ever transfusing blood, and yet he "never had a patient any the worse for not having received it." He compared the relatively new practice of blood transfusion to the old practice of bloodletting, known as phlebotomy. He realized that his opinion was a dissident and unpopular one since, at that time, the practice was accepted "by physicians and laity as the 'thing to do' and who had the temerity to question orthodox medicine in the great and enlightened year of 1948."[86]

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transfusion practices. She wrote: "Be it known that it is becoming more prevalent to give blood transfusion during quite simple operations, and the only knowledge the patient may have of it is when asked to have friends and relatives replace it in the blood bank. To avoid this, an exclusion clause should be inserted in the hospital release contract before signing for operation. I carry identification card in my wallet marked "No blood transfusion" in red ink and bearing my signature."

[85] "Dangers of Blood Transfusion" (22 October 1948) Awake! 12.

[86] "Blood Transfusion – One Doctor's Opinion" (8 January 1949) Awake! 12. Other doctors did, with time, report on the dangers of blood transfusions. See, for example, Unger, "Medical-Legal Aspects of Blood Transfusion" (1960)

During the following decades, blood transfusion therapy became firmly entrenched as standard practice in the medical community. As a result, Jehovah's Witnesses' objection to this therapy increasingly became an object of controversy.[87] In their defense, they published volumes of information in their literature that had worldwide circulation. This information was intended for the benefit of their members, as well as the public, and addressed the theological, ethical, legal and medical aspects of their decision to opt for alternative treatment to blood transfusion therapy. In 1961, they published a 64-page booklet entitled *Blood, Medicine and the Law of God*. This booklet was subsequently updated in 1977[88] with the latest medical research, and again in 1990.[89]

Between 1950 and 1997 they published over 130 articles in their magazine *The Watchtower* and at least 300 articles in the magazine *Awake!*, all referring to the question of blood transfusion. Many of these articles presented updated scientific research on the dangers of blood transfusions as well as on alternatives.[90] In all articles, they consistently objected to the use of blood transfusion in any circumstances. Several accounts were also printed of individuals who had succeeded in convincing doctors to respect their conscientious objection to blood transfusion therapy.[91] During that time,

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60:2 N.Y. St. J. of Med. 237, which states: "The mortality from blood transfusion equals that from either anesthesia or appendectomy. In the London area there has been reported one death for every 13,000 bottles of blood transfused."

[87] An early article discussing their objection to blood transfusion is found in J. Ford, "The Refusal of Blood Transfusions by Jehovah's Witnesses" (February 1955). Linacre Quart. 3.

[88] *Jehovah's Witnesses and the Question of Blood, supra* note 31. A special campaign by Jehovah's Witnesses to distribute this edition to 370,000 U.S. physicians and hospital officials, one million registered nurses, 320,000 lawyers and judges, as well as to professionals in countries such as Canada, England, Finland, France, Germany, Italy, Japan, Sweden is reported in "Blood Transfusions: Why Many Are Taking a Fresh Look" (8 September 1976) Awake! 16.

[89] *How Can Blood Save Your Life?, supra* note 6.

[90] Between 1950 and 1997, over 90 articles were printed regarding the dangers of blood transfusion therapy and over 40 articles were printed regarding alternative treatment. These articles received wide circulation since the *Awake!* circulation grew from 3,000,000 (in 21 languages) in 1960 to over 18,000,000 (in 81 languages) in 1997. Circulation for *The Watchtower* grew from more than 3,000,000 (in 58 languages) in 1960 to over 20,900,000 (in 125 languages) in 1997. (Circulation of these magazines appears in every issue.)

[91] Between 1950 and 1997, over 80 articles were printed regarding cases where individuals recovered after refusing blood transfusions and asking for alternative treatment.

they also vigorously fought legal battles in various countries to establish patients' rights to make autonomous medical decisions.[92]

One of the most remarkable accomplishments in their efforts to assist members who found themselves in a hospital setting due to sickness or injury, was the establishment of a network of Hospital Liaison Committees in major centers around the world where the Witnesses were located. These committees worked to develop a network of medical specialists willing to treat Witness patients using medical alternatives to blood transfusions. This meant supplying doctors with medical, ethical, legal and theological information to help them understand the contentious objection of Jehovah's Witnesses to blood transfusion and assist them to offer treatment which did not violate Witnesses' beliefs.

However, before discussing the development of the Hospital Liaison Committees and their significant impact on the medical community, it would be helpful to briefly review the evolution of blood transfusion therapy as well as early efforts by the Witnesses to have the courts recognize their right to choose alternative treatment.

B. BLOOD TRANSFUSION

The analysis of the conscientious objection by an individual to a particular form of medical treatment requires understanding both the nature and the reason for the objection as well as the medical treatment itself. In the case of blood transfusion, this is particularly important in view of the miraculous, indeed almost mystic lifesaving properties assigned to blood from the earliest times of antiquity. This study involves

[92] W. Glen How, General Counsel for Jehovah's Witnesses, fought many legal battles in Canada, the United States and other countries, defending Witness patients when doctors and hospitals petitioned courts to force blood transfusion therapy on them. In 1960, in the *Canadian Bar Journal*, he published a scathing attack on the practice of blood transfusion describing it as a practice "founded more on mysticism and showmanship than on scientific proof and really curative value" and predicting that, because of the dangers involved, it would go "the way of bloodletting into the limbo of desuetude." W.G. How, "Religion Medicine and Law" (October 1960) Can. Bar J. 365 – 432.

looking not only at the practice of blood transfusion, but also briefly at earlier medical practices revolving around the use of blood.

1. Early use of blood in medicine

Early medical writings indicate a widespread use of blood in the practice of medicine. Pliny The Elder (23 – 79 A.D.), author of the celebrated *Natural History,*[93] referred to the Pharaohs of Egypt who, when stricken with leprosy, took baths in human blood. He describes epileptics who found it 'efficient' to drink the warm blood gushing from the open wounds of gladiators, in effect drinking 'their living soul'. He enumerates several ailments that could be treated with the blood of specific animals administered in a variety of ways.

Pliny also refers to the age-old practice of phlebotomy, or bloodletting, the origin of which is unknown, but is believed to have been practiced by the Egyptians from as early as 2500 B.C.[94] Primitive cultures are believed to have used sharpened flints or fishes' teeth as well as thorns to let blood.[95] The practice was to become a "sort of therapeutic sheet-anchor" for millenniums to come.[96] Hippocrates (460 – 377 B.C.), a Greek physician considered to be the father of medicine, referred to bloodletting within

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[93] Considered to be the first encyclopedia, *Natural History* was completed in 77 AD and dedicated to Titus. It was divided into 37 books and was an attempt to gather older scattered material on a variety of topics including medicine. A novel feature of this work was that Pliny named authors and titles of books he relied upon. Though it contained both factual and fictional data, including unsupported claims, fables, and exaggerations, *Natural History* was an authority on scientific matters up to the Middle Ages and helped shape scientific and medical theory during that time. For a detailed history of bloodletting, see F. H. Garrison, "The History of Bloodletting" (March 1913) N. Y. Med. J. 432 – 437, 498 – 501.

[94] Pline L'ancien, *Histoire Naturelle*, trans. A. Ernout (Paris: Les belles lettres, 1962) in Books 26 and 28. That Egyptians may have practiced bleeding is seen from an illustration on a tomb near ancient Memphis which shows some being bled from the neck and from the foot. See F. H. Garrison, "The History of Bloodletting" *supra* note 93 at 432.

[95] F. H. Garrison, *An Introduction to the History of Medicine* (London: W.B. Saunders Company, 1929) at 28. See also B. R. Ortiz de Montellano, *Aztec Medicine, Health, and Nutrition* (London: Rutgers University Press, 1990) at 149, 179.

[96] F. H. Garrison, *An Introduction to the History of Medicine, supra* note 95 at 29.

the context of humoral medicine, which taught that all sicknesses resulted from an imbalance of the fluids of the body.[97] Through the conquest of Alexander the Great, the medical knowledge and practice regarding bloodletting spread to both the Persian and Hindu world.[98] Aulus Cornelius Celsus (first century Roman encyclopedist) wrote "to let blood by incising a vein is no novelty, what is novel is that there should be scarcely any malady in which blood may not be let."[99] Druidical medicine in Britain included bloodletting which was "regulated by the moon's age." [100] In Papua New Guinea, healers treated headaches by shooting six-inch arrows from small bows into the head as a form of bloodletting.[101]

Indian maiden being bled from tiny arrow puncture wounds. Water, Lionel [London: James Knapton, 1699] Central America

Greek physician, Galen of Pergamum (129 – 216 A.D.), expanded on the concept of humoral medicine by stating that human health requires an equilibrium between the four main bodily fluids, or humours – blood, yellow bile, black bile and phlegm. Therefore, bloodletting, which supposedly served to reestablish the equilibrium played an important part in his practice.[102] While much of Galen's medical knowledge, though

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[97] According to the *Hippocratic Corpus* health was equilibrium and illness an upset. Bodily fluids or 'humors' (bile, phlegm, blood and black bile) were being kept in balance. For discussion see R. Porter, *The Greatest Benefit to Mankind* (New York: W.W. Norton & Co., 1997) at 56 – 58.

[98] For bloodletting among the Arabs (known as cupping) see *Islamic Medical Wisdom the Tibb Al-A'Imma*, trans. Batool Ispahany (London: The Muhammadi Trust of Great Britain and Northern Ireland, 1991) at 64 - 143. For bloodletting among the Hindus, see *History of Medicine in India from Antiquity to 1000 A.D.* (New Delhi: Indian National Science Academy, 1992) at 329.

[99] *Celsus de Medicina*, trans. W. G. Spencer, vol. I (Cambridge: Harvard University Press, 1960) at 155.

[100] F. H. Garrison, *An Introduction to the History of Medicine, supra* note 95 at 169.

[101] B. G. Burton-Bradley, *A History of Medicine in Papua New Guinea* (Kingsgrove: Australasian Medical, 1990) at 5.

[102] "Galen of Pergamum" *Encyclopoedia Britannica Online*, http://members.eb.com/bol/topic?eu=36532&sctn=1.

very influential, has turned out to be inaccurate, he did, however, correctly determine that arteries (from the Greek *aer*=air and *terein*=to conserve) were filled with blood and not with air from the lungs, as was previously believed.

This was a time when doctors did not understand the true nature of disease. The existence of germs, bacteria and viruses was unknown. In place of scientific research, ignorance and superstition played a dominant role in the continuing practice of bloodletting. The physician was guided by his own personal experience at the bedside of a patient or on the experience of his predecessors, thus perpetrating useless and dangerous therapies. The therapy was administered, and if the patient didn't die, it was deemed to be successful. Bloodletting became the longest enduring inefficient and dangerous medical therapy ever developed. Nevertheless, it managed to survive antiquity and actually flourished to become the standard and most popular therapy during the Middle Ages.

"Il n'y a pas de remède au monde qui fasse tant de miracles que la saignée" stated Guy Patin (1601 – 1672 A.D.), French physician and staunch supporter of bloodletting, while he made a seventh incision in a vein of his arm to cure his cold.[103] Bloodletting was prescribed for every imaginable illness and disorder, including hemorrhages; it was the "queen of remedies."[104] It was even administered as a form of punishment.[105] For

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[103] J. Héritier, *La sève de l'homme* (Paris : Éditions Denoël, 1987) at 19. The procedure for bloodletting involved tying a bandage around the arm to make the forearm veins swell up. The exposed vein was then opened with a lancet. This was called 'breathing a vein'. For a detailed description of the methods and instruments used see 167 – 172.

[104] L. Brockliss & al., *The Medical World of Early Modern France* (Oxford: Clarendon Press, 1997) at 159.

[105] J. Pichon, *Le Ménagier de Paris*, vol. 1 (Paris: Société des bibliophiles français, 1846) at 164. This is an account of a Parisian house wife who displeased her husband on three occasions and was punished with a bleed: « Dame, vous m'avez fait trois grands déplaisirs et courroux, si je peux vous ne m'en ferez pas un quatrième; et je sais bien que cela vous a fait faire du mauvais sang; il faut vous saigner. Il appelle le barbier et fait faire le feu. La dame lui dit :

-Sire, que voulez-vous faire? Je n'ai jamais été saignée.

-Tant pis, fait le seigneur, il vous faut commencer : les trois mauvaises actions que vous avez commises contre moi vous ont fait faire du mauvais sang.

Alors il lui fait chauffer le bras droit au feu, et quand il fut échauffé, il la fit saigner; elle saigna tant que le sang épais et vermeil sortit. Alors le seigneur la fit panser, et puis lui fait retirer l'autre bras hors de la robe. La dame

those who did not get sick, it was administered "par précaution."[106] Those who were opposed to phlebotomy as a cure-all were described by Patin as 'wicked', 'insane', 'ignorant', 'charlatans', 'atheist' and 'imposter'.[107] Certain astrological conditions were preferred for bloodletting, and calendars were even printed for that specific purpose.[108] Records indicate the practice to have been a lucrative one.[109] Guilds for surgeons and barber-surgeons were organized in France and England during the 13th and 14th centuries.[110] Bleeding was held in such esteem by British physicians that they named their pre-eminent journal after the preferred surgical instrument used in phlebotomy: *The Lancet*.[111]

While bloodletting continued in vogue on the Continent (French doctors imported 41.5 million leeches in 1833 alone)[112], colonization brought the practice to America. The leading American advocate of bleeding was no doubt Benjamin Rush (1745 – 1813), physician and signatory of the Declaration of Independence, known as the 'Prince of

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commence à crier grâce. Mais ça ne l'avance à rien, car il la fit chauffer et saigner de ce second bras; et elle commença à saigner : il la tint ainsi si longtemps qu'elle s'évanouit et perdit la parole, et devint tout entière d'une pâleur mortelle. »

[106] J. Pichon, *Le Ménagier de Paris*, *supra* note 103 at 42. Such blind faith and certitude of the usefulness of their therapy often causes physicians to be the object of public scorn. See for example Molière's play *Le malade imaginaire* and Dickens' *Mudfog Papers*.

[107] F. R. Packard, "Guy Patin and the Medical profession in Paris in The Seventeenth Century" (1922) IV Ann. of Med. Hist. 358, 363 and 364. About Guy de la Brosse (physician to Louis XIII) who would rather die than be bled, Patin wrote in 1641: "The devil will bleed him in the other world, as merits a rascal, an atheist, an impostor, a homicide, and a public executioner such as he was."

[108] R. Porter, *The Greatest Benefit to Mankind*, *supra* note 97 at 115-116. Astrology was part of mainstream medicine, a practice going as far back as Hippocrates. It was believed that the motion of the planets has an influence on the human body and its diseases. Through the Middle Ages, princely courts often housed a physician-astrologer.

[109] J. Héritier, *La sève de l'homme*, *supra* note 103 at 26 – 29.

[110] F. H. Garrison, *An Introduction to the History of Medicine*, *supra* note 95 at 172. During this time period, surgeons formed a separate class from the physicians who looked down upon them. The surgeons were divided into two groups – the surgeon and the surgeon-barber. The surgeon was usually a cleric (known as the surgeon of the long robe) while the surgeon-barber was a lay barber (known as the surgeon of the short robe) and who had originally been trained for the purpose of bleeding and shaving the monks.

[111] The lancet was used for bloodletting by venesection. Other methods were arteriotomy, scarification with wet cupping and the use of leeches. For a detailed description and explanation of bloodletting methods see G. R. Seigworth, "Bloodletting Over the Centuries" (December 1980) N. Y. St. J. of Med. 2024 – 2027.

[112] F. H. Garrison, *An Introduction to the History of Medicine*, *supra* note 95 at 409.

Bleeders."[113] Believing that the human body contained 12,500 – 14,500 cc. of blood,[114] he promoted the use of the lancet in almost every case and even in cases where it had never before been used.[115] During the yellow fever plague in Philadelphia in 1793, the worst in American history, casualties were so numerous that the city, then the nation's capital, emptied and its government collapsed. Rush stayed behind to care for the sick and dying. His treatment included a massive dose of mercury and jalap to produce diarrhea, followed up with copious bleeding.[116] He would visit as many as a hundred patients in a day and the bleeding was so profuse that the blood, "from want of a sufficient number of bowls, was often allowed to flow upon the ground."[117] Convinced that his patients were surviving due to his treatment, he wrote his wife on September 13, 1793: "Yesterday was a day of triumph to mercury, jalap and bleeding. I am satisfied that they saved, in my hand only, nearly one hundred lives."[118] He would, however, have been of greater help to his patients if he had left them alone. It is known today that this plague was caused by the *Aëdes (Stegomyia) ægypti* mosquito, whose bite spreads yellow fever through a virus that follows its course and then leaves the body. Copious bleeding in these cases only weakened the body and hastened death.[119]

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[113] P. J. Schmidt, "Transfusion In America In the Eighteenth And Nineteenth Centuries" (1968) 279 New Eng. J. of Med. 1319. See also A. C. Siddall, "Bloodletting in American Obstetric Practice, 1800 – 1945" (1980) 54 Bull. of the Hist. Of Med. 102. This article explains that bloodletting was also prevalent in obstetrics during the nineteenth century. Patients were bled for almost all of their "minor antenatal complaints, such as headaches, vertigo, nausea and vomiting, insomnia, apprehension, palpitation, muscle cramps, diarrhea, hemorrhoids, varicose veins, and swelling of the lower extremities." (at 105) Pregnant patients were even bled for hemorrhage. "The paradoxical treatment of hemorrhage in pregnancy by bloodletting was based on the logic that in producing a faint by venesection, the force of the patient's circulation was so reduced that clotting could take place, which in turn checked the hemorrhage." (p. 106) To control a convulsive disorder called eclampsia a venesection of 900 – 1800 cc. was recommended in addition to shaving the patient's head so leeches could be applied to the scalp." (p. 109)

[114] A. C. Siddall, "Bloodletting in American Obstetric Practice, 1800 – 1945", *supra* note 113 at 102.

[115] W. Pepper, "Benjamin Rush" (1890) XIV:17 JAMA 599.

[116] D. Starr, *Blood, An Epic History of Medicine and Commerce* (New York: Alfred A. Knopf, 1998) at 24.

[117] W. Pepper, *supra* note 115 at 599.

[118] L.H. Butterfield, ed., *Letters of Benjamin Rush, 1793-1813*, vol.2 (Princeton, New Jersey: Princeton University Press, 1951) at 663 quoted in D. Starr, *supra* note 116 at 25.

[119] Walter Reed (1851 – 1902) proved, through experimentation, that yellow fever was caused by the *Stegomyia* mosquito. See F. H. Garrison, *An Introduction to the History of Medicine*, *supra* note 95 at 718 – 719.

Rush came under heavy criticism from a young journalist named Willaim Cobbert who accused him of "puffing his treatment and failing to report deaths."[120] Rush successfully sued Cobbert. Following his conviction, Cobbert wrote: "On the 14th of December, on the same day, and in the very *same hour*, that a ruinous fine was imposed on me for endeavoring to put a stop to the practice of Rush, *General Washington was expiring under the operation of that very practice.*"[121] In effect, Washington, suffering from what appeared to be strep, was bled copiously and subsequently died.[122] Bloodletting came under heavy criticism; some even suggesting that bloodletting be made a criminal offense; the magic was fading.[123]

Even though bloodletting was still being recommended as a treatment in the United States in the early twenties,[124] the discovery that microbes, not humors, caused diseases, led to its demise.[125] Still, some resisted its abandonment.[126] For his part, Oliver Wendell Holmes (physician, 1809 – 1894), father of the famous jurist, gave his candid view of the age-old therapy of bloodletting when he wrote: "The lancet was the magician's wand of the dark ages of medicine."[127]

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[120] D. Starr, *Blood*, *supra* note 116 at 27.

[121] *Ibid.*

[122] *Ibid.*

[123] L. Bryan, Jr., "Blood-Letting in American Medicine, 1830 – 1892" (1964) 38 Bull. Of the Hist. Of Med. 516 at 519.

[124] W. Osler & al., *The Principles and Practice of Medicine* (New York: D. Appleton and Company, 1920) at 102: "We employed it much more than we did a few years ago, but more often late in the disease than early. To bleed at the very onset in robust, healthy individuals in who disease sets in with great intensity and high fever is good practice."

[125] As early as 1830, Pierre-Charles-Alexandre Louis (1787 – 1872) began documenting the course of diseases systematically and how they responded to treatment. His studies showed by statistical proof the uselessness of bloodletting in the treatment of pneumonia. See F. H. Garrison, *An Introduction to the History of Medicine*, *supra* note 95 at 411. By the nineteenth century, bloodletting was being severely criticized. See G. R. Seigworth, *supra* note 111 at 2024.

[126] A. Flint, *Practice of Medicine* (Philadelphia: Henry C. Lea's Son & Co., 1881) at 133. The author states: "It can hardly be doubted that this measure was formerly adopted too indiscriminately, and often employed too largely, but the natural tendency being to pass from one extreme to another, the utility of bloodletting in certain cases, at the present time, is perhaps not sufficiently appreciated." See also G. Risse, "The Renaissance of Bloodletting: A Chapter in Modern Therapeutics" (1979) 34:1 J. of Med. Hist. Of Med. 3.

[127] F. H. Garrison, "The History of Bloodletting", *supra* note 93 at 500.

In 1980, Seigworth wrote: "It seems hard to believe that the many educated observers over the centuries were completely wrong in their assessment of clinical improvement following bloodletting."[128] Yet, evidence has proven the practice to be futile in most cases. Ironically, what was sincerely thought to be a benevolent measure for the good of patients was often harmful to them. The maxim *Primum non nocere* was unwittingly violated.[129] Yet, even as the practice was criticized for being often useless, it persisted. In their defense, those who used it, countered: "We were governed by the best light we had; we thought we were right, and so we are justified."[130] As one author puts it: "blind adherence to a therapeutic regimen can cause trouble, and so can the uncritical extension of a remedy from one disease to another, and so can the failure to critically evaluate any clinical improvement in relation to the remedy. (...) The devotees of bloodletting sinned in all three respects."[131] These were times when, in the name of the 'life is sacred' principle, the blind determination of doctors to save lives at all cost, often resulted in a premature death or sickness. However, these were also times when the patient had little say about the treatment to be administered to him; he was at the mercy of the physician.

Was the survival of such a useless therapy as that of bloodletting simply the result of ignorance, or was it also a question of control and paternalism? The answer may best be supplied by Garrison, who makes the following comment:

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[128] G. R. Seigworth, *supra* note 111 at 2027.

[129] "Above all [or first] do no harm." This maxim calls to mind the Hippocratic oath: "I will apply dietetic measure for the benefit of the sick according to my ability and judgment; I will keep them from harm and injustice." Translated by Ludwig Edelstein in *The Hippocratic Oath* at http://www.med.virginia.edu/hs-library/historical/antiqua/texto.htm.

[130] J. W. Estes, "George Washington and the Doctors: Treating America's First Superhero" (January-February 1985) Med. Herit. 43 - 57.

[131] L. S. King, *Medical Thinking - A Historical Preface* (Princeton: Princeton University Press, 1982) at 242 - 243.

"History teaches everywhere that permanent ignorance and superstition are the results of the oppression of mankind by fanatical overmen. In medicine, this is sometimes ludicrously true."[132]

2. The advent of blood transfusion

While bloodletting, in spite of criticism, continued as a standard medical procedure, other uses of blood were being considered. Among the miraculous properties assigned to blood, considered the 'bearer of life', was its power to rejuvenate. Blood baths were thought by some to help regain youth and vigor.[133] It was not a difficult leap to think of adding young blood in the veins of an aging person in an attempt to help them rejuvenate. Though some believed that blood transfusions were practiced as far back as the ancient Egyptians,[134] probably, the best known account of an early attempt is reported in 1492 when Pope Innocent VIII was purported to have been given the blood of three young men. We do not know exactly how the blood had been administered, but it is highly improbable that a transfusion really did occur on that occasion.[135] At any rate, it was to be to no avail, since the Pope died and, in the process, so did the three young men. The doctor, for his part, fled.[136] During this period of the Middle Ages,

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[132] F. H. Garrison, *An Introduction to the History of Medicine, supra* note 95.

[133] J. Héritier, *supra* note 103 at 11 where reference is made to the countess Erzebeth Bathory of Hungary, (16th century) who is said to have sacrificed six hundred young virgins to bathe in their blood.

[134] J. - J. Penmery, *infra* note 137 at 57.

[135] Though traditionally Pope Innocent VIII is reported to have received a blood transfusion in 1492, there is controversy as to the accuracy of this account. One author states: "On the evening of July 25, 1492, the good-natured and incompetent Pope Innocent VIII passed away. It is related that, during his last illness, the operation for transfusion of blood was unsuccessfully performed. This, however, is an error arising from the forgetfulness of two important facts: (1) that the idea of this operation could not occur to any one to whom the circulation of blood was unknown; (2) that the phenomenon of the circulation of the blood was not discovered until the seventeenth century. Raynaldus and Infessura say that a certain Jewish physician undertook to restore the Pope's health; for this purpose he drew all the blood out of three young boys, who immediately died. With their blood he prepared a draught which, in spite of the doctor's protestations, failed to improve the sick pontiff's condition. The saving virtue of drinking human blood was no new idea." As quoted by A.H. Mathew in "Correspondence" (1914) 62 JAMA 553-554 and 633. See also F.A. Lindeboom, "The story of a blood transfusion to a pope" (1954) 9 J. Hist. Med. 455.

[136] J.-P. Houdre, *Aperçu sur l'historique de la transfusion sanguine depuis les origines jusqu'au XIXème siècle* (Paris: L'imprimerie R. Foulon & Cie, 1968) (Thèse pour le doctorat en médecine) at 8.

reference is made to transfusing blood to humans, but there are no specific accounts of any transfusion having been actually carried out.[137]

It was not until 1628, when William Harvey's (English physician, 1578 – 1657) discovery of the circulation of blood gave a new direction to medicine that blood transfusion experimentation began in earnest. Until then, the Galenic physiology taught that there were two types of blood, the venous and the arterial, each having different pathways and functions. According to this concept, blood, believed to be produced by the liver,[138] was ebbing and flowing through arteries and veins and sloshing through imagined pores in the heart.[139] Harvey's research clearly disproved this. His experimental methods, which included measuring flow and volume, helped to conceptualize the body mechanically instead of mystically. He did, however, continue to believe that the body was moved by vital forces.

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[137] J. – J. Penmery, *Les origines de la transfusion sanguine* (Amsterdam: B.M. Israel N.V., 1974) at 2. One quote from the 15th century stated:

"Et pourquoi nos vieillards aussi qui sont destitués de toute aide ne suceront-ils le lait d'une jeune fille? Et le sang d'un jeune adolescent, qui le veuille bien, qui soit sain, gai, tempéré, qui ait le sang fort bon et par aventure trop en abondance? Qu'ils le sucent donc à la façon des airondes de la veine du bras gauche ouverte jusques à une ou deux onces."

Another quote from the 16th century stated :

"Que l'on prenne un robuste jeune homme, en bonne santé et plein de sang vigoureux; que l'on tienne auprès de lui un autre, épuisé de toutes forces, maigre, décharné et à la respiration haletante; que l'homme de l'art ait des tuyaux d'argent s'adaptant les uns aux autres; qu'il ouvre une artère du sujet robuste, y insère un tuyau et l'y maintienne; qu'il ouvre immédiatement une artère du malade et y insère l'autre tuyau; ensuite qu'il ajuste les deux tuyaux ensemble et qu'il laisse le sang du sujet en bonne santé s'élancer, chaud et vigoureux, dans le malade, apporter la source de vie et chasser toute la faiblesse."

[138] This belief can be traced back to the Sumerians for whom "the liver, as the source of blood, was regarded as the seat of the soul." F. H. Garrison, *An Introduction to the History of Medicine*, *supra* note 95 at 63.

[139] R. Porter, *supra* note 108 at 211 – 216. Harvey described the circulation of blood in the following manner (at 214):

"Since all things, both argument and ocular demonstration, show that the blood passes through the lungs and heart by the force of the ventricles, and is sent for distribution to all parts of the body, where it makes its way into the veins and porosities of the flesh, and then flows by the veins from the circumference on every side to the center, from the lesser to the greater veins, and is by them finally discharged into the vena cava and right auricle of the heart, and this in such a quantity or in such a flux and reflux thither by the arteries, hither by the veins, as cannot possibly be supplied by purposes of nutrition; it is absolutely necessary to conclude that the blood in the animal body is impelled in a circle, and is in a state of ceaseless motion."

Some of Harvey's colleagues, impressed by his research on circulation, carried on their own research with blood. In particular, Christopher Wren (English architect, 1632 – 1723) and Robert Boyle (English chemist, 1627 – 1691) reported on the effects of infusing different substances, such as opium, into the bloodstream of both animals and humans.[140] A French Benedictine monk, Dom Robert des Gabets, is credited with being the first to propose the idea of performing a blood transfusion on an animal or a human in 1658.[141] However, Richard Lower (English physician and anatomist, 1631 – 1691), carried out the first recorded transfusion on an animal in February 1665.[142] This successful experiment (it was considered a success because the dog who received the blood did not die, the donor dog however bled to death) moved researchers to envision endless possibilities for this new therapy. 'Would a fierce dog become tame by being stocked with the blood of a cowardly dog or would the recipient's fur color change to that of the donor?' asked Boyle.[143]

Johann Scultet - "Appendix ad armamentarium chirurgicum" - Amsterdam, 1671 - page 28
A patient who is bled while receiving the blood of a lamb. # 3 - the surgeon # 4 - the doctor

French physician and ardent defender of blood transfusion therapy, Jean-Baptiste Denis, (approx. 1635 – 1704) reasoned that since blood lost through bloodletting needed to be

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[140] J. – J. Penmery, *supra* note 137 at 5-6.

[141] J. – J. Penmery, *supra* note 137 at 13-14. Jean-Baptiste Denis claimed that Dom Robert des Gabets was the first to propose the idea of blood transfusion as a therapy. Richard Lower contested this, claiming that he was the first to conceive this idea. He had, in effect, carried out transfusions on animals as early as 1665.

[142] J. – J. Penmery, *supra* note 137 at 15-16. According to F. H. Garrison, *An Introduction to the History of Medicine*, *supra* note 95 at 273: "J.D. Major (1662), Caspar Scotus (1664), Elsholtz (*Clysmata nova*, 1665) made the first successful intravenous injections in man. Major published his *Chirurgia infusoria* at Kiel in 1667. Priority in transfusion has been claimed for Francesco Folli (1654), but the first authenticated records are those of R. Lower (1665-1667) and A. Coga (1667)."

[143] D. Starr, *supra* note 116 at page 9.

replaced, why not replace it with blood through a transfusion. For those opposed to phlebotomy, he argued that since it was believed that 'corrupted' blood was present for all sickness, a transfusion would be the ideal way to purify the blood.[144] In this fashion, he hoped to convince both proponents and opponents of bloodletting of the value of blood transfusion therapy. Instead of transfusing human blood, Denis favored animal blood since, according to him, it was not corrupted with human vices and moods.[145] Denis believed that, as with bloodletting, blood transfusion would heal most disorders: pleurisy, smallpox, leprosy, cancers, ulcers, epilepsy, madness, as well as most illnesses arising from what he believed to be 'corrupted' blood.[146]

On June 15, 1667, Denis practiced the first transfusion on a human. Using the blood of a sheep, he transfused approximately 270 grams of blood into the veins of a teenage boy with severe fever resulting from copious bloodletting. According to Denis' observations, the transfusion was a success since the young man recovered and eventually regained his health.[147] In England, Lower followed suit on November 23, 1667, by transfusing sheep's blood into a thirty-two year old man named Arthur Coga, who was suffering from insanity. Again, as was the case with Denis, this transfusion was considered a success since the patient survived. Others attempted transfusions in Germany, Holland and Italy, making exaggerated claims as to the results obtained.[148]

During the summer of 1667, Denis unsuccessfully transfused a Swedish nobleman. Later the same year, a 34-year-old man, Antoine Mauroy, who had been suffering from mental illness for several years, was brought to Denis. Mauroy had been bled many times as a treatment for attacks of insanity. Finally, Denis transfused him with five or

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[144] J. - J. Penmery, *supra* note 137 at page 32.

[145] *Ibid.* at 33.

[146] *Ibid.*

[147] *Ibid.* 34-35.

[148] D. Starr, *supra* note 116 at 12.

six ounces of blood from a calf, carrying out the procedure before a large crowd of spectators. Mauroy 'improved' slightly, so Denis decided to give him a second transfusion of an even larger amount of blood (approx. 1 lb.). He improved sufficiently for the transfusion to be considered a success. On February 10, 1668, Denis transfused a partially paralyzed woman who survived for a short time. Mauroy, in the meantime, was again having continued bouts of lunacy, and was brought back by his wife, Périne, to Denis for an additional blood transfusion. This third transfusion was attempted, but could not be carried out because of the patient's convulsions. Mauroy died, and a lawsuit followed. Périne, supported by doctors who strongly opposed blood transfusion, accused Denis of causing the death of her husband. Denis countered by filing a complaint against the doctors involved with Périne, and by accusing her of poisoning Mauroy. Denis was not convicted, but the negative publicity surrounding the lawsuit resulted in a ban, in 1670, by the Parliament of Paris on any further transfusions.[149] Now considered dangerous and inefficient, transfusion fell into disrepute for the next 150 years.

Despite the existence of earlier claims,[150] the first credible report of man to man blood transfusion came in 1818, from James Blundell (1790 - 1877).[151] After carrying out systematic and extensive experiments with animal transfusion, Blundell concluded,

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[149] J. - J. Penmery, *supra* note 137 at 63 - 71. Regarding the order of the Parliament of Paris, Penmery quotes *Dictionnaire des arrêtes*, de Brillon (1717): "Défense à tout Médecins et Chirurgiens d'exercer la transfusion du sang, à peine de punition corporelle. Arrêt du P. de Paris du 10 janvier 1670 *Journal des Adu.* Tom. 3. Liv. 10. Ch. 15. Les épreuves extraordinaires sont ordinairement dangereuses; et, pour une qui réussit, toutes les autres deviennent mortelles."

[150] For example, in 1667, Claude Tardy, a Parisian doctor, referring to material he taught 13 years earlier at the Faculté de Médecine de Paris, published two documents in which he described and illustrated man-to-man blood transfusions. However, authors in the next century dismissed his accounts as too simplistic which could only be the fruit of his imagination. See J. - J. Penmery, *supra* note 137 at 49-51.

[151] J. Blundell, "Experiments on the transfusion of blood by the syringe" (1818) IX Medico-Chir. Tr. 56; J. Blundell, "Some account of a case of obstinate vomiting in which an attempt was made to prolong life by the injection of blood into the veins" (1818) X Medico-Chir. Tr. 310. Regarding alleged transfusion to Pope Innocent III, see *supra* note 135.

"the blood of animals might (...) be harmful to human beings."[152] By the end of the nineteenth century, "the use of animal blood was abandoned for human transfusion therapy."[153] Favoring the use of human blood, Blundell transfused ten patients over a period of eleven years; five patients survived.[154] Blundell was acting on the belief that blood was "alive" and that past failures in transfusion practice were mainly due to technical details. He developed a variety of apparatus that he believed helped preserve the "life-giving properties" of blood. He was also probably the first to use the syringe in transfusion.[155] Some members of the Medical Society of London were opposed to these transfusions. They believed that a patient who survived a transfusion, would have recovered regardless. A study made in 1849 reviewed 48 reported cases of transfusions, of which 18 resulted in the death of the patient.[156] Several years later, in the mid-1800s, English surgeon Alfred Higginson is reported to have performed transfusions on seven patients, five of whom died.[157] In the United States, various attempts were made at transfusion therapy during this time. The earliest recorded successful attempt was in 1795 by a Dr. Philip Syng Physic (1768 – 1837) of Philadelphia. Transfusions were also reported in Annapolis in 1849, in New Orleans in 1858, and on four occasions by the Union Army during the Civil War.[158]

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[152] P. Hagen, *Blood: gift or merchandise: towards an international blood policy* (New York: A.R. Liss, 1982) at 12.

[153] Soloman, "A History of Transfusion Medicine" in III Amer. Assoc. Blood Banks, Administrative Manual (A. Ross ed. 1990) at 1.

[154] H. W. Jones & al., "The Influence of James Blundell on the Development of Blood Transfusion" (1928) 10 Ann. of Med. Hist. 242, 244 – 247.

[155] H. W. Jones & al., *supra* note 154 at 244 – 247. See also R. D. McClure & al., "Transfusion of Blood" (1917) 28:313 John. Hopkins. Hosp. Bull. 99. According to this article, Blundell's use of the syringe was limited to one, thus very little blood could be transfused through this method. Professor H. von Zeimssen, Director of the Medical Clinic in Munich, in 1892, developed a method using several syringes where he could transfuse an average of 300 cc. of blood.

[156] C. Routh, "Remarks statistical and general on transfusion of blood" (1849) 20 Med. Times 114.

[157] A. Higginson, "Report of Seven Cases of Transfusion of Blood, with a Description of the Instrument Invented by the Author" (1857) Liverpool Med. & Chir. J. 1 102 – 110 quoted in D. Starr, *supra* note 116 at 38.

[158] P. J. Schmidt, "Transfusion in America in the Eighteenth and Nineteenth Centuries" 279:24 New Eng. J. of Med. 1319 – 1320; I. M. Rutkow, *American Surgery, An Illustrated History* (New York: Lippincott-Raven, 1998) at 146 – 147.

As with the earlier efforts, these transfusions were generally unsuccessful. While transfusions were becoming popular across Europe, one Polish doctor's statistical research in 1873 showed that 56 percent of transfusions ended in death.[159] Since it often resulted in suffering and death, transfusion therapy again fell into disrepute. More research was necessary to understand the nature of blood which we now know to be a complex heterogeneous tissue composed of several elements such as lymphocytes, monocytes, platelets, eosinophils, basophils, and plasma.[160]

Karl Landsteiner (1868 - 1943), considered the "father of blood groups,"[161] led the way in this research with the discovery of blood groups in 1901.[162] Alexis Carrel (1873 – 1944) developed a direct end-to-end suture of blood vessels known as vascular anastomosis.[163] To show the importance of cross matching, American physician Reuben Ottenberg, relying on Landsteiner's research, carried on a 5-year study at Mount Sinai Hospital on pretransfusion testing.[164] However, even after these discoveries, blood transfusion was still not widely used by doctors, that is, until the advent of the First World War.

"War is good for medicine" wrote one author.[165] This was to prove true for blood transfusion. During the course of the major wars of the twentieth century, with blood

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[159] D. Starr, *supra* note 116 at 38.

[160] According to one author, R. M. Titmuss, *The Gift Relationship* (London: George Alloen & Unwin, 1970) at 247, one drop of blood is said to contain 250,000 red corpuscles, 400,000 white corpuscles and 15,000,000 platelets.

[161] A. Fleming, *Medical Milestones* (Baltimore: The Williams & Wilkins Co., 1952) at 188.

[162] H. A. Oberman, "The history of Transfusion Medicine" in *Clinical Practice of Transfusion Medicine*, 3d. ed. (New York: Churchill Livingstone, 1995) at 24. See also E. C. Rossi, T. L. Simon & G. S. Moss, *Principles of Transfusion Medicine* (Baltimore: Willaims & Wilkins, 1991) at 6. Though the full impact of his discovery was not initially understood, his work is described as "a burst of light in a darkened room. He gave us our first glimpse of immunohematology and transplantation biology and provided the tools for important discoveries in genetics, anthropology, and forensic medicine."

[163] E. C. Rossi, T. L. Simon & G. S. Moss, *supra* note 162 at 6.

[164] R. Ottenberg & al., "Accidents in Transfusion" (1913) 61 JAMA 2138 - 2140.

[165] R. Porter, *supra* note 108 at 652.

flowing in quantities yet unimagined, transfusion therapy developed into the standard medical practice it is today. It would replace bloodletting as the "queen of remedies;" and many would eventually come to believe that "modern medicine could not survive without it."[166] Doctors on both sides of the war effort worked frantically to save the lives of those injured by the enemy, transfusing more and more blood as the conflicts became larger and deadlier. This development of blood transfusion therapy throughout the wars of this century is well summarized by P. Ellis as follows:

World War I:	-The ABO blood group had been discovered (1900) and was now used as a basis for selecting donors. -The "universal donor" concept had been formulated by Ottenberg (1911). -Anticoagulant was first used on a widespread basis. -Pretransfusion testing was not routinely performed. -Donor criteria were developed. -Widespread use of plasma began.
Spanish Civil War:	-Blood was drawn from civilians for the benefit of war casualties. -Criteria for transfusion were developed. -Hemorrhage was treated with red blood cells. -Shock was treated with plasma.
World War II:	-Blood was drawn in a closed system. -Much information was gained on the treatment of shock. -Blood was airlifted from the United States for use overseas instead of being drawn locally. -Hemolysin testing was performed on type O blood. Low titered Os were used as universal donors. -It was found that blood could be transported without being hemolyzed. -The shelf life of blood was extended to as long as seven weeks without reported ill effects. -Autotransfusion was used when blood was in "short-supply." -Packed red blood cells were widely used. -Filters were used for plasma infusions. -Fresh frozen plasma (FFP) received some limited use. It was, however, difficult to store at the front lines. -Transfusion-related hepatitis was realized.
Korean War:	-In organized collection, donors were typed at the collection site and only type Os were drawn. -A closed system (bottle) with acid citrate dextrose (ACD) was used for collection.

[166] A. H. B. Masson, "History of the Blood Transfusion Service in Edinburgh" (Edinburgh: Alastair H. B. Masson, 1993) at 92.

	-A central reporting program for reporting posttransfusion hepatitis was organized. -Methods for sterilizing plasma were attempted. -Storage and transportation studies were conducted. Room temperature storage was found to cause irreversible damage.
Vietnam War:	-A high risk of hepatitis was found in Vietnam; hence, residents and soldiers there were not good donors. -There was also a high risk of malaria and syphilis in Vietnam. -Blood was drawn in Japan and shipped to Vietnam. -Blood was kept for 31 days. -Work was conducted on ACD-adenine.[167]

Staggering quantities of donated blood were sent to the battlefield during some of these wars.[168] Researchers frantically looked for ways to meet the demands imposed by modern warfare on health facilities. New methods to harvest and store blood were developed. Even cadavers became a potential source of blood.[169] In Canada, the Red Cross established its first blood donor clinic in January 1940. Later the same year, Charles H. Best (physiologist, 1899 – 1978), with financing from the Canadian Ministry of Defense, successfully developed a method of reducing plasma serum to powder. Connaught Laboratories produced the 'miracle' powder and the Red Cross entered the business of distributing it to the front.[170] Connaught would stay in the blood business until June 1987, when its credibility was seriously tarnished by the blood scandal of the 1980s. In the United States, Edwin Joseph Cohn (biochemist, 1892 – 1953), devised

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[167] This table appears in an article by P. J. Ellis, "History of Transfusion Therapy" in *Transfusion Therapy, Principles and Procedures* (Rockville: Aspen Systems Corporation, 1981) at 5. For a first-hand account of a surgeon's experience with blood transfusion during both World Wars see: N. M. Guiou, *Transfusion, A Canadian Surgeon's Story in War and in Peace* (Yarmouth: Stoneycroft Publishing, 1985).

[168] Approximately 2.5 millions donations were made during the course of World War II according to A. Picard, *The Gift of Death*, *infra* note 170 at 26. Another author, referring to reports from the American Red Cross, mentions that by the end of 1943, the military had received "more than two and half million packages of dried plasma and nearly 125,000 ampoules of albumin." However, these would prove insufficient. See D. Starr, *supra* note 116 at 121.

[169] J. McCullough, *Transfusion Medicine* (New York: McGraw-Hill, 1998) at 5.

[170] A. Picard, *The Gift of Death* (Toronto: HarperCollins, 1995) at 20 – 22. Colonel Albert E. Gooderham, himself involved in Red Cross activities, established Connaught Laboratories. Together, the Red Cross and Connaught Laboratories worked closely to gather blood, process it, and send it to the front. During World War II, Connaught Laboratories produced a total of 436,000 bottles of dried plasma. During the last twelve months of the war, Canadians gave 890,000 blood donations, more than a third of all donations made during the war.

methods to produce human plasma fractions such as serum albumin, gamma globulin, fibrinogen and fibrin, which were first used for treatment of the armed forces and later in civilian medicine.[171] It is of interest to note, however, that there are no records of "randomized controlled trial(s)" establishing scientific proof of the benefits of blood transfusion.[172] Patients were surviving, so the therapy was deemed to be beneficial.

Blood transfusion now became standard procedure. Bloodletting took on new meaning – no longer was it practiced for therapeutic reasons as it had been for millenniums - the donor was now being asked to voluntarily give up part of his precious blood for an unknown patient.[173] Donating blood to the Red Cross was seen as a patriotic duty.[174] The blood industry became a prosperous business. In North America, for example, blood was being separated, processed, freeze-dried, bagged and shipped to hospitals at home and around the world. Blood banks were established and the public was reminded of the mystic power of blood; they were told that giving blood was giving 'the gift of life'. In the United States, the practice of collecting blood took on gigantic proportions: in 1992 alone, a staggering 13,588,000 units were collected.[175] With the development of plasmapheresis, the harvest of raw plasma became a thriving business, both for the donor, from whom the plasma was bought, and for the collection agency that would resell at a handsome profit. Since only plasma was collected, with the red cells

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[171] "Cohn, Edwin Joseph" *Encyclopaedia Britannica Online* http://members.eb.com/bol/topic?eu=25072&sctn=1&pm=1 [Accessed April 26, 1999].

[172] R. K. Spence, "Beneficial Aspects of Surgical Transfusion" in *Blood and Blood Products: Safety and Risk* (Washington: National Academy Press, 1996) at 83.

[173] P. L. Mollison, C. P. Engelfriet & M. Contreras, *Blood Transfusion in Clinical Medicine*, 9th ed. (Oxford: Blackwell Scientific Publications, 1993) at 1. Surprisingly, in this textbook the authors are of the view that bloodletting was harmless, even citing Benjamin Rush's work as an example. It goes on to state that bloodletting "has come back into fashion although in the more sophisticated form of plasma or red cell exchange."

[174] During the First World War, "the American Red Cross distributed a poster of the Stars and Stripes alongside the Red Cross flag with the slogan 'Loyalty to one means loyalty to both.'." This loyalty extended to donating blood since during the Second World War, the Red Cross was instrumental in collecting blood in support of the war effort. See A. Picard, *supra* note 170 at 20.

[175] J. McCullough, *supra* note 169 at 19.

being re-infused in the donor, it was possible to buy from the same individual as often as twice a week or 104 times a year. Those with rare blood types or immunity factors could sell for a higher price. In one case, it is reported that a woman earned more than $ 80,000 a year selling her blood.[176] Prisoners as well as the unemployed, indigent and substance-addicted saw the opportunity for extra income.

Thus, during the last quarter century, blood banking and transfusion medicine developed into a complex, sophisticated, medical-technical discipline.[177] However, the procedure became so commonplace that physicians gave little thought to the complexity of blood and its uniqueness to each individual.[178] In fact, even today, "clinicians administer blood without giving much thought to the indications for its use, the proper dose required, and the potential adverse consequences."[179] With approximately 14 million units of blood being transfused in just one year, in the United States alone, problems were sure to develop.[180]

The AIDS crisis jolted both health professionals and the public into awareness of the potential dangers associated with blood. However, that the "risks of transfusion are

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[176] *U.S. v Garber*, 589 F. 2d 843, 845 (5th Cir. 1979).

[177] For a detailed explanation of the preparation and administration of blood products see: L. Calhoune "Blood Product Preparation and Administration" in *Clinical Practice of Transfusion Medicine*, 3d ed. (New York: Churchill Livingstone, 1995) at 305 – 333.

[178] W. V. Miller, *supra* note 167 at 295. According to this author: "Blood transfusion has become so commonplace that the unique nature of this form of therapy is often overlooked. Transfusionists must remember that the transfusion process is a special kind of transplant, with the transfer of living tissue from one person to another. Furthermore, blood is a highly complex, heterogeneous tissue, much more so than most people realize. Besides erythrocytes (which have over 350 blood groups distinguishing one individual from another), there are lymphocytes, monocytes, platelets, eosinophils, basophils, and plasma with essential nutrients, wastes, immunoglobulins, transport proteins, and a potpourri of clotting proteins. Not only is blood unique to each individual, but the transfusion process (collection, long-term storage and reinfusion) carries with it a variety of special problems and risks (...)."

[179] Kevy & Gorlin, "Red Cell Transfusion" in *Hematology of Infancy and Childhood*, 5th ed. (Philadelphia: W.B. Saunders, 1998) at 1786.

[180] E. C. Rossi, T. L. Simon & G. S. Moss, *supra* note 162 at 9.

legion" was well known even before the crisis.[181] Warnings about the dangers of transfusion-transmitted hepatitis were being sounded as early as 1943.[182] That year, thousands of bottles of dried plasma from Canada had to be destroyed when soldiers contracted a bacterial infection in a tainted-blood problem that received little publicity.[183] In 1948, Dr. Capps pointed to research which indicated that as many as 20% of patients were being infected by hepatitis from contaminated blood.[184] The problem, he pointed out, was compounded in the case of pooled blood.[185] In 1961, the "the annual mortality from only 3 complications of blood transfusion (hemolytic reactions, overload and serum hepatitis) is computed to be 16,500" in U.S.A. alone.[186] A later study found the occurrence of Non-A Non-B Hepatitis due to contaminated blood to be as high as 33%.[187] In 1965, Dr. Louis Diamond, deploring the lack of proper training on transfusion practices, wrote, "blood is often used wastefully, improperly, and dangerously."[188] Investigations revealed that possibly 'only 1% of transfusions were given on vital indication.'[189] Authors warned about 'over-enthusiastic transfusionists'

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[181] W. V. Miller, *supra* note 167 at 295. See also P. L. Mollison, C. P. Engelfriet & M. Contreras, *supra* note 173 at xvii. The preface to this edition points out that in the first edition of the volume, 40 years earlier, only four pages were devoted to the subject of ill effects of transfusion. In the 9th edition, however, the longest chapter is devoted to infectious agents transmitted by transfusion.

[182] P. B. Beeson, "Jaundice occurring one to four months after transfusion of blood or plasma" (1943) 121:17 JAMA 1332.

[183] A. Picard, *supra* note 170 at 25.

[184] "Dangers of Blood Transfusion", *supra* note 85. In 1966, Creutzfeldt found the incident to be as high as 28.6% in patients with more than 10 transfusions. See U.F. Gruber, *Blood Replacement* (Heidelberg: Springer-Verlag Berlin, 1969) at 24.

[185] "Dangers of Blood Transfusion" *Ibid.*

[186] B. Wilson, "Complications of Blood Transfusions" in *Complications in Surgery and Their Management* (Philadelphia: Saunders, 1961) at 80.

[187] C. E. Stevens, "The Epidemiology of Non-A Non-B Hepatitis in the United States" in *Blood Transfusion, Blood Components and Hepatitis*, Second USA-USSR Joint Symposium, Bethesda, Maryland, 24-26 September 1979 (U.S. Department of Health and Human Services, 1980) 43 at 44: "Incidence rates ranged between 7 and 16 percent among recipients of blood from volunteer donors and up to 33 percent among recipients of blood from paid donors."

[188] L. K. Diamond, "History of blood banking in the United States" (1965) 193:1 JAMA 40 at 42.

[189] U.F. Gruber, *supra* note 184 at 19: This manual on blood transfusion stated that from retrospective investigations it was assumed that "35% to 50% of all transfusions are unnecessary and that only 1% are given on vital indication."

who were administering needless transfusions; still others compared this reckless practice to playing "Russian roulette with bottles of blood" which resulted in thousands dying needlessly.[190]

Eventually, due to ensuing lawsuits, it became necessary for the medical community in the U.S.A. to convince state legislatures to adopt blood "shield" laws which defined blood and blood products as a service and not a product, thereby carrying no implied warranty. This, they hoped, would protect them from liability in cases of tainted blood products. This categorization of blood has been followed by other countries, thereby relieving hospitals, blood banks, and the Red Cross, from liability in cases of contaminated blood, except where negligence is proven.[191]

Unfortunately, evidence of the dangers associated with blood transfusion "was largely ignored by the medical profession as a whole."[192] This is surprising considering

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In 1957, Dr. Bruce Chown guessed that not 1% of transfusions been had been life-saving. See B. Chown, "Transfusions are Dangerous" (1957) 77 Can. Med. Assc. J. 1037.

[190] R. A. Zeitlin, "Warning on Over-Free use of Blood Transfusions" (25 April 1956) Man. Guard., author states that in England about 200 died as a result of transfusions. He criticizes what he calls 'cosmetic' transfusions "which are performed more for the benefit of the relatives and the peace of mind of the doctor than for the wellbeing of the patient"; W. H. Crosby, "Misuse of Blood Transfusions" (December 1958) Blood 1198 at 1200. About the "thoughtless prescription of blood transfusion," the author writes "While the odds are in the physician's favor that nothing will go wrong, the patient takes the risk."; T. Greenwalt (1956) 19:3 Postgrad. Med. Greenwalt estimated that blood transfusion contributed to at least 1,700 deaths annually in the United States with the morbidity rate being many times higher; In 1960, the chief legal adviser of the American Medical Association, B. D. Hirsh, was of the view that approximately 3,000 persons died annually in the USA from blood transfusions. See U.F. Gruber, *Blood Replacement, supra* note 184 at 20-21. In L. J. Unger, "Medical-Legal Aspects of Blood Transfusion" (1960) Jan. *New York State J. of Med.* 237: The author warns "Blood is dynamite! It can do a great deal of good or a great deal of harm. The mortality from blood transfusion equals that from either anesthesia or appendectomy. There is said to be approximately one death in 1,000 to 3,000 or possibly 5,000 transfusions. In the London area there has been reported one death for every 13,000 bottles of blood transfused." He goes on to add: "When one considers the vast number of patients transfused, the wonder is not that catastrophes occur but that they do not occur more often."

[191] For example, in the Canadian case of *Pittman* v. *Bain* [1994] 19 C.C.L.T. (2d) 1 (Ont. Ct. Gen.Div.) 1 at 99, the trial judge was of the view that "blood is not a manufactured product in the nature of other equipment and supplies, it is not, in my view, reasonable to imply a term that the Hospital, absent negligence on its part, warranted that it would be free of disease."

[192] C. H. Baron, "Blood, Sin, and Death: Jehovah's Witnesses and the American Patients' Rights Movement" (1993) 30 *Revue Trimestrielle du Ressort de la Cour d'Appel de Versailles* 105 at 115.

the fact that there exists "no randomized controlled trial" from which proof of benefit of blood transfusion could be found.[193] According to one physician "if one approached regulatory authorities today with a new product with the safety profile of human red cells, it probably would not be approved for clinical use."[194] Certain practices, adopted and maintained for decades by the medical community, such as the "transfusion trigger," have been described as being "cloaked in traditions, shrouded in obscurity, and unsubstantiated by clinical or experimental evidence."[195] In fact, even though transfusion medicine has become a daily part of the physicians' practice, "(t)here is a surprising, even appalling, lack of adequate studies on the value of and indications for the blood products in question."[196] As the procedure developed over the years, it became evident that there were "wide variations in transfusion practices," these practices often being "based on habit rather than scientific data."[197] Even today, after "more than 5 decades of established practice, doctors still do not agree about precisely when and why they should transfuse red cells."[198] The uncertainty seems to exist because, as one survey found,

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[193] R. K. Spence, *supra* note 172 at 83.

[194] A. Picard, "Tragedy prompts bloodless solutions" *The Globe and Mail* (18 May 1996) A1. Comments by Robert Winslow, professor of Medicine at the University of California at San Diego during presentation "Is There A Potential Need for Blood Substitutes in Civilian and Noncivilian Situations?" (Address to the IV International Symposium on Blood Substitutes, 20 August 1991).

[195] H. L. Zauder, "How Did We Get a "Magic Number" for Preoperative Hematocrit/Hemoglobin Level?" (Address to the National institutes of Health Consensus Development Conference, June 27, 1988.) Reporting in the *Lancet* on a Consensus Conference of the Royal College of Physicians at Edinburgh in May 1994, the author stated: "Despite more than 5 decades of established practice, doctors still do not agree about precisely when and why they should transfuse red cells and how efficacy can be assessed. (...) One message was clear, the traditional transfusion trigger – i.e., the critical haemoglobin value justifying transfusion intervention – needs to be considerably revised. (...) And despite the diversity of views, there was little dissension from the idea that a therapy that costs so much (...) deserved to be put on an altogether more substantial scientific basis." J. A. Napier, "Towards More Rational Use of Red Cells" (1994) 343 The Lancet 1280.

[196] Ellison & Silberstein, "A Commentary on Three Consensus Development Conferences on Transfusion Medicine" (1990) 8 Anesthesiology Clinics No. Am. 609 at 624. According to the United States Congress' Office of Technology Assessment Task Force, "data by which to evaluate the overall appropriate use of blood products do not exist, in many cases because of lack of scientific precision concerning when a component or derivative should be administered." U.S Congress, Office of Technology Assessment Task Force, *Blood Technologies, Services, and Issues* (1988) at 121.

[197] Stehling & al., "A Survey of Transfusion Practices Among Anesthesiologists" (1987) 52 Vos Sanguinis 61 – 62.

[198] J. A. Napier, *supra* note 195. The author also states that "For most areas of surgical practice the lack of incontrovertible proof of benefit from red-cell transfusion, despite subjective impressions, might seem disquieting. After all, what widely available drug could be used under such imprecise circumstances?"

"(d)efficiencies in knowledge of transfusion indications were widespread." This lack of scientific research and reliance on "anecdotal information"[199] is passed on from chief resident to assistant resident and on to interns and medical students. As a result, it has been observed that "many physicians enter their definitive careers with a shallow and narrow understanding of the appropriate management of one of their most important therapeutic tools."[200]

However, since retrospective data and anecdotal information indicated that many more patients were surviving the procedure than were dying from it (no doubt also because of "its reputation of mythical proportions"),[201] blood transfusion therapy remained 'the queen of remedies' with medical practitioners until, as we shall see, the blood scandals of the 1980s splattered across the news headlines.

3. Tainted blood scandal

Of all the events surrounding modern blood transfusion therapy, the singular most devastating one, which sounded the wakeup call to the potential dangers of transfused blood was, without a doubt, the tainted blood scandal of the 1980s. For many, the 'gift of life' became the "gift of death."[202] Populations the world over were jolted into the realization that those who had received blood transfusions during the 1980s had been "unwitting participants in the lottery of death."[203] The stupor heightened

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[199] A. Thomson & al., "Blood Component Treatment: A Retrospective Audit in Five Major London Hospitals" (1991) 44 J. Clinical Pathology 734 - 736.

[200] Swisher & Petz, "Overview and General Principles of Transfusion Medicine" in *Clinical Practice of Transfusion Medicine*, 2nd ed. (New York: Churchill Livingston, 1996) 1 at 4.

[201] A. Picard, "Tragedy prompts bloodless solutions," *supra* note 194 A8.

[202] For a detailed account of the events surrounding the Canadian tainted blood scandal see: A. Picard, *The Gift of Death*, *supra* note 170; J. McDuff, "*Le sang qui tue*" (Montreal: Libre Expression, 1995).

[203] A. Picard, *supra* note 170 at 1.

when notification was sent out to millions of former blood transfusion recipients, advising them that they were at risk of having contracted AIDS and Hepatitis C.

Serious warnings of the possibility of AIDS being transmitted through blood transfusions started to surface in the U.S. in 1982.[204] In 1983, high-risk donor groups were identified and attempts were made to stop collecting blood from them.[205] To illustrate the danger of contamination from these high-risk groups, there is the example of Christopher Whitfield, of Texas, a transient gay man who died of AIDS in 1983. He had sold his blood 48 times during 1982 and 1983. During that time he had no visible symptoms of AIDS and he lied when asked if he belonged to a high-risk group. His plasma had infected 65,000 doses of blood-clotting agents that were distributed to 14 countries worldwide, including Canada, France, Jordan and Israel.[206] In 1984, an American study reported on 28 AIDS cases where the sole risk factor was blood transfusion.[207] Recognizing the danger of contamination from blood harvested from commercial donors, the Council of Ministers of the Council of Europe recommended the elimination of such imports altogether.[208] Such warnings were largely ignored by countries like England, Germany, France, Canada and Japan, who continued to rely heavily on what would later prove to be contaminated imported blood products, mostly from the U.S.[209] During the World Hemophilia Federation's annual meeting in June 1983, a Dutch representative, Cees Smit, whose research had helped to convince Dutch authorities to limit the importation of blood products, failed to convince the Federation

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[204] Institute of Medicine, *HIV and the Blood Supply: An Analysis of Critical Decisionmaking* (Washington: National Academy Press, 1995) at III-9.

[205] A. Picard, *supra* note 170 at 72 - 73.

[206] ABC NEWS, 20/20 aired on March 19, 1987, hosts Hugh Downs & Barbara Walters, producer Joseph R. Lovett and correspondent Tom Jarriel; D. Starr, *supra* note 116 at 293.

[207] J. Curran & al., "Acquired Immunodeficiency Syndrome (AIDS) Associated With Transfusions" (12 January 1984) New Eng. J. of Med.

[208] D. Starr, *supra* note 116 at 280.

[209] *Ibid.* at278 - 292.

to warn hemophiliacs of the impending danger.[210] As a result, hemophiliacs would become the one particular group to suffer the most from tainted blood, with thousands dying. Yet, in spite of the growing number of warnings being sounded, the public in the United States and Canada was being reassured that the risk of contracting AIDS through blood products was only one in a million.[211]

One American doctor, D. R. Francis, candidly described the lack of response to these early warnings: "It was something like having a bend in the train track and sitting there and you hear the whistles and the signals are blinking and the tracks are beginning to shake, and they're saying, 'There's no train coming.'"[212]

The scandal then took on a more sinister, mercenary side. After it was known that stocks of blood products were contaminated, officials did not remove them from circulation in order to avoid heavy financial losses.[213] In Canada, even after it was confirmed that untreated blood concentrates, such as Factor VIII, were potentially lethal, a concentrated effort was still made to distribute the remaining stocks even though safer, treated concentrates were now available, in inventory.[214] And, even when treated concentrates became available, they were initially distributed to selected groups who

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[210] *Ibid.* at 282.

[211] In A. Picard, *supra* note 170 at 127, the footnote states: "The one-in-a-million risk, often cited over the years, seems to have come from a July 19, 1983 press conference where Dr. Roslyn Herst said, in response to a question, that the risk to transfusion recipients was one in a million. That figure was based on U.S. statistics that showed fourteen cases of transfusions AIDS over a three-year period during which there had been ten million transfusions." See also p. 64 which explains that in 1984, Health and Welfare in Canada distributed a pamphlet to the public stating that the risk was only two in a million. During that time, NACAIDS published a document to be inserted in *The Medical Post*, stating that there was "no conclusive proof" that AIDS could be transmitted through blood.

[212] Quoted in D. Starr, *supra* note 116 at 273 from Video deposition of Dr. Donald R. Francis, July 3, 1992, District Court, Denver, Col., *Chris and Susie Quintana* v. *United Blood Services*, case no. 86CV11750 at 45.

[213] A. Picard, *supra* note 170 at 120; "Editorial." (1984) 2 The Lancet 1433 at 1434: "It would be indefensible to allow prescription and home use of material known to at risk from HTLV III when apparently safer preparations are available."

[214] A. Picard, *The Gift of Death*, *supra* note 170 at 119: "By May 1 (1985) the Red Cross had 7.8 millions units of heat-treated products in inventory, but during that month it delivered only 343,795 of those units to hemophilia treatment centers. Despite a healthy inventory and assurances that two large orders would arrive early in June, the priority lists were rigidly obeyed and the stock was held back so the unheated products could be used."

found themselves to be on, what would later came to be known to many hemophiliacs as a "Schindler's List."[215] In late 1984, the Canadian Red Cross had been warned that a particular lot of concentrate contained plasma from three donors diagnosed with AIDS, but it made no attempts whatsoever to locate and destroy the lot.[216] Untreated blood products considered unsafe in one city were returned to the Red Cross warehouse in Ottawa, only to be redistributed to another area.[217] By using up their untreated stocks, the Canadian health system initially saved less than two million dollars.[218] As a result, more than 1,200 persons were infected with HIV and the Canadian government eventually had to pay out millions in compensation.[219]

In France, health officials were brought to trial and sentenced to prison terms and fines for having "knowingly distributed blood extracts contaminated with HIV."[220] One of these officials, former head of the National Blood Transfusion Centre, Dr. Michel Garretta, was a major shareholder in one of the main suppliers of concentrate and had funneled more than one million dollars to companies he controlled.[221] Even after it was well known that prisoners were a high-risk group, blood collected from French prisons continued to be used until late 1985, a practice which had been abandoned by several

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[215] *Ibid.* at 118.

[216] *Ibid.* at 117.

[217] *Ibid.* at 119.

[218] *Ibid.* at 198.

[219] A. Picard, "Blood victims may see cash by year's end," *The Globe and Mail* (29 November 1993) A5.

[220] "French tainted blood affair continues beyond court sentence" (1992) 305 Brit. Med. J. 1047; A. Picard, "France makes an example of misdeeds" *The Globe and Mail* (7 September 1993) A4: Dr. Michel Garetta, former head of the National Blood Transfusion Centre, was condemned to four years in prison and a $100,000 fine. He was also ordered to pay about $ 3 million dollars in compensation to 70 victims. His former assistant, Dr. Jean-Pierre Alain, was also sentenced to four years in prison (two years were suspended). Dr. Jacques Roux, former Director General of Health, received a suspended sentence of four years.

[221] A. Picard, *The Gift of Death, supra* note 170 at 196, 199. Garretta's lawyer complained that his client was really a scapegoat in this scandal and compared him to the famous Jean-Baptiste Denis who, in 1668, was charged with murder in the death of his patient Antoine Mauroy following a blood transfusion.

countries in the 1970s and early 1980s, because of the hepatitis threat.[222] In January 1985, even though they knew that blood supplies might be contaminated, French government officials delayed approving an American screening test for detecting HIV, to allow time for a domestic company to develop its own test. During the six-month delay, patients were being infected.[223] Adding to the scandal, if was found that in 1985, after the French government had banned the use of untreated blood concentrates, 3.2 million of these potentially lethal units were nevertheless exported to West Germany, Italy, Spain, Portugal, Greece, Argentina, Iraq, Saudi Arabia, Egypt, Libya and Tunisia.[224] Through subsequent investigation, it also came to light that after banning the importation of U.S. blood concentrate, France was secretly importing plasma from third world 'vampire shops',a dangerous practice followed by many other countries.[225] By using up their stock of unheated blood concentrate and delaying testing, the French blood system saved a meager four million dollars.[226] However, the results in human tragedy were staggering: "1,500 hemophiliacs were infected with HIV and at least 256 have since died of AIDS" (as of August 15, 1992).[227]

Where countries responded quickly to the crisis, the consequences were less devastating. In Belgium, for example, only 7 per cent of hemophiliacs were infected and in Sweden 16 per cent. Elsewhere, however, the outcome was tragic. In Spain, 90 per cent of hemophiliacs were infected,[228] in Denmark 64 per cent and in England 32 per

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[222] J.-Y. Nau & F. Nouchi, "Fatal attraction in prisoners' blood" (26 April 1992) Guard. Week. 15; D. Starr, *supra* note 116 at 315.

[223] T. Patel, "France faces fresh HIV blood scandal" (19 February 1994) New Sci. 7.

[224] "New Scandal erupts in France over export of blood products" (17 November 1992) The Med. Post 60.

[225] D. Starr, *supra* note 116 at 205.

[226] A. Picard, *A Gift of Death*, *supra* note 170 at 198.

[227] "Prison sentences for French blood transfusion officials" (31 October 1992) New Sci. 8.

[228] A. Picard, *The Gift of Death*, *supra* note 170 at 204.

cent.[229] Worldwide, over forty thousand hemophiliacs have tested positive for HIV.[230] For these victims, this was a real "Holocaust." [231]

Moreover, not only hemophiliacs were infected. All recipients of blood products were exposed to the lethal consequences of tainted blood. In the U.S., for example, while more than eight thousand hemophiliacs were infected, more than 12,000 other blood recipients were also infected from blood products.[232] Eventually, twenty-two countries, including most of Europe, Canada and Thailand (but not the U.S.) established a compensation fund. In the U.S., hemophiliacs were able to work out a compensation settlement with the industry worth $ 640 million.

Money and figures do not, however, portray accurately the toll of human suffering caused by this scandal. To capture the depth of the suffering, one can try to imagine explaining to an 11-year-old that he has a fatal disease caused by a *teaspoon* of unnecessary blood he was administered as a baby.[233] Or, portray the scene of a lawyer explaining to a widow that her husband had been infected with HIV five years earlier, but the treating physician had decided, in a blush of paternalism, that his patient "was too emotionally fragile to be told of his transfusion of bad blood." The wife had been infected by the husband.[234] Try to imagine the pain of a mother and father, having to explain to their 11-year-old twins that they are going to die. Unfortunately, the children had received some of the unheated blood products that were being liquidated, while

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[229] D. Starr, *supra* note 116 at 320.

[230] *Ibid.* at 346.

[231] *Ibid.* at 343.

[232] *Ibid* at 337.

[233] D.-L. Carlson, "Clients living proof of Canada's tainted-blood scandal" (13-19 June 1994) Law Times 4.

[234] This is one of the few cases where a victim of AIDS won a lawsuit against a physician. The judge, however, did not condemn the hospital, the doctor, and the Red Cross for using tainted blood. They were only held liable for failure to give timely notice to the patient and his family. See *Pittman Estate v. Bain*, *supra* note 191

treated products sat on the shelves.[235] Imagine a wife coping with the emotional turmoil as she marks the months "with CD4 counts [a marker for the progression of AIDS]" watching and waiting for her husband to die.[236] How does one react to the ostracism of being an HIV-positive child who is expelled from school and sees one's family driven from home and neighborhood.[237] For these individuals, blood held no mystic healing power; it was a merciless killer.

As the blood scandal unfolded, it became evident that HIV was not the only virus to infect patients receiving blood products, though it was the most deadly.[238] It is now known that additional hundreds of thousands of blood product recipients worldwide were contaminated with hepatitis C.[239] In Canada, it was reported that as many as 60,000 had been infected.[240] Countries are still trying to tally those victims and the amount of compensation to award them. In 1999, the Canadian government offered to set up a fund for persons infected with hepatitis C through blood transfusions received between 1986 and 1990, worth over $ 1,118,000,000.[241]

There is no doubt that transfusion therapy and unsafe medical practices during the blood scandals of the 1980s were indeed a "lottery of death" for the unwilling

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[235] A. Picard, *The Gift of Death*, *supra* note 170 at 121.

[236] *Ibid.* at 180 - 181.

[237] D. Starr, *supra* note 116 at 316.

[238] Is the scandal really over? A report in 1993 accused France of pooling samples of blood to use fewer test kits. The practice is dangerous since it dilutes the HIV antibodies and can produce a false negative result. See T. Patel, "French 'cut corner' over HIV testing" (13 March 1993) New Sci. 11. Another report told about a German licensed company that failed to test every blood donation separately, as required by law. Plasma which came from this company infected at least three patients. See D. MacKenzie, "How safe is Europe's Blood?" (15 January 1994) New Sci. 12.

[239] D. Starr, *supra* note 116 at 346.

[240] A. Picard, "Krever report fallout looks devastating" *The Globe and Mail* (28 November 1997) A1: Results from the Krever Inquiry indicated that "at least 60,000 transfusions recipients contracted hepatitis C, a potentially debilitating liver disease."

[241] *The Gazette* (28 June 1999) A 14. Notice of proposed settlement was approved by Mr. Justice Winkler of the Superior Court of Justice for Ontario, Mr. Justice K. Smith of the Supreme Court of British Columbia and Madame Justice Morneau of the Superior Court of Quebec.

participants. This dreadful tale which received extensive media coverage helped, to some degree, to demystify blood transfusion therapy, 'the queen of remedies.' It was now clear to the public that blood could be a dangerous product. Also, paternalism, or what was left of it, took a crippling blow. From now on, patients would be asking questions, doctors would be obligated to answer and inform patients of the risks associated with blood products, and the media would be watching. The main players in this blood scandal had been doctors, hospitals and agencies, such as the Red Cross. As a result, the medical profession began to be viewed more critically and more realistically, coming down a few notches from what Professor Baron called "the status of an established state church."[242] The spell had been broken.

3. Legal battles over the issue of blood

> *The American medical profession had achieved something of the status of an established state church. Its dogma regarding the low risk and high benefits of blood transfusions had been forced upon unbelievers by the state.*[243]

A survey of 28 different religious groups revealed that only Jehovah's Witnesses firmly objected, for conscientious reasons, to the use of blood transfusion as medical therapy, while they accept all other forms of standard medical treatment.[244] They have consistently taken this stand since 1945, at a time when blood transfusion was not only becoming standard therapy, but was emerging as the 'queen of remedies.' They maintained this position through the dark years of the tainted blood scandals and continue to do so today. Their religious belief that blood transfusion violates God's law

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[242] C. H Baron, *supra* note 192 at 115.

[243] *Ibid.*

[244] Catholic Hospital Association, *Religious Aspects of Medical Care: A Handbook of Religious Practices of All Faiths* (St. Louis: The Catholic Hospital Association, 1978) at 1 – 69.

put them into a head-on collision course with the medical profession's 'dogma' that blood is "the gift of life."

Since "the true Jehovah's Witness cannot be dissuaded" from this position,[245] it has been very difficult for many physicians to deal with the Witness' objection to blood transfusion. This has often resulted in "confusion" on the part of health care professionals and "emotional bias" against the Witness patient.[246] Considering that the physician is taught, from medical school on, that blood transfusion saves lives, a refusal will often be deemed unreasonable and tantamount to suicide. Many doctors sincerely feel they are prevented from respecting the maxim *primum non nocere*, if not given the opportunity to administer blood.

Initially, it would seem that the issue of medical decision-making by a competent adult is a straightforward matter. In an often quoted 1914 decision, American justice Cardozo stated quite plainly that: "(e)very human being of adult years and sound mind has a right to determine what shall be done with his own body."[247] However, one must keep in mind that this was a time when biomedical ethics had not yet evolved; paternalism was strong and "the physician enjoyed autonomy and independence, alone with God and the patient, and alone with God, when deciding, in *loco parentis*" what was best for the patient.[248] It is not surprising that hospitals and physicians consistently, and often successfully, petitioned the courts to override the decision of a competent adult Jehovah's Witness patient refusing blood. It took courage and determination to

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[245] R. K. Spence, "Management of Surgical Patients with Special Problems" in *Clinical Practice of Transfusion Medicine*, 3d ed. (New York: Churchill Livingstone, 1995) at 600.

[246] M. Minuck & R. S. Lambie, "Anesthesia and Surgery for Jehovah's Witnesses" 84 Can. Med. A. J. 1187.

[247] *Schloendorff* v. *Society of New York Hospital* (1914) 211 N. Y. 125.

[248] H. H. Bendixen, "Preface" in *Blood and Blood Products* (Washington: National Academy Press, 1996) at xiii.

challenge the medical establishment both in the courts and in the media and claim the right to make autonomous medical decisions.[249]

In many of these cases, third party interests were invoked to override the patient's bodily self-determination, personal privacy and religious freedom. Notions such as "abandonment" of minor children or risk of liability for doctors and hospitals were considered.[250] The leading U.S. case on this issue was *In re President and Directors of Georgetown College, Inc.*,[251] in which Justice Skelly Wright ordered that blood transfusions be administered to Mrs. Jesse Jones, who was *in extremis* following heavy bleeding from a ruptured ulcer. Mrs. Jones and her husband had a seven-year-old son. Both parents were Jehovah's Witnesses and would not consent to blood transfusion.[252] After the president of Georgetown University, Father Bunn, pleaded to no avail with Mrs. Jones that she change her mind, hospital attorneys unsuccessfully petitioned a trial judge to override her refusal. The matter was immediately brought before Justice Wright, a federal court of appeals judge, who then issued the *ex parte* order. In his reasons, which he released five months later, he stated that "(t)he state as *parens patriae* will not allow a parent to abandon a child." Justice Wright also believed that the doctors and the hospital had a responsibility to treat Mrs. Jones, and that if they let her die, they were exposing themselves to civil and criminal liability.[253] He ignored the fact that both

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[249] They were confronting the "American medical profession (which) had achieved something of the status of an established state church" and they were asking the courts to "take a neutral stance between the beliefs of their religion and those of American medicine." C. H Baron, *supra* note 192.

[250] The notion of 'abandonment' was considered in several cases. See for example: *Holmes* v. *Silver Cross Hosp.* 340 F. Supp. 125 (N.D. Ill 1972); *In re Osborne*, 294 A.2d 372 (D.C. 1972); *In re Brooks*, 32 Ill. 2d 361, 205 N.E.2d 435 (1965); *In re Melideo*, 88 Misc. 2d 974, 390 N.Y.S.2d 523 (Sup. Ct. 1976); *Fosmire* v. *Nicoleau*, 75 N.Y.2d 218, 551 N.E.2d 77, 551 N.Y.S.2d 876 (1990), 144 A.D.2d 8, 536 N.Y.S.2d 492 (1989); *Norwood Hospital* v. *Munoz*, 409 Mass.116, 564 N.E.2d 1017 (1991); *In re Dubreuil*, 629 So. 2d 819 (Fla. 1993), 603 So. 2d 538 (Fla. Dist. Ct. App. 1992).

[251] 331 F.2d 1000 (Wright, J., in chambers), 331 F.2d 1010 (D.C. Cir.) cert. Denied, 377 U.S. 978 (1964).

[252] *Ibid.*

[253] *Ibid.* Wright stated at p. 1009 "Mrs. Jones was their responsibility to treat. The hospital doctors had the choice of administering the proper treatment or letting Mrs. Jones die in the hospital bed, thus exposing themselves, and the hospital, to the risk of civil and criminal liability in either cases." A request for a rehearing en banc was denied. However, nine of the 10 federal judges who considered the Georgetown case would have denied the order.

Mr. and Mrs. Jones had "volunteered to sign a waiver to relieve the hospital of any liability of the consequences of failure to effect the transfusion."[254]

While other trial courts followed suit and granted applications to permit the administration of blood transfusion on unwilling patients,[255] the *Georgetown* decision came under strong criticism.[256] Subsequent appellate courts who were called upon to consider the issue did not adopt the reasoning of Wright, which was found to be of "little precedential value"[257] and to have "extended the concept of abandonment (...) into areas where it would conflict with other substantial interests."[258] Most appellate courts overturned orders violating the autonomous right of competent adults to decide on medical treatment, even where third party interests were involved.[259] The common-law right to bodily integrity, the constitutional right to privacy, and the right to religious freedom, emerged as the foremost considerations when competing with third party interests.[260]

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[254] C. H Baron, *supra* note 192 at 108.

[255] See for example: *United States* v. *George*, 239 F. Supp. 752 (D. Conn. 1965); *Powell* v. *Columbian Presbyterian medical Center*, 49 Miscf. 2d 215, 267 N.Y.S.2d 450 (Sup. Ct. N.Y. County 1965); *In re Winthrop University Hospital*, 128 Misc. 2d 804, 490 N.Y.S.2d 996 (Sup. Ct. Nassau County 1985); *Crouse irving Memorila Hospital, Inc. v. Paddock*, 127 Misc. 2d 101, 485 N.Y.S.2d 433 (Sup. Ct. Onondaga County 1985); *In re Jamaica Hospital*, 128 Misc. 2d 1006, 491 N.Y.S.2d 898 (Sup. Ct. Queens County 1985).

[256] S. Davis, "The Refusal of Life-Saving medical Treatment vs. the State's Interest in the Preservation of Life: A Clarification of the Interests at Stake" (1980) 58 Wash. Univ. Law Quarterly 85; Rhoden, "Litigating Life and Death" (1988) 102 *Harv. L. Rev.* 375 at 381 - 382; Jonsen, "Blood Transfusions and Jehovah's Witnesses" (1986) 2 Critical Care Clinics 91 at 97 - 99; Note, "Compulsory Medical Treatment: The State's Interest Re-evaluated" (1966) 51 Minn. L. Rev. 292; Note, "The Refused Blood Transfusion: An Ultimate Challenge for Law and Morals" (1965) 10 Nat. L.F. 202.

[257] *In re Dubreuil*, 629 So. 2d 819 at 824 n. 8.

[258] *Fosmire* v. *Nicoleau*, 551 N.E.2d 77 at 83.

[259] *In re Osborne*, 294 A.2d at 372 (D.C. 1972); *Public Health Trust* v. *Wons*, 541 So. 2d at 96 (Fla. 1989), 500 So. 2d at 679 (Fla. Dist. Ct. App. 1987); *Fosmire* v. *Nicoleau*, 75 N.Y.2d at 218, 551 N.E.2d at 77, 551 N.Y.S.2d at 876 (1990), 144 A.D.2d at 8, 536 N.Y.S.2d at 492 (1989); *Norwood Hospital* v. *Munoz*, 409 Mass. 116, 564 H.E.2d at 1017 (1991).

[260] See in general *In re Quinlan*, 70 N.J. 10, 355 A.2d 647 (1976) 617; *Superintendent of Belchertown State School* v. *Saikewicz*, Mass. 370 N.E. 2d 417 (1977); *In re Quackenbush*, 156 N.J. Super. 282, 383 A2d 785 (1978).

Another challenge to medical practitioners was the emergency situation scenario in which the now incompetent patient had either a relative available or an advanced written directive, to establish that blood therapy was not consented to. Initially, American courts held that "nothing less than a fully conscious, contemporaneous decision by the patient will be sufficient to override evidence of medical necessity."[261] However, in time, courts began to recognize a patient's "oral directives, actions or writings" as sufficient evidence to respect the refusal of a particular medical treatment deemed necessary by a physician.[262]

In Canada, where there was less litigation on the question of the right of medical decision-making by a competent adult, the issue was thoroughly examined in 1990, by the Ontario Court of Appeal in *Malette* v. *Shulman*.[263] In this case, the treating physician administered a blood transfusion to an unconscious automobile accident victim who had in her wallet an Advance Medical Directive indicating that she was one of Jehovah's Witnesses and did not consent to blood transfusion. A few hours later, her daughter arrived at the hospital and confirmed to Dr. Shulman that her mother did not want blood.[264] Dr. Shulman refused to discontinue the transfusions. Mrs. Malette eventually recovered and sued. The trial judge ruled in favor of Mrs. Malette. Dr. Shulman was found guilty of battery and condemned to pay her $ 20,000 in damages. The Ontario

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[261] *In re Estate of Dorone*, 502 A.2d 1271 (Pa. Super. 1985); See also *Werth* v. *Taylor*, 475 N.W.2d 426 (Mich. Ct. App. 1991).

[262] *In re Huges*, 259 N.J. Super. 193, 611 a.2d 1148 (App. Div. 1992).

[263] 67 D.L.R. (4th) 321 (Ont. C.A. 1990). On the matter of medical treatment for children, in *B. (R.)* v. *Children's Aid* [1995] 1 S.C.R. 315, the Canadian Supreme Court decided that, while parents could not "refuse [for their children] medical treatment that is necessary and for which there is no reasonable alternative," (p. 386) they did have the right to choose medical treatment for their children. "(...)(T)he right to nurture a child, to care for its development, and to make decisions for it in fundamental matters such as medical care, are part of the liberty interest of a parent." (p. 370) "(...) the right of parents to rear their children according to their religious beliefs, including that of choosing medical and other treatments, is an equally fundamental aspect of freedom of religion."

[264] *Ibid.* at 249. According to the daughter's evidence, Dr. Shulman responded: "Don't you care if your mother dies? You will be responsible. I am in charge. I am responsible and I will give blood."

Court of Appeal, after considering the issues of the state's interest to preserve life,[265] the physician's dedication to saving lives, and the question of refusal for religious reasons,[266] upheld the trial decision and, giving priority to self-determination, stated:

> "The right of a person to control his or her own body is a concept that has long been recognized at common law. The tort of battery has traditionally protected the interest in bodily security from unwanted physical interference. Basically, any intentional nonconsensual touching which is harmful or offensive to a person's reasonable sense of dignity is actionable."[267]

Commenting on the validity of the Advance Medical Directive carried by Mrs. Malette, the court concluded that it "set forth unqualified instructions applicable to the circumstances presented by this emergency. In the absence of any evidence to the contrary, those "clear, precise and unequivocal" instructions should have been taken as validly representing the patient's wish not to be transfused."[268] The court understood and accepted that by carrying the Advance Medical Directive with her, Mrs. Malette "gave notice to the doctor and the hospital, in the only practical way open to her, of her firm religious convictions as a Jehovah's Witness and her resolve to abstain from blood."[269]

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[265] *Ibid.* at 336. On the matter of the state's interest, Justice Robin wrote: "The state's interest in preserving the life or health of a competent patient must generally give way to the patient's stronger interest in directing the course of her own life. As indicated earlier, there is no law prohibiting a patient from declining necessary treatment or prohibiting a doctor from honoring the patient's decision. To the extent that the law reflects the state's interest, it supports the right of individuals to make their own decisions. By imposing civil liability on those who perform medical treatment without consent even though the treatment may be beneficial, the law serves to maximize individual freedom of choice. Recognition of the right to reject medical treatment cannot, in my opinion, be said to depreciate the interest of the state in life or in the sanctity of life. Individual free choice and self-determination are themselves fundamental constituents of life. To deny individuals freedom of choice with respect to their health care can only lessen, and not enhance, the value of life."

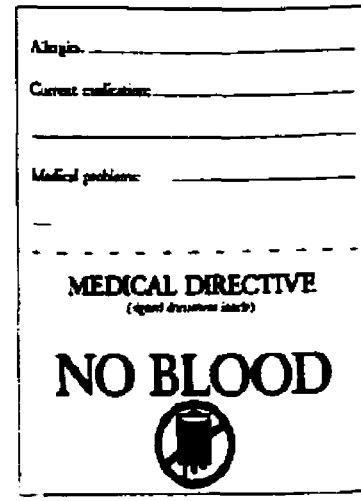
[266] *Ibid.* at 272. On the matter of a conscientious refusal (for religious reasons) of a medical treatment, Justice Robins wrote: "However sacred life may be, fair social comment admits that certain aspects of life are properly held to be more important than life itself. Such proud and honorable motivations are long entrenched in society, whether it be for patriotism in war, duty by law enforcement officers, protection of the life of a spouse, son or daughter, death before dishonor, death before loss of liberty, or religious martyrdom. Refusal of medical treatment on religious grounds is such a value." See also comments by J. Adams, "Respecting the Right to Be Wrong" (1998) 5 Acad. Emerg. Med. 753; E. Zeitz, "Legal Reasoning and Medical Decision Making" (1998) 5 Acad. Emerg. Med. 755.

[267] *Malette* v. *Shulman*, *supra* note 263 at 327.

[268] *Ibid.* at 337.

[269] *Ibid.* at 335. Justice Robin of the Court of Appeal is here quoting the trial judge. The trial judge also added: "The card itself presents a clear, concise statement, essentially stating : "As a Jehovah's Witness, I refuse blood." That

While there are some isolated cases to the contrary, physicians in Canada have, for the most part, respected the *Malette* decision and have accepted to abide by the wishes of adult Jehovah's Witness patients as expressed by their Advance Medical Directive.[270]



Allergies. _____

Current medications: _____

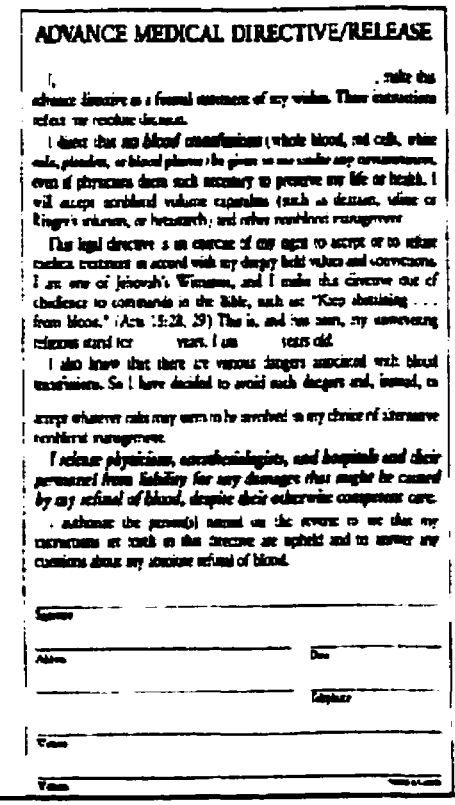
_____

Medical problems: _____

_____

MEDICAL DIRECTIVE

NO BLOOD



ADVANCE MEDICAL DIRECTIVE/RELEASE

I, _____, make this advance directive as a formal statement of my wishes. These instructions refuse me medical treatment.

I direct that no blood transfusions (whole blood, red cells, white cells, platelets, or blood plasma) be given to me under any circumstances, even if physicians deem such necessary to preserve my life or health. I will accept nonblood volume expanders (such as dextran, saline or Ringer's solution, or hetastarch) and other nonblood management.

This legal directive is an exercise of my right to accept or to refuse medical treatment in accord with my deeply held values and convictions. I am one of Jehovah's Witnesses, and I make this directive out of obedience to commands in the Bible, such as: "Keep abstaining . . . from blood." (Acts 15:28, 29) This is, and has been, my unwavering religious stand for _____ years. I am _____ years old.

I also know that there are various dangers associated with blood transfusions. So I have decided to avoid such dangers and, instead, to accept whatever risks may seem to be involved in my choice of alternative nonblood management.

I release physicians, anesthesiologists, and hospitals and their personnel from liability for any damages that might be caused by my refusal of blood, despite their otherwise competent care.

I authorize the person(s) named on the reverse to see that my instructions set forth in this directive are upheld and to answer any questions about my previous refusal of blood.

_____
Signature

_____ _____
Address Date

_____ _____
Telephone

_____
Witness

_____
Witness

message is unqualified. It does not exempt life threatening perils. On the face of the card, its message is seen to be rooted in religious conviction." *Malette v. Shulman & al.*, 63 O.R. (2d) 243 at 268 (Ont. Sup. Ct., 1987).

[270] See for example *Evelyn Estrella v. Princess Margaret Hospital & al.*, June 2, 1999, Court. File No. 99-CV-170514. This case involved a 39-year-old single woman suffering from leukemia. According to court documents, she had signed an *Advance Medical Directive* requesting that no blood be administered. The hopital chart also indicated that she had also verbally refused at least 15 times. Nevertheless, a nurse and a doctor were overheard badgering her to change her mind. Blood was eventually administered. As soon as the patient regained consciousness, she had her lawyer petition the court for an injunction restraining all hospital staff involved in her care "from communicating with the Plaintiff/Applicant Evelyn Estrelle with respect to receiving blood transfusions, other than recommending such treatment" and prohibiting doctors "from administering blood transfusions" unless proper consent was obtained. The injunction was granted.

[271] See *infra* c. 1, sec. C, number 1: Hospital Liaison Committees.

the 'right' clinical decision."[272] Thus, it is not surprising that, in many cases where courts had been told by the treating physicians that the patient's life was threatened without the use of blood, the patient was successfully managed without blood.[273]

The right of a person to control his or her own body has also been extended to 'mature minors' by both courts and legislators.[274] For example, in the Province of Quebec, the *Civil Code* provides that if a minor is 14 years old or more, a doctor may not override a refusal for medical treatment unless a court order has been obtained.[275]

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[272] Lehmann, "Decision Analysis: A Language for Survival in the Era of Managed Care" (August 1997) Contemp. Pedia. 65 at 69.

[273] For example see: (This information as supplied by W. Glen How & Associates from the Watchtower Society Canada Branch) *In re Rena*, 705 N.E.2d 1155 (Mass. Ct. App. 1999) (medical evidence of the "potential need" of blood products, minor patient with lacerated spleen was managed without blood); *In re Harrell*, 678 So. 2d 455 (Fla. Dist. Ct. App. 1996) (in doctor's opinion pregnant patient had "a life-threatening blood condition" yet she received no blood); *In re W.M.*, 823 S.W. 2d 128 (Mo. Ct. App. 1992) (doctor testified that minor patient absolutely needed platelet and red cell transfusions yet patient was transferred to other facility and was successfully treated without blood); *McKenzie* v. *Doctors' Hosp. of Hollywood, Inc.*, 765 F. Supp. 1504, 1505 (S.D. Fla. 1991) (ex parte order obtained to administer to patient 'life-saving' transfusion but patient left before the transfusion was administered and was treated in another center without the use of blood); *Norwood Hosp.* v. *Munoz*, 564 N.E. 2d 1017, 1019-20 (Mass. 1991) (Doctor argued that blood was "*reasonably necessary*", yet patient was managed without blood); *Mercy Hosp., Inc.* v. *Jackson*, 489 A.2d 1130, 1131 (Md. Ct. Spec. App. 1985) (Caesarian section successfully performed without blood in spite of doctors claiming "high risk of mortality" and "fatal risk" if blood was not ordered); *Lakeshore General Hospital* v. *Methot-Gaudreault*, Sup. Ct. Montreal, no. 500-05-008750-844, August 1, 1984 (*ex parte* court order allowing blood to be administered to a 20 year old women suffering from *post partum* hemorrhage – before order was carried out, she was transferred to nearby hospital and was treated without blood); *In re Osborne*, 294 A.2d 372, 376 n.6 (D.C. 1972) (doctors petitioned court to obtain order to administer 'needed' transfusions for trauma injuries, the petition was denied and patient successfully treated without blood).

[274] See for example: *Region 2 Hospital Corp.* v. *Walker*, 4 R.F.L. (4th) 321 (New Brunswick Ct. App. 1994) (15-year-old with acute myeloid leukemia); *Re A.Y.*, 111 348 A.P.R. 91 (Nfld. Fam. Ct. 1993) (15-year old boy suffering from cancer); *Re L.D.K.*, 48 R.F.L. (2d) 164 (Ont. Prov. Ct.) (12-year-old girl suffering from leukemia); In British Colombia, *Infants Act*, *R.S.B.C.* 1979, c. 196 recognizes right of competent minor (no age limit) to consent to medical treatment; In New Brunswick, *Medical Consent of Minors Act*, N.B. Acts, 1979, c. 41 provides for two doctors to decide if a minor under 16 has the capacity to decide on treatment.

[275] Article 14 of the *Quebec Civil Code* allows for "a minor of fourteen years of age or over" to consent alone to medical care. Article 16 states that court authorization is necessary to force "a minor fourteen years of age or over to undergo care he refuses, except in the case of emergency, if his life is in danger or his integrity threatened, in which case the consent of the person having parental authority or the tutor is sufficient." Cases in the province involving Jehovah's Witness minors over 14 years old have generally been dealt with by health care professionals, without going to court. Mr. Alain Beauchemin, coordinator of the Montreal area Hospital Liaison Committee for Jehovah's Witnesses submitted the following information in a personal interview: "Since the adoption of the new *Civil Code*, physicians have been respecting the wishes of mature minors over 14 years old. For example, a 16-year-old female was transferred from New Brunswick following a serious car accident where she suffered severe injuries to her intestines and spleen. She refused blood and her wishes were respected. In another case, a 16-year-old male requested that no blood be administered during surgery. The anesthesiologist considered asking for a court order, but was counseled by the Hospital attorney to respect the wishes of the individual. No blood was administered.

Jehovah's Witnesses have not limited their effort to fighting court battles over the right of a patient to medical decision-making. As we shall see, they have also embarked on an extensive campaign to support their members and educate health care professionals.

C. ALTERNATIVES

The belief that blood is the 'gift of life' continues to be strongly entrenched. Because of their conscientious objection to this one specific therapy, Jehovah's Witnesses have been wrongly perceived by many in the medical community as religious zealots who seek martyrdom, while others consider them to be "medical nihilists."[276] Judges, social workers and the public at large sometimes consider them unreasonable, irrational and irresponsible. What often seems to be lost in the shuffle is the fact that blood is the only treatment they refuse, and now, more than ever, there are many effective alternatives to blood transfusion.[277] According to one prominent physician, Jehovah's Witnesses readily seek out "the best in medical treatment" and as a group are "among the most educated consumers the surgeon will ever encounter." [278]

As discussed earlier, Jehovah's Witnesses believe their refusal of blood transfusion to be an important fundamental biblical teaching. They do not seem concerned with the fact that mainstream religions disagree with them on this doctrine.[279] Much of the

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Finally, in another case, a 14-year-old male was admitted to the hospital with leukemia. Once it was determined that the young man was competent to decide on medical treatment, his wishes were respected."

[276] W. Nielsen, "The Biblical laws Against Transfusions Reexamined – A Christian Physician's Viewpoint" (October 1991) V:4 at 273. This author sees in the refusal of blood transfusion for religious reasons "a smattering of martyrdom"; R. K. Spence, *supra* note 245 at 600.

[277] See *infra* c. 1, sec. C, number 3: Medical Alternatives to Blood Transfusion.

[278] R. K. Spence, *supra* note 245 at 602.

[279] K. Boyd, "Moral and Religious Dilemmas" in *Critical Care – Standards, Audit and Ethics* (New York: Oxford University, 1996) at 393. In this article, the author states that "no major religion for which the Biblical scriptures are authoritative endorses the Jehovah's Witnesses' interpretation of the texts on which their opposition to blood transfusion is based." This leads him to ask: "In the light of the religious consensus that Jehovah's Witnesses are mistaken in their interpretation of Scripture (...). Why is this particular religious belief, so clearly rejected by other

disagreement seems to come either from ignorance[230] or simply from theological dispute.[231]

They are also convinced that what they believe to be God's command to abstain from blood is not only for their future eternal welfare, but also for their immediate temporal benefit. In other words, nonblood medical management is more beneficial and less dangerous than blood therapy.[232] They believe their stand to be a reasonable one

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religious authorities, now so clearly defended in law as to discharge doctors of their normal responsibilities (...)?" It would seem that to analyze the beliefs of a minority religious group in light of mainstream religions and to conclude that, since the majority does not agree, the group in question must be mistaken, is to endorse what the Canadian Supreme Court called the "tyranny of the majority." See *Chaput* v. *Romain & al.* [1955] S.C.R. 834.

[230] See for example A. Verhey, "Scripture and Medical Ethics: Psalm 51:10A, The Jarvik VII, and Psalm 50:9" in *Religious Methods and Resources in Bioethics*, ed. P. Camenisch (Kluwer Academic, 1993) at 263. Verhey is of the view that Jehovah's Witnesses have a "curious reading of a curious set of texts about blood" which is in fact an 'abuse of scripture' which has harmed "marginalized patients," "usually women and children." This view seems to be contradicted by physicians who have observed first hand that Witness patients "think deeply and pray earnestly about decisions regarding blood transfusions," seek the "best in medical treatment, (...) are among the most educated consumers" and have 'done better' when undergoing major surgery such as open-heart surgery without the use of blood. R. K. Spence, *supra* note 245 at 602; J. Adams, *supra* note 266 at 753; J. H. Kay, "Need for Blood in Open-Heart Surgery" (1973) 226 JAMA 1230.

[231] See O. Muramoto, "Bioethics of the refusal of blood by Jehovah's Witnesses: part 1. Should bioethical deliberation consider dissidents's views?" (1998) 24 J. of Med. Ethics 230; O. Muramoto, "Bioethics of the refusal of blood by Jehovah's Witnesses: part 2. A novel approach based on rational non-interventional paternalism" (1998) 24 J. of Med. Ethics 301. In these articles, Dr. Muramoto advocates leaving the medical arena to engage in a theological "in-depth discussion" on the doctrine of blood with patients who are Jehovah's Witnesses. The purpose of the interchange would be to convince them that their understanding of the scriptures is wrong. He has also set up a website which appears to rely heavily on material from disgruntled ex-members of Jehovah's Witnesses. D. Malyon, Chairman of the Hospital Liaison Committee of Jehovah's Witnesses in Luton, England responded to Muramoto's articles which he "consider(ed) outside and unwelcome to ethical debate." He quoted an Italian sociologist and international expert in new religious movements. This expert expresses concern regarding the "unreliability and the unrepresentative nature of the views of former members of religious organizations." Malyon attributes Muramoto's apparent hostility towards Jehovah's Witnesses to personal motives: "At least he (Muramoto) has the honesty to declare his motives on his public website on the Internet, where he openly admits to religious differences with his own Jehovah's Witness wife." See D. Malyon, "Transfusion-free treatment of Jehovah's Witnesses: respecting the autonomous patient's rights" (1998) 24 J. Of Med. Ethics 302; D. Malyon, "Transfusion-free treatment of Jehovah's Witnesses: respecting the autonomous patient's motives" (1998) 24 J. Of Med. Ethics 376. See also M. Green, "Biblical Laws Relating to Blood Transfusion: The Judaic Laws and Principles" (1991) V Transf. Med. Rev. 247.

[232] "The Most Precious Fluid in the World" (22 October 1990) Awake! 15: "Furthermore, abstaining from blood transfusions has protected Witnesses from myriads of dangers. More and more people besides Jehovah's Witnesses are refusing blood transfusions today. Slowly the medical community is responding and reducing its use of blood. As the *Surgery Annual* put it: "Clearly, the safest transfusion is the one not given." Witnesses have also printed accounts of individuals who escaped the ravages of the blood scandals because they refused blood products. See "My Life With Hemophilia" (22 June 1987) Awake! 21. (Account John A. Wortendyke, who suffered from severe hemophilia and upon becoming one of Jehovah's Witnesses in 1972 ceased to take blood products. His condition was managed with blood and he was still alive in 1987.) "Canada's "Tainted Blood" Inquiry" (8 June 1995) Awake! 22. (Account of Willam Hall, a 76-year-old Jehovah's Witness man, with severe hemophilia, who testified before the

"vindicated by a flood of new scientific findings on both the dangers of homologous transfusions and the safety of alternatives to transfusion."[283] So, while the basis for their refusal is first and foremost religious, they do not hesitate to point out the benefits of bloodless medicine.

In order to counter misconceptions and negative perceptions many hold about them, and also to provide assistance and support for their members who are faced with a medical situation where blood is deemed to be necessary by the treating physician, Jehovah's Witnesses have successfully launched a thorough research and education campaign which includes the following:

- establishment of Hospital Liaison Committees in larger cities worldwide;
- extensive research of medical literature on alternatives to blood and blood products;
- direct contact with health care professionals to inform them about the position of Jehovah's Witnesses and to discuss available alternative treatments.

Canadian Krever Commission on tainted blood about how "he successfully manages his condition using alternatives to blood products." Mr. Hall testified that his bother also had hemophilia: "He didn't have the same faith [religion] as I have, so he took a blood transfusion and he died from hepatitis.")

[283] "Bridging the Gap Between Doctors and Witness Patients" (22 November 1990) Awake! 21. On the risks associated with blood transfusion see: J. Dobroszcki & al., "A Cluster of Transfusion-Asssociated Babesiosis Cases Traced to a Single Asymptomatic Donor" (1999) 281 JAMA 927;. K. Sazama, "Adverse Effects of Blood Transfusion" (1999) Conn's Current Therapy 451; Saéz-Alquézar & al, "Evaluation of the performance of Brazilian Blood Banks in Testing for Chagas' Disease" (1998) 74 Vox Sanguinis 228; L. Williamson & al., "Reporting Serious Hazards of Transfusion: The SHOT Program" (1998) 12 Transf. Med. Rev. 28; I. Grzelak & al, "Blood Transfusions Downregulate hematopoiesis and Subsequently Downregulate the Immune Response" (1998) 38 Transfusion 1104; Wolf & Gold, "Current Practice of Blood Transfusion in Cardiac Surgery" in *Blood Conservation in Cardiac Surgery* (1998) at 3, 7; I. Fakhry & al., "Blood Transfusions and Disorders of Surgical Bleeding" in *Textbook of Surgery* (1997) at 118, 124, 125; N. Blumberg, "*Allogenic Transfusion and Infection: Economic and Clinical Implications*" (1997) 34 Semin. Hema. 34; P. I. Tartter, "Immunologic Effects of Blood Transfusions" (1995) 24 Immuno. Investi. 277; H. Krever, *supra* note 4 at 17 – 33.

1. Hospital Liaison Committees

In the early 1960s, at the headquarters of Jehovah's Witnesses in Brooklyn, N.Y., a list began to be compiled of cooperative physicians familiar with medical alternatives to blood transfusion. This information was shared with local congregations as the need arose.[234] Eventually, the desire for better communication between the Witnesses and the medical community led to the establishment of Hospital Liaison Committees. The project was piloted by their Canadian Branch and eventually developed into a worldwide network. From a handful in 1979, the number of Hospital Liaison Committees has grown to over 1,200 in 200 countries. They identify themselves as "an international network of experienced ministers who are trained to liaise with medical personnel at the patient's request." Support is given to members as well as to treating physicians by "arranging consults with doctors and medical teams experienced in bloodless medicine and surgery techniques."[235]

These committees operate under the direction of a department called Hospital Information Services (HIS) located at the Watch Tower Society international headquarters in Brooklyn, N.Y. and in major branches around the world.[236] Members of

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[234] "Doctor-Patient Communication - A Key to Success" (8 March 1991) Awake! 12.

[235] Hospital Liaison Committee for Jehovah's Witnesses, form HIS-1 11/96.

[236] Mr. Zenon Bodnaruk, Director of Hospital Information Services (HIS) for Canada supplied the following information regarding the services offered by HIS:

"Hospital Information Services (Canada) is part of an international network disseminating authoritative information regarding strategies to avoid allogeneic blood transfusion and facilitating access to health care for patients who are Jehovah's Witnesses.

HIS facilitates, at no cost to the physician, access to current and clinically relevant information regarding strategies to avoid allogeneic blood transfusion. Our services to physicians include the following:

- Ongoing searches of the leading peer-reviewed medical journal for advances in blood conservation and management of patients without transfusion and periodic mailings of clinically useful information.
- Literature search service for specific clinical questions regarding blood management options for patients who are Jehovah's Witnesses.

the Hospital Liaison Committees are chosen from among experienced local ministers and receive regular training to help them speak with doctors, social workers and hospital personnel. They present themselves as offering the following services:

- Facilitate consults with over 30,000 doctors in Canada and the U.S., over 100,000 worldwide.
- International contacts with bloodless medicine and surgery programs.
- Patient transfers arranged.
- Specialized information service to doctors. On-line medical researchers with access to over 4,000 medical and scientific publications.
- Presentations to medical staff.
- Expertise on informed consent policy development.
- Consultation on bloodless medicine and surgery programs.[287]

In every city where they are located, they have established an emergency phone number where they can be reached by local congregations or treating physicians. A 24-hour National Hot Line is also provided in most countries. Through their periodical *Awake!*, Jehovah's Witnesses keep their members abreast of progress made by Hospital Liaison Committees throughout the world and their efforts to contact favorable doctors and assist members who need medical alternatives to homologous blood.[288] They have

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- Concise summaries and bibliographies of nonblood management strategies.
- Speakers arranged for grand rounds, seminars, etc., on medical and ethical issues in the care of Witness patients.
- Support to physicians and Witness patients through local representatives of the Hospital Liaison Committee Network.
- Facilitate consults with medical specialists (in Canada and the US) with special expertise in the use of medical alternatives to allogeneic transfusion.
- Contacts with hospitals (now 200 in 20 countries) with formalized blood conservation or "bloodless" medicine and surgery programs."

[287] *Ibid.*

[288] "Bridging the Gap Between Doctors and Witness Patients" (22 November 1990) Awake! 21. (Reports from Australia, New Zealand, Philippines, Hong Kong, Taiwan, Japan and Korea). "Doctor-Patient Communication – A Key to Success" (8 March 1991) Awake! 12. (Accounts of individual members being helped by the Hospital Liaison Committees.) "Pioneering Bloodless Surgery With Jehovah's Witnesses" (22 November 1991) Awake! 8. (Reports from England, Sweden, France, Germany, Spain, Mexico, Brazil, Puerto Rico and U.S.A.) "Jehovah's Witnesses and the Medical Profession Cooperate" (22 November 1993) Awake! 24. (Reports from Australia, France

supplied information to physicians that "disabuses them of mistaken notions regarding the necessity of transfusions and makes them aware of neglected techniques for treating patients without blood."[289] Through the information provided to them by the Hospital Liaison Committees, Jehovah's Witnesses have become more knowledgeable on medical issues that concern them.[290]

Research in medical journals, as well as in their own publications, indicates that Jehovah's Witnesses have indeed gone to great lengths to stand behind their members' steadfast refusal of blood therapy. In fact, it can safely be assumed that there does not exist another international consortium, as vast and efficient as theirs, specializing in gathering and distributing medical research on one particular topic – medical alternatives to blood transfusion.

2. Educational campaign

In recent years, Hospital Liaison Committees in various parts of the world have been involved in seminars for health care professionals where the benefits of bloodless medicine have been discussed. In 1998, *Awake!* reported four such seminars involving more than 1,400 professionals from 12 countries.[291] During the 25th Congress of the International Society of Blood Transfusion, held in Oslo, Norway, in 1998 attended by over 1,700 doctors from 83 countries, Hospital Information Services set up an exhibition booth where doctors could obtain handouts containing abstracts from some 1,000

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and U.S.A.) "Seminars to Improve Relations Between Doctors and Jehovah's Witnesses" Awake! (22 March 1995) 19. (Letter from Doctor Pope who attended a seminar put on by Hospital Liaison Committee in the San Francisco Bay area.)

[289] C. H Baron, *supra* note 192 at 9.

[290] R. K. Spence, *supra* note 245 at 602.

[291] "Doctors Take a New Look at Bloodless Surgery" (8 December 1998) Awake! 18.

medical articles. Also available was information on medical techniques to avoid blood transfusion during surgery.[292]

In 1982, in France, Jehovah's Witnesses set up an association called *Association médico-scientifique d'information et d'assistance du malade* (AMS) which involves both Witness and non-Witness professionals. Through this association, they have organized "several national and regional meetings and lent support to work on research, theses, and medical liability articles."[293] Members from this association have also participated in medical conferences in different parts of Europe, Eastern Europe and Africa, carrying their message of bloodless medicine with them.

In 1996 the *Canadian Medical Association Journal* reported in 1996 on efforts by the Hospital Information Services to "educate the medical community about the Jehovah's Witness position on blood and to promote "bloodless" medicine and surgery in Canada." According to this report, representatives have visited more than 10 medical schools and 200 hospitals across the country. Some universities have included a presentation from Hospital Information Services as part of an undergraduate curriculum unit. The presentation includes a brief overview of medical treatment Jehovah's Witnesses accept and that which they object to, an explanation of their religious belief, a

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[292] "Nonblood Treatment, What Experts Say" (8March 1999) Awake! 19.

[293] A.M.S., *Le refus des transfusions sanguines* (Guyancourt: 1990) 6. See also: "Compte rendu du colloque de Bordeaux du 8 novembre 1986" l'Association médico-scientifique d'information et d'assistance du malade (Montfort Lamaury, 1986). Following this conference, AMS published a 32-page brochure entitled *Sauver des vies sans violer des consciences*, addressed to healthcare professionals; Another seminar was organized in 1993 entitled *Les Témoins de Jéhovah, le Droit de la Famille, de la Santé, du Service national et les Libertés Publiques*, at which American professor Charles Baron was invited to present his paper *Blood, Sin, and Death: Jehovah's Witnesses and the American patient Rights Movement*, which he had already presented earlier that year at a seminar held at the University of Paris X (Nanterre). Another seminar entitled *Ateliers Épargne Sanguine*, held on January 27, 1994 at which a handout (not published) containing 17 abstracts of presentations by doctors and professors on bloodless medicine was circulated. At the 10th World Congress on Medical Law, held in Jerusalem, in 1994, Philippe GONI, attorney for Jehovah's Witnesses and associated with A.M.S. presented a paper entitled *"Aspects juridiques du refus d'un malade de se soumettre à un traitment médical."* For an example of some of their articles, see: A. Garay & P. Goni, "La valeur juridique de l'attestation de refus de transfusion sanguine" (13 August 1993) 97 Les petites affiches 14; D. Delmas & A. Garay, "Le Bureau D'Information Hospitalier des Témoins de Jéhovah" (July 1993) 88 La Gaz. de la Transf. 36 - 38; A. Najand, "Anesthésiste-réanimateur et Témoins de Jéhovah" (1992) 11 Ann. Fr. Anesth. Réanim 237.

discussion of ethical and legal issues involved and an explanation of how Hospital Information Services (HIS), through access to experienced specialists, Hospital Liaison Committees (HLC), and online research, can assist doctors treating church members.[294]

According to Church officials, many students and doctors who attended these presentations expressed amazement at the large number of alternatives to transfusion. They were also surprised by the support network available to physicians and patients as well as the information service provided to physicians by HIS and HLCs.[295]

Within this educational campaign, the Watch Tower Society has published a volume entitled *Family Care and Medical Management for Jehovah's Witnesses* which has been distributed to professionals, including physicians, judges and social workers, involved in health-care decisions concerning church members. It can be found in most hospital libraries. This manual contains information about the Worldwide Hospital Liaison Committee Network (1,200 committees servicing 200 countries), phone numbers to contact local committees, suggested hospital protocol for treating Jehovah's Witnesses[296], a review of their beliefs, ethical, legal and social factors to consider, as well as information on extensive medical research in bloodless medicine. It is published in a three-ring binder format and is updated on a regular basis.

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[294] N. Robb, "Jehovah's Witnesses leading Education Drive as Hospitals Adjust to No Blood Requests" (1996) 154:4 Can. Med. Assoc. J. 557.

[295] This information was supplied by Mr. Zenon Bodnaruk, Director of Hospital Information Services (Canada) for Jehovah's Witnesses in an interview on July 23, 1999.

[296] The protocol suggested is the following: "PURSUE nonblood medical alternatives, and treat the patient without using homologous blood; CONSULT with other doctors experienced in non blood medical management at the same facility, and treat without using homologous blood; CONTACT local Hospital Liaison Committee of Jehovah's Witnesses to locate cooperative doctors at other facilities for consultation on alternative medical care; TRANSFER patient, if necessary, to cooperative doctor or facility before patient's condition deteriorates; IN A RARE SITUATION, if the above steps have been exhausted and governmental intervention is deemed necessary, the patient, the parents, or the guardian should be notified as soon as possible of such intended action." *Family Care and Medical Management for Jehovah's Witnesses* (New York: Watchtower Bible and Tract Society of New York, 1995) at EMERGENCY 5.

3. Medical Alternatives to Blood Transfusion

Jehovah's Witnesses' conscientious objection is to the use of blood; they do not object to medical treatment in general. It is understandable that they would champion the cause of bloodless medicine in an effort to promote their own good health and, no doubt, to prove that: **a.** their objection is reasonable and rational, supported by scientific literature; **b.** alternatives to blood and blood products are safe, therefore obeying God's law is beneficial even on a short term basis.

While surgeons have been taught for years the 'halstedian principles' of minimizing blood loss during surgery, [297] the popularity of 'bloodless medicine' is a relatively new phenomenon, in large part the result of extensive media coverage of tainted blood scandals in different parts of the world. Jehovah's Witnesses, though, have been advocating it for many years. While much 'confusion, emotional bias, intolerance and ignorance' exists among doctors regarding the treatment of Jehovah's Witnesses, this is not the case with all health care professionals. A growing number of medical community members have tried to promote the development "of a positive philosophy towards" them by advocating careful preoperative and intraoperative management, as well as the use of specialized anesthetic techniques.[298]

As early as 1964, open-heart operations were being successfully performed on Jehovah Witnesses their members without the use of blood. In 1974, Dr. D. Cooley

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[297] William Steward Halsted advocated in the 1920s "careful diagnosis and planning before surgery, gentle tissue handling, incisions along avascular anatomic planes to avoid vessels, and meticulous hemostasis." He stressed the importance of preventing blood loss over replacing blood loss. See W. S. Halsted, *Surgical Papers* (Baltimore: Johns Hopkins Press, 1924).

[298] M. Minuck & R. S. Lambie, *supra* note 246. See also D. Malyon, *supra* note 281 at 381. Author, who is Chairman of Hospital Liaison Committee of Jehovah's Witnesses in London, England writes: "The atmosphere between members of our faith and the medical profession as a whole is becoming increasingly relaxed and even friendly."

wrote: "Encouraging results in our group of Jehovah's Witness patients support our belief that the commitment not to transfuse blood is not an obstacle to the successful performance of such major surgery as aorto-coronary bypass with the saphenous vein."[299] Elsewhere, following some 6,000 open-heart operations at St.Vincent's Hospital, in Los Angeles, during which most of the patients did not receive blood, it was the doctor's "impression that the patients do better."[300] Other doctors were noticing these impressive results.[301] Bloodless medicine in the 1970s and 1980s was being developed mainly by favorable physicians who were willing to treat Jehovah's Witnesses while respecting their conscientious objection to blood.[302]

However, by the end of the 1980s, the medical community had "been jolted into awareness of the risks involved in blood transfusions by the recent evidence linking

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[299] F. M. Sandiford & al., "Aorto-coronary bypass in Jehovah's Witnesses" (1974) 68 J. of Thor. and Cardio. Surg. 1.

[300] J. H. Kay, *supra* note 280 at 1230.

[301] In the *Bulletin* of the American College of Surgeons, June, 1978, Dr. Englbert Dunphy, from San Francisco, made the following comments: "(Lord) Hunt goes on to make a final plea for better training of medical students, doctors, and clergy in the meanings of religion in different areas. Hunt made his plea ten years ago, and we are just beginning to heed it now in this country. We know the problems associated with Jehovah's Witnesses. We have had a number of patients at our hospital over the last 12 years who have been Jehovah's Witnesses, and we have operated without blood transfusions. I may be wrong, but I cannot recall a patient who died because of lack of transfusion. I agree, however, a patient may have become anemic through the course of the day."

"I was fascinated to find a paper just published by Denton Cooley reporting on more than 500 major cardiac operations involving Jehovah's Witnesses performed without transfusion and showing a mortality rate of 5 percent. The figures are comparable to his figures on patients given adequate transfusion."

"Transfusion certainly makes the surgeon feel better, but it may not make the patient feel better. Perhaps we all have a tendency to transfuse to make ourselves more comfortable. I think when we have a Jehovah's Witness, we'll do well to consider his point of view."

[302] A. Kambouris, "Major Abdominal Operations on Jehovah's Witnesses" (1987) 53 The Am. Surg 350. (Thirteen major operations successfully performed on 11 Jehovah's Witness patients without complications.); F. Garcia & al., "Anemia and Anesthesia" (1986) 4 J. of Bloodl. Med. & Surg. 15. (Surgery and general anesthesia on over 10,000 Jehovah's Witness patients without the use of blood or blood products.); "Two Hospitals Offering Patients Options of "Bloodless Surgery"" 13:12 Mod. Health 50. (Bloodless surgery program offered to all patients of the Graduate Hospital in Philadelphia. Over 5,000 operations performed without transfusions on both Witnesses and non-Witnesses at Pioneer Park Medical Center, in Texas.); M. I. Bonakdar & al., "Major Gynecologic and Obstetric Surgery on Jehovah's Witnesses" (1982) 60 Obst. & Gyn. 587. (Retrospective study of 165 Jehovah's Witnesses and 164 control patients showed no deaths and few complications in both groups.); C. L. Nelson & al., "Total hip Arthroplasty in Jehovah's Witnesses without Blood Transfusion" (1986) 68 J. of Bo. and Jt Surg. 350. (One hundred patients who were Jehovah's Witnesses successfully underwent total hip replacement without blood transfusion.)

transfusion with transmission of " AIDS.[303] Some believe that AIDS, at least partly, is a "consequence of the dramatic growth of blood transfusion networks in post-World War II industrial societies." [304] At any rate, it became apparent that there were major problems with the blood supply. In 1993, Mark Boyd, director of gynecology at the Royal Victoria Hospital in Montreal, noted: "Blood is not a popular product these days. Patients are frightened."[305] One of the recommendations of the Krever Commission,[306] in its interim report, in 1995, was to inform patients "well in advance" to "enable them to employ some of the alternatives to an allogeneic blood transfusion."[307] Through the media, the public became educated about the risks associated with blood products and learned of available alternatives.[308] As a result, more patients were asking for alternatives to blood transfusion. In fact, there are reports that some patients would even falsely claim to be Jehovah's Witnesses so they could get a non-blood alternative to a blood transfusion.[309] A 1996 Gallup poll indicated that as many as 89% of Canadians, "if informed they required a blood transfusion due to a surgical operation", would chose an alternative to donor blood.[310] In England, 'hemovigilance' led to the setting up of the

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[303] R. K. Spence, "The Effects of Hemoglobin Levels and Blood Loss on Surgical Mortality" (1989) Inf. Surg. 264. See also R. K. Spence & al., "Elective Surgery without Transfusion: Influence of Preoperative Hemoglobin Level and Blood Loss on Mortality" (1990) 159 Am. J. of Surg. 320.

[304] K. Wailoo, *Drawing Blood* (Baltimore: The Johns Hopkins University Press, 1997) at 13.

[305] J. Rafuse, "Better planning could have saved life of woman who refused transfusion, MD says" (1 May 1993) Can. Med. Assoc. J. 1596. See also H. Polk & al., "Blood Management Practice Guidelines: Conference Highlights" (1995) 170 Amer. J. of Surg. at 15: "the public's awareness of new pathogens has made blood transfusion a less attractive treatment option."

[306] Mr. Justice Krever was appointed Commissioner by the Canadian government in 1993 to inquire into and report on the blood system in Canada. *Commission of Inquiry of the Blood System in Canada*, Interim Report (Ottawa: Canada Communication Group, 1995).

[307] *Ibid.* at 66.

[308] See for example D. Jenish, "Bad Blood" *Maclean's* (19 September 1994) at 22; "Le Sang" *La Recherche* 24 (May 1993) 494; A, Picard, "Tragedy prompts bloodless solutions" *The Globe and Mail* (18 May 1996) A1, A8; D. Bueckert, "Bloodless medicine continuing to gain in popularity" *The Globe and Mail* (4 January 1997) A10.

[309] R. Bragg, "Fake Witnesses avoid transfusions" *The Toronto Star* (25 February 1997) A9.

[310] Quoted in J. M. Thomas, "Nonblood Management in Obstetrics and Gynaecology" (May 1997) J. SOGC 475.

SHOT[311] program intended "to receive and collate confidential reports of transfusion fatalities and major complications."[312]

Blood conservation policies have been put into place in most hospitals, resulting in a decrease of patients being exposed to blood transfusion.[313] Blood conservation programs include preoperative patient preparation (treatment of anemia and/or clotting deficiencies and minimal phlebotomy for lab testing) and surgical techniques (the use of hemostatic scalpels, minimally invasive procedures and techniques designed to minimize blood loss). For emergency situations: prompt arrest of bleeding, hemostatic agents, and appropriate fluid management.[314] Physicians have also developed techniques that include controlled hypotension, hemodilution, intra and postoperative blood salvage and reinfusion.[315] For example, at the Ottawa Heart Institute, there was no blood conservation program in 1985 at which time 94% of their patients received transfused blood. After the adoption of a blood conservation policy, the number of patients exposed to blood transfusion decreased to 36%.[316] The benefits of a restrictive transfusion strategy and avoidance of an arbitrary transfusion trigger have been confirmed by a recent Canadian

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[311] Serious Hazards of Transfusion.

[312] L. Williamson & al., "Reporting Serious Hazards of Transfusion: The SHOT Program" *supra* note 283, at 28.

[313] An example of an attempt by the medical profession to address its problem of blood management and conservation is seen in the "Blood Management Practice Guidelines Conference" held January 12-14, 1995 in Dallas, Texas. For full report on conference and papers presented see "Consensus Conference: Blood Management - Surgical Practice Guidelines" (1995) 170 Amer. J. of Surg. 1S.

[314] J. A. Robblee, "Alternatives to Blood Transfusion: The Surgical Perspective" (Report of proceedings and recommendations of conference *Building a Blood System the 21st Century*, Toronto, 3-4 November 1997) 17. "In a series of 56 patients undergoing minimally invasive coronary bypass surgery at the Ottawa Heart Institute, only 1 patient (1.8%) needed a blood transfusion during surgery and this was a person with hemophilia." It is interesting to note the Denton Cooley had been using blood conservation methods since 1962 with good success on Jehovah's Witness patients. See Denton A. Cooley & al., "*Open Heart Surgery in Jehovah's Witnesses*" (June 1964) 13 Amer. J. of Card. at 779; See also R. K. Spence, "Blood Saving Strategies in Surgical Patients" in *Clinical Practice of Transfusion Medicine* 3d ed. (New York: Churchill Livingstone, 1995) at 521.

[315] J. A. Robblee, *supra* note 314 at 16 - 17. See also G. Sher, "The Blood Conservation Program at The Toronto Hospital" (Report of proceedings and recommendations of conference for *Building a Blood System the 21st Century*, Toronto, 3-4 November1997) 46 – 48. See also N. Joseph & al., "Blood Salvage Techniques" in *Blood Conservation in the Surgical Patient* (Baltimore: Williams & Wilkins, 1996) at 252. For early comments on the acceptability for Witnesses to accept blood salvage methods see "Questions from Readers" (15 October 1959) The Watchtower 640.

[316] J. A. Robblee, "Alternatives to Blood Transfusion: The Surgical Perspective" *supra* note 315 at 16.

clinical trial involving 838 patients which found that, in one particular group where blood was used liberally, "one additional death occurred for every 13 patients." Also, when a restrictive strategy was used, the number of transfusions decreased by 54%.[317]

Another phenomenon resulting from this new awareness of the dangers associated with blood transfusion therapy, is the appearance of Centers for Bloodless Medicine. The first such center in the United States was established in 1987 at Our Lady of Resurrection Medical Center in Chicago. Treating over 200 patients a year in their bloodless program, they have observed that "(t)here is very little that can't be done", and patients who do not receive blood transfusion stay "1 day less on average compared with other patients with the same diagnosis."[318] David Rosencrantz, director of a bloodless center in Portland, stated that after treating 500 to 700 patients annually over a period of four years, he hadn't lost a single patient.[319] He also found the program very successful that from a cost standpoint since these patients were out a full day earlier.[320]

In early 1996, there were more than 100 bloodless centers in the world, with 52 of them in the U.S.A.[321] In 1999, the number of such centers in the U.S.A. had risen to 75.[322] At the time of writing, there were no bloodless centers in Canada.

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[317] E. Ely & al., "Transfusions in Critically Ill Patients" (1999) 340 New Eng. J. of Med. at 468. See also, P. C. Hébert & al., "A Multicenter, Randomized, Controlled Clinical Trial of Transfusion Requirements in Critical Care" (1999) 340 New Eng. J. of Med. 409.

[318] N. Robb, *supra* note 294 at 559. See also R. deCastro, "Bloodless surgery: Establishment of a program for the special medical needs of the Jehovah's Witness community—The gynecologic surgery experience at a community hospital" (1999) 180 Am. J. Obstet. Gynecol. 1491. Bloodless program indicated high level of patient satisfaction and potential for improved patient care with no increase of morbidity.

[319] This program is available to any patient who desires to benefit from it; there is no pre-screening to eliminate high-risk patients.

[320] N. Robb, *supra* note 294 at 560.

[321] A. Picard, "Tragedy prompts bloodless solutions" *supra* note 194 at A8.

[322] K. Dougherty, "La fin des transfusions?" *L'Actualité* (1 May 1999) 16 at 18.

According to David Davis, Associate Dean of Continuing Education at the University of Toronto's Faculty of Medicine, "a myth in the medical field, is that when you research something and you publish it, or speak to a large conference, your colleagues will automatically change." The impetus must come from patients. This is what the Witnesses seem to be trying to do.[323] As the momentum for bloodless medicine increased, the medical profession noticed the extensive research gathered by Witnesses in their bid to educate health care professionals on alternatives to blood transfusion therapy. In the "first ever multi-disciplinary conference of its kind in Canada, perhaps in the world," entitled *Building a Blood System for the 21st Century*, Witnesses were invited to participate and to submit, for publication with the report of the conference, a comprehensive 28-page submission on *Medical Alternatives to Blood Transfusions*.[324]

D. CONSEQUENCES OF VIOLATING THEIR BELIEF

When considering a conscientious objection to a medical treatment that stems from a religious belief, one must consider the role of religion in the patient's life. The patient may have adopted a religion that encompasses a profound commitment to a way of thinking and a way of life, such as Jehovah's Witnesses.[325] To impose upon these patients medical treatment that violates their religiously trained conscience would be a gross violation of their dignity as humans and could have grave and devastating moral and spiritual consequences.

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[323] A. Picard, "Tragedy prompts bloodless solutions" *supra* note 194 at A8.

[324] "Medical Alternatives to Blood Transfusions" (Report of proceedings and recommendations of the conference *Building a Blood System the 21st Century*, Toronto, 3-4 November 1997) (1997) Hospital Information Services (Canada) for Jehovah's Witnesses 57 – 88.

[325] The Supreme Court of Canada has recognized that those who adopt such a religious lifestyle will often be "vulnerable to stereotype, social prejudice and marginalization." See *Adler* v. *Ontario*, [1996] 3 S.C.R. 607 at 661.

One patient who was violated in such a way described "severe emotional and mental upset" which lasted for years to the point that "some days I don't feel like living." When she learned that her conscientious objection had been ignored and a blood transfusion administered, she felt "very, very dirty" as "if her privacy has been invaded and her body violated akin to sexual assault."[326] Another young patient who went through the same experience felt "like a dog being used for an experiment."[327] Consideration for human dignity, as well as respect for the individual's values and preferences imposes upon the physician a moral (and legal) obligation to treat the patient according to expressed wishes. In order to do this, it will be necessary to know and understand the patient. In the case of Jehovah's Witnesses, the following information may be helpful.

1. Jehovah's Witnesses religion – a 'public' one

Contrary to what has been stated by some authors,[328] the religion of Jehovah's Witnesses is a very 'public' one. All of their religious meetings and conventions are opened to the general public.[329] Through their door-to-door preaching activity, which has become their 'trademark,'[330] they freely discuss various religious topics. They also circulate their periodicals *THE WATCHTOWER* and *AWAKE!*, as well as other publications,

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[326] *Malette* v. *Shulmann & al.*, *supra* note 269 at 274.

[327] *Re L.D.K.; C.A.S.* v. *K.* (1985) 48 R.F.L. (2d) 164 (Ont. Prov. Ct.) Transcript of hearing at p. 28.

[328] For example, in M.A. Blajchman, "Transfusion-Related Issues in Jehovah's Witness Patients" (1991) V Trans. Med. Rev. at 243 the author writes: "It has been quite difficult to determine just what the Witnesses' beliefs are, because they are very secretive about them." This statement is surprising considering the wide distribution of their literature. *The Watchtower*, Witnesses' main periodical contains an ongoing discussion of their beliefs and has an average printing of 22,328,000 copies every two weeks and is distributed publicly and from door-to-door worldwide in 131 languages. See (15 July 1999) The Watchtower 2.

[329] *Organized to Accomplish Our Ministry* (New York: Watchtower Bible and Tract Society of New York, 1989) at 68.

[330] *Organized to Accomplish Our Ministry*, *supra* note 329 at p.84.

in which their religious beliefs and doctrines are examined in detail.[331] Apart from the Bible, *THE WATCHTOWER* is the main reference on doctrinal issues for Witnesses.[332]

As a result of their evangelizing activities, new converts are found. However, before permitting an individual to be baptized as one of Jehovah's Witnesses, elders of the church will assure themselves that the person possesses a basic understanding of Bible doctrines, which includes the issue of blood transfusion, and has come to accept these as developed and explained in their literature.[333] It is only after the individual has personally 'dedicated his life' to God and expressed "a sincere desire to obey its teachings (the Bible) in harmony with Jehovah's Witnesses" that baptism will be possible.[334] They do not practice infant baptism.[335]

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[331] These include such publications as *Knowledge That Leads to Everlasting Life* (New York: Watchtower Bible and Tract Society of New York, 1995) and *You Can Live Forever in Paradise on Earth* (New York: Watchtower Bible and Tract Society of New York, 1989) which contain a detailed discussion of their beliefs.

[332] *Organized to Accomplish Our Ministry, supra* note 330 at (fr. 65).

[333] The current Bible study aid used is *Knowledge That Leads to Everlasting Life, supra* note 331. On page 129, par. 22, the issue of blood is discussed:

"Jehovah told Noah and his family that blood represents the soul, or life. Therefore, God forbade them to eat any blood. (Genesis 9:3,4) Since we are their descendants, that law is binding upon all of us. Jehovah told the Israelites that blood was to be poured out on the ground and was not to be used for man's own purposes. (Deuteronomy 12:15, 16) And God's law on blood was reiterated when first-century Christians were instructed: "Keep abstaining... from blood" (Acts 15: 28, 29) Out of respect for the sanctity of life, godly people do not accept blood transfusions, even if others insist that such a procedure would be lifesaving. Many medical alternatives acceptable to Jehovah's Witnesses have proved to be very effective and do not expose one to the hazards of blood transfusions. Christians know that only Jesus' shed blood is truly lifesaving. Faith in it brings forgiveness and the prospect of eternal life. – Ephesians 1:7."

[334] *Organized to Accomplish Our Ministry, supra* note 330 at 171 – 173. Before baptism, congregation elders review with the prospective candidate basic Bible doctrine with the help of a series of questions and scriptures. If the candidate does not 'conform his life to Scriptural teachings', he will not be recommended for baptism (p. 174). On the matter of blood, the following questions and scriptures are discussed (p. 191):

How do the following scriptures show that Jehovah considers blood as something sacred?

- Only flesh with its soul – its blood you must not eat. – Gen 9:4.
- Whenever your soul craves it you may slaughter, and you must eat meat according to the blessing of Jehovah your God... .Only the blood you must not eat. On the earth you should pour it out as water.- Deut. 12:15, 16.
- Any soul who eats any blood, that soul must be cut off from his people.-Lev.7:27.
- Keep abstaining from things sacrificed to idols, from blood and from things strangled.-Actes 15:29.
- Additional references: Leviticus 17:11; 1 Chronicles 11:18, 19; 1 Samuel 14:31-34; Romans 5:9.

2. Their position on blood and blood fractions

Jehovah's Witnesses seek and accept standard medical treatment, [336] however, as we have seen, the official position of the Watch Tower Society, as stated in their literature, is that "blood transfusions, whole blood, red cells, white cells, platelets, or blood plasma" are strictly forbidden by God's law. Whether or not to accept "serum injections containing a tiny amount of a blood protein" such as "globulins, albumin, and fibrinogen" is left to the individual conscience of members. Some members accept them, other do not. Those deciding to accept these blood fractions may find some justification, among other things, in that during pregnancy "some protein fractions from the plasma do move naturally into the blood system" of the fetus or that "a tiny fraction of a donor's blood plasma (...) used to bolster their defense against disease, is not the same as a life-sustaining blood transfusion." [337]

Option questions for discussion:

a. How has the Scriptural view of blood affected your thinking on this matter?

b. As a Christian, what local foods or medical practices will you henceforth avoid?

c. How does the Bible teaching concerning the sanctity of life affect your view of certain dangerous sports or types of recreation?

d. Does God's view of life and blood seem reasonable to you?

e. What stand should a Christian take if he is told that in order to save his own life or the life of a loved one a blood transfusion would be needed?

See also D. Ridley, "Honoring Jehovah's Witnesses' Advance Directives in Emergencies: A Response to Drs. Migden and Braen" (1998) 5 Acad. Emerg. Med. 825.

[335] See "Should Babies Be Baptized?" (15 March 1986) The Watchtower 7.

[336] R. K. Spence, *supra* note 245 at 602; C. Kitchens, "Are Transfusions Overrated? Surgical Outcome of Jehovah's Witnesses" (1993) 94 Amer. J. of Med. 118.

[337] "Questions from Readers" (1 October 1994) The Watchtower 31; "Questions from Readers" (1 June 1990) The Watchtower 30; "Questions from Readers" (1 November 1961) The Watchtower 669; "Questions from Readers" (15 September 1958) The Watchtower 575. (This has been the position of *The Watchtower* for the last 40 years. On the matter of serums and vaccines containing blood fractions, it stated in 1958: "It would therefore be a matter of individual judgment whether one accepted such types of medication or not.")

While pre-stored autologous blood is ruled out, members will decide personally whether or not to accept the use of hemodialysis devices (artificial kidney or heart-lung pump), induced hemodilution and certain blood salvage methods.[338]

3. The depth of their commitment

The depth of commitment to their religious belief is seen from a recent resolution presented at their 1998 annual District Assemblies held in major cities around the world and adopted by the thousands in attendance.[339] The resolution stated, among other things:

> - We, as Jehovah's Witnesses assembled at the 'God's Way of Life' Convention, whole-heartedly agreed that God's way is the best way of life.
> - We view ourselves as belonging to Jehovah God, having individually dedicated ourselves to him unconditionally, and we shall maintain unshakable faith in Jehovah's provision of the ransom through his Son, Jesus Christ.
> - As individuals and as a religious organization, we will continue to put God's will first in our lives. Using his Word, the Bible, as our guide, we will not deviate to the right or to the left, thus confirming that God's way is far superior to the ways of the world.[340]

Jehovah's Witnesses are known to take their religion seriously. With regards to the blood issue in particular, health care professionals have observed, as mentioned above, that Jehovah's Witnesses "think deeply and pray earnestly about decisions

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[338] "Questions from Readers" (1 March 1989) The Watchtower 30. In deciding whether to permit the use of these methods, the Witness patient will want to know if their blood has been "poured out." For example, with the use of a hemodialysis device, patients may "view the external tubing as elongating their circulatory system so that blood might pass through an artificial organ. (...) that the blood in this closed circuit was still part of them and did not need to be 'poured out'." The same reasoning may apply to blood salvage methods which involve "circuit with recovery from a surgical site and ongoing reinfusion." These methods are also discussed in R. Spence, "Blood Management Policies for Jehovah's Witnesses" Appendix 2 (1995) 170 Amer. J. of Surg. 148 and N. Joseph & al., *supra* note 315 at 290 – 291; For early comments on the acceptability for Witnesses to accept blood salvage methods see "Questions from Readers" (15 October 1959) The Watchtower 640.

[339] For a partial report of these conventions see 1999 *Yearbook of Jehovah's Witnesses*, *supra* note 2 at 7 - 16.

[340] "Keep on Walking in Jehovah's Way" (15 May 1999) The Watchtower 19.

regarding blood transfusion." [341] For them, it is a religious decision, for "(e)ven if doctors could give assurance that a transfusion would be totally safe, God's Word commands us to 'keep ourselves from blood'.[342] Thus, to willfully accept a blood transfusion, whether directly or indirectly, means personally accepting "the responsibility for the violation of God's Law."[343] This is why, as stated by the Royal College of Surgeons of England, "Jehovah's Witnesses have absolutely refused the transfusion of blood and primary blood components ever since these techniques became universally available."[344]

4. To impose a transfusion is a form of 'moral rape'

The Witness patients views an imposed blood transfusion as "a gross physical violation"[345] equivalent to sexual assault.[346] For this reason, the physician can expect strong physical resistance from a conscious patient, including "screaming", "struggling", attempts to pull out "the injection device," even an effort "to destroy the blood bag." [347] It makes no difference if the physician is acting on a court order. The transfusion would still be considered a "violation of God's law." If capable, the patient may attempt "to avoid being accessible" for the transfusion, even if this could lead to prosecution.[348] This

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[341] J. Adams, *supra* note 266 at 753.

[342] "Be Faithful to God "Who Looks On in Secret"" (15 April 1985) The Watchtower 12.

[343] E. Rosam, "Patients' Rights and the Role of the Emergency Physician in the Management of Jehovah's Witnesses" (1991) 20 Ann. of Emerg. Med. 1151. Mr. Rosam is writing as Director of Hospital Information Services at Jehovah's Witnesses international headquarters in Brooklyn, New York.

[344] The Royal College of Surgeons of England, *Code of Practice for the Surgical Management of Jehovah's Witnesses* (1996) at 1.

[345] The Royal College of Surgeons of England, *supra* note 344 at 1.

[346] "Questions from Readers" (15 June 1991) The Watchtower 31.

[347] "Walk as Instructed by Jehovah" (15 June 1991) The Watchtower 13 at 17.

[348] "Questions from Readers" The Watchtower, *supra* note 346 at 31. See also E. Rosam, *supra* note 343 at 1151: "Whether an individual agrees to accept a blood transfusion or allows another authority to make this decision is immaterial. The individual still incurs the responsibility for the violation of God's law."

strong resistance is no doubt because their refusal "to consume blood is neither a mere ritual observance nor a minor dietary regulation; rather, it is a central expression of their relationship with God." [349]

5. Consequences

Since Witnesses consider that "God's law requires that Christians abstain from blood, just as they are commanded to avoid fornication (sexual immorality)"[350], a member who voluntarily violates this law could face excommunication if found to be unrepentant.[351] This measure is not automatic.[352] To decide, the congregation elders meet as a 'judicial committee' with the individual with a view to 'recovery', to help 'the sinner readjust'. Only if it is determined that the person is guilty of 'remorseless apostasy, willful rebellion, or sheer wickedness' will 'disfellowshipping' occur.[353]

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[349] R. Devine, "Save the Body, Lose the Soul" (1989) Health Progress 68; R. K. Spence, "Management of Surgical Patients with Special Problems," *supra* note 245 at 600. The author, who has treated many Jehovah's Witness patients, describes his understanding of what would be the effect for one of these to accept a blood transfusion: "The consequences of transfusion for the Jehovah's Witness include excommunication from the church, forfeiture of a chance for eternal life, and severance of the individual's relationship with God."

[350] "Questions from Readers" The Watchtower, *supra* note 346 at 31.

[351] "Questions from Readers" (15 January 1961) The Watchtower 63: "If, however, he refuses to acknowledge his nonconformity to the required Christian standard and makes the matter an issue in the Christian congregation and endeavors to influence others therein to his support; or, if in the future he persists in accepting blood transfusions or in donating blood toward the carrying out of this medical practice upon others, he shows that he has really not repented, but is deliberately opposed to God's requirements. As a rebellious opposer and unfaithful example to fellow members of the Christian congregation he must be cut off therefrom by disfellowshiping."

[352] D. Malyon, *supra* note 281 at 381.

[353] "Elders, Judge With Righteousness" (1 July 1992) The Watchtower 19. The definition for disfellowshipping is: "dissociation or breaking off of spiritual fellowship and social intimacy." See "The Christian Congregation and Its Operation" (1 October 1977) The Watchtower 600. Initially, congregations of Jehovah's Witnesses were not instructed to "disfellowship those who voluntarily take blood transfusions or approve them." See "Baptism" (1 August 1958) The Watchtower 472 at 478.

Some writers have stated that "(a)mbivalent patients under stress may, in extremis, decide to accept transfusion or even indicate their wish to be coerced."[354] If and when this does happen, it may involve newly acquainted individuals.[355] Health care professionals have observed that, for the most part, "Jehovah's Witnesses have maintained a 'firm position' to "absolutely refuse blood transfusion."[356]

Some also wonder if Witness patients who receive a blood transfusion against their will are guilty of sin and would be ostracized by co-religionists.[357] According to the Canadian director of HIS, in circumstances where an unauthorized transfusion is administered: "The person is offered psychological and emotional support, spiritual help and counseling. They are treated like a person who has been sexually assaulted so they are offered assistance and support to cope. They are in no way ostracized, but are offered help in any way they need support and encouragement. That is what they really need at the time."[358]

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[354] R. Macklin, "The Inner Workings of an Ethics Committee: Latest Battle over Jehovah's Witnesses" (February-March 1988) Hastings Cen. Rep. 16; D. Lang & al., "Blood Conservation in Jehovah's Witnesses" in *Blood Conservation in the Surgical Patient* (Baltimore: Williams & Wilkins, 1996) at 328.

[355] "Be Faithful to God "Who Looks On in Secret"" (15 April 1985) The Watchtower 14 states: "Doctors and judges may try to persuade you to accept blood because they have seen people of other religions object to some medical step but then accept it 'behind closed doors'. Some officials have even claimed to know of a Witness who agreed to a secret transfusion. *If* that did occur, it might have involved someone who was just acquainted with Jehovah's Witnesses."

[356] I. Andrews, "Legal, Ethical, and Medical Guidelines for Jehovah's Witnesses in Surgery" (1979) 34 Week. Anesth. Upd. 1; The Royal College of Surgeons of England, *supra* note 344 at 1; L. Findley, "Blood Transfusion in Adult Jehovah's Witnesses, A Case Study of One Congregation" (1982) 142 Arch. Intern. Med. 606. A survey in one congregation indicated that 58 out of 59 respondents said they would not consent to blood even if faced with death. One respondent answered 'probably no', 46% had had bloodless surgery for themselves or a member of their family and the majority indicated that they would probably sue if administered a transfusion against their will; M. Viele & al., "What can we learn about the need for transfusion from patients who refuse blood?" (1994) 34 Transfusion 396. From 1970 through to early 1993 Medline search reveals 4722 cases of Jehovah's Witnesses who had refused blood transfusion therapy and were managed with alternatives. These do not include the statistical review by D. Cooley on 1,026 operations referred to in J. Dixon, "Blood: Whose Choice And Whose Conscience" (1988) 88 N. Y. State J. of Med. 463.

[357] R. Macklin, *supra* note 354 at 16.

[358] Interview on July 23, 1999 with Mr. Zenon Bodnaruk, Director of Hospital Information Services, Watchtower Society, Canada Branch.

Jehovah's Witnesses believe that if they obey God's laws and exercise faith in Jesus Christ, they will be rewarded with everlasting life on earth transformed into a paradise under the rule of God's Kingdom.[359] As one author remarked, "understanding that the potential for everlasting life is an enormous incentive" to Jehovah's Witness patients will help the treating physician to understand his patient's firm position against blood therapy.[360] Indeed, a violation of "such patients' deep and long-held religious convictions, the result could be tragic."[361] As observed by Pope John Paul II, forcing someone to violate his conscience "is the most painful blow inflicted to human dignity. In a certain sense, it is worse than inflicting physical death, or killing."[362]

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[359] *Jehovah's Witnesses in the Twentieth Century* (Georgetown: Watch Tower Bible and Tract Society of Canada, 1989) at 13 for a detailed list of their beliefs.

[360] R. K. Spence & al., "Transfusion and Surgery" *supra* note 78 at 1167.

[361] J. Dixon, *supra* note 356 at 464.

[362] Quoted in J. Dixon, *supra* note 356 at 464.

Chapter 2

ETHICAL AND LEGAL ISSUES RAISED BY OBJECTION

There was a time when the doctor was "as it were, alone with his patient and God."[363] The end of the post Second World War period brought about important changes in health care that would revolutionize this doctor-patient relationship. Technology and specialization moved in. The individual physician, alone with his patient at the bedside, gave way to teams of highly specialized doctors working with sophisticated technical equipment, in a modern hospital. This led to "the altered social position of medicine (...) with the fact that the doctor became a stranger and the hospital a strange place."[364] New rules were needed as patient and doctor became 'strangers at the bedside' and did not always share the same values.[365] In light of these changes, it became necessary to reassess the 'Hippocratic ethic'.[366] As a result, 'medical ethics' or 'bioethics' emerged as a guiding light to help doctors and patients reestablish a meaningful relationship of mutual trust and respect.[367]

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[363] H. Jonas, "Philosophical Reflections on Experimenting with Human Subjects" (1969) 98 Daedalus 219 at 238.

[364] D. Rothman, *Strangers at the Bedside* (BasicBooks, 1991) at 11.

[365] Rothman describes this change: "When one could no longer assume that the physician shared the same set of values as the patient, it seemed vital to devise and implement new mechanisms, preferably formal or even rigid, to further patients' particular wishes. It became appropriate to post on hospital walls a copy of the Patient Bill of Rights (...)." D. Rothman, *supra* note 364 at 11.

[366] E. Pellegrino, "Toward an Expanded Medical Ethics: The Hippocratic Ethic Revisited" in *Hippocrates Revisited, A Search for Meaning* (New York: Medcom Press, 1973) at 134. The Hippocratic ethic refers to 'admonitions found scattered throughout the Hippocratic corpus' which form 'a mixture of high ideals, common sense, and practical wisdom'.

[367] For a definition of ethics in the medical context see: R. Veatch, "Medical Ethics, An Introduction" in *Medical Ethics*, (Boston: Jones and Bartlett Publishers, 1997) at 1: "Ethics is the enterprise of disciplined reflection on the moral intuitions and moral choices that people make. Medical ethics is the analysis of choices made in the medical sphere. Medical ethics covers choices made not only by physicians, but also by other health professionals – nurses, pharmacists, hospital chaplains, and so forth. More important, it covers choices made by medical lay people – patients, parents, legislators, public officials, and judges." Regarding the term bioethics, Veatch writes at p. 6: "Sometimes the term *bioethics* is used instead of medical ethics. The terms are now used almost interchangeably. Sometimes bioethics has a slightly broader meaning, including ethical problems of the biological sciences outside of medicine – research on animals, efforts to manipulate the genetic makeup of nonhuman species, and so forth." See

Also, with an educated public, "the notion of the physician as a benevolent and paternalist who decides all for the patient" became outmoded."[368] The physician now encountered knowledgeable patients who expected the doctor to be "alert to (his) responsibility in the relationship, just as you would in any other adult relationship where you are purchasing services."[369] In advancing their claims, formerly 'powerless patients' now found support in the movement toward a commitment to bioethics.[370] As a result, "informed and empowered patients" began to "serve as active and skilled partners in managing their own health." [371]

These were major changes in health care that attempted to level the playing field in the doctor-patient relationship. New principles and rules have emerged and, as we shall see, these have a direct impact on the patient who is a conscientious objector to blood transfusion.

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also: Health Sciences Ethics Education Committee, *Introduction to Ethical Decision-Making in Health Care* (Hamilton: McMaster University, 1993) at 1: "Ethics as a theoretical discipline is a formal, scholarly, logical enquiry into what actions are good or right (that is, moral) and why certain actions are good or right. Applied to clinical practice, it leads to action based on rules, principles, and values, and seeks to resolve conflicts of value that arise in the course of treating patients. While ethics may not always come up with a single or simple solution to problems arising in clinical practice, it serves to clarify the practitioner's thinking and to facilitate making ethical decisions in an orderly way rather than on an ad hoc basis."

[368] E. Pellegrino, *supra* note 366 at 135..

[369] M. Haug & al., "Practitioner or Patient - Who's in Charge?" (1981) 22 J. of Healt. & Soc. Behav. 215

[370] D. Rothman, *supra* note 364 at 245: "In the end, the initial commitment of bioethics to patients' rights helps account for its extraordinary accomplishments in the decade from 1966 to 1976. The fit between the movement and the times was perfect. Just when courts were defining an expanded right to privacy, the bioethicists were emphasizing the principle of autonomy, and the two meshed neatly; judges supplied a legal basis and bioethicists, a philosophical basis for empowering the patient. Indeed, just when movements on behalf of a variety of minorities were advancing their claims, the bioethicists were defending another group that appeared powerless - patients."

[371] These comments were published by the National Health Council, a nonprofit American association of 118 national health organizations dedicated to accessible health care for patients. Information about them as well as their official booklet is posted on the web at: http://www.healthanswers.com/Sources/nhc/ppf.html; See also R. Carlson, "Patient Representatives Aid Physicians Too" (1991) 87 Tex. Med. 34. This article shows the expanding role of patient representatives or advocates aiding patients to "become successful partners in their own care."

A 'LIFE IS SACRED' PRINCIPLE

We have already observed from our brief survey of the historical use of blood in medicine that the practice has long been enshrouded with mysticism and, at times, ignorance. Convinced of its life giving 'magical' properties, some bathed in blood while others drank it, hoping for a cure.[372] Bloodletting became standard treatment for centuries, hailed as the "queen of remedies," only to fall into disrepute and eventually give way to blood transfusion therapy. Through it all, blood remains the 'gift of life' with 'magical' properties. As blood transfusion became standard medical practice, little attention was given to the dangers surrounding it until the blood scandals of the 1980s. Since then, a more measured approach to the use of blood therapy has been encouraged and more and more patients are looking for alternatives.[373]

Nevertheless, blood transfusion does remain in the mainstream of medical practice. Physicians in general continue to regard it as 'life-saving' in many situations.[374] They argue that without it, surgery in many cases would be impossible, hemophiliacs would die and many trauma patients would not survive.[375] Blood collection agencies counter the fallout from negative media coverage of the blood scandal years by stressing the continued need for blood to 'save lives', even using children as spokespersons.[376] For

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[372] *Supra* note 93 and accompanying text.

[373] J. M. Thomas, *supra* note 310 at 475.

[374] That blood continues to be considered the gift of life by many can be seen by the comments of author Andre Picard who, after recounting the horrors of the Canadian Blood Scandal and considering numerous infectious agents known to be blood-borne, went on to write: "None of this is intended to create a panic, or to scare people who really need transfusions away from accepting blood. Blood truly is the Gift of Life to accident and burn victims, and many major surgery patients; we can't lose sight of that." A. Picard, *The Gift of Death*, *supra* note 170 at 232.

[375] R. K. Spence, "Beneficial Aspects of Surgical Transfusion" in *Blood and Blood Products: Safety and Risk*, *supra* note 172 at 87 – 91: "Thus transfusion is still a major part of coronary bypass surgery. (...) we still need allogeneic blood to make these kinds of procedures possible. (...) Other areas of medicine that would not be possible today without transfusion include level I trauma centers. (...) patients with hemophilia and the inherent coagulopathies would all die at young ages (...)."

[376] During the summer months of 1999, *HEMA Quebec*, blood agency for the province, carried on an extensive media campaign using mainly young children in a drive to obtain blood donations.

individuals to refuse a blood transfusion, "a simple form of treatment", after it has been recommended by the physician, will often mean being perceived as unreasonable and irrational by attending health care personnel, who believe that refusing the 'gift of life' "may lead directly to their death."[377]

The issue of 'life saving' treatment brings us to the 'sanctity of life' principle. While this principal permeates the medical ethics debate, its meaning remains "open to innumerable differences in interpretation."[378] An example of this is seen from the conflict between patient and physician on the issue of refusing a blood transfusion. On the one hand, blood transfusions are refused by Jehovah's Witnesses because, they argue that in the Bible, God forbids to consume the "lifeblood" (Genesis 9: 3 – 6). "Blood had a special meaning. It stood for life provided by the Creator." Both life and blood are considered 'holy' or sacred. They take the position that "those who respect life as a gift from the Creator do not try to sustain it by taking in blood." To do so would be "unholy." [379] On the other hand, physicians will oppose such a refusal on the premise that blood 'saves lives,' it is the very 'gift of life,' and "because human life is at stake, every reasonable attempt ought to be made to save that life." [380] Which 'life is sacred' argument is correct? Who is to say?

1. Religious and secular viewpoints

While the 'life is sacred' principle is implicitly present in Eastern religions and in Judeo-Christian and Hippocratic traditions, an extensive literature review failed to

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[377] G. Gilmartin, "Jehovah's Witnesses" in *Ethical Issues in Anaesthesia* (Oxford: Butterworth-Heinemann Ltd., 1994) at 103. Here the author is oversimplyfying: "The particular problem posed by Jehovah's Witnesses is that their refusal of a relatively simple form of treatment may lead directly to their death."

[378] D. Callahan, *The Sanctity of Life* (Boston: Beacon Press, 1968) 185.

[379] *How Can Blood Save Your Life?*, *supra* note 6 at 4, 25. See also *supra* note 24 and accompanying text.

[380] M. Green, *supra* note 281 at 247.

identify explicit references to this principle prior to the twentieth century.[381] One of the earlier references applying the principle outside the religious discourse is less than half a century old and is found in Glanville Willams' work entitled *The Sanctity of Life and the Criminal Law*.[382]

From a *religious* viewpoint, the life is sacred principle generally "bespeaks life to be God's creation, over which we have no authority; life is a gift-in-trust from God, and we are pledged to practice good stewardship of it; it is for our use, but it is only on loan."[383] Expressed differently: "Every human being is a unique, unrepeatable opportunity to praise God. His life is entirely an ordination, a loan, and a stewardship."[384] Furthermore, each of "us is created in the image or likeness of God" and our behavior must "mirror in some way the divine glory."[385] For those who adopt this approach, humans get their worth and dignity entirely from God.[386] As such, 'human life may not be taken without justification.'[387]

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[381] G. Khushf, "The Sanctity of Life: A Literature Review" in *Sanctity of Life and Human Dignity* (Dordrecht: Kluwer Acdemic, 1996) at 294.

[382] F. Williams, *The Sanctity of Life* (London: Faber and Faber, 1958).

[383] K Clouser, "The Sanctity of Life": An Analysis of a Concept" (1973) 78 Ann. of Int. Med. 119.

[384] P. Ramsey, "The Morality of Abortion" in *Moral Problems: A Collection of Philosophical Essays* (New York: Harper & Row, 1971) at 11.

[385] R. Sevensky, "The Religious Foundations of Health Care: A Conceptual Approach" (1983) 9 J. of Med. Eth. 165. Those who adopt this viewpoint also believe that human life begins at the moment of conception. See C. Koop, "The Sanctity of Life" (1978) 75 J. of the Med. Soc. of N. J. 62.

[386] In E. Keyserlingk, *Sanctity of Life or Quality of Life* (Ottawa: Minister of Supply and Services Canada, 1979) at 13, after a thorough discussion, the following conclusions are drawn from the religious viewpoint of the 'Sanctity of life' principle:

(i) The sanctity of Human life is not the result of the "worth" a human being may attribute to it – either to one's own life or that of others. Considerations such as "degrees of relative worth", "functional proficiency" or "pragmatic utility", which humans may acquire or have are in no sense appropriate yardsticks for determining or measuring sanctity of life.

(ii) Human life may no be taken without adequate justification, nor may human nature be radically changed.

(iii) The sanctity of life principle is basic to our society, and its rejection would endanger all human life.

[387] *Ibid.*

However, not all proponents of the 'sanctity of life' principle are believers in God. Some approach the topic from a different angle, from a *secular* point of view, hoping to reach a larger audience.[388] They point "to the nature of things, to the way things are – a protoreligious, natural metaphysic."[389] Sacredness is inherent to humans because they are alive. "The idea of sacredness is generated by the primordial experience of being alive, of experiencing the elemental sensation of vitality and the elemental fear of its extinction."[390] Of course, such an explanation begs a definition for 'sacredness' used in the non-religious context: is it a property, a feeling, a value, a right or simply an overall life orientation? One writer concludes from such an analysis that "the sanctity of life concept as it is generally used – not in its original religious sense – is only a slogan."[391]

For some, this secular viewpoint is more accurately described as a *qualified* sanctity of life principle.[392] While conceding that it is "elusive and indeterminate," it has been portrayed in the following way: "It *does* point to an objective, absolute value of human life and worth, it insists that human life is always worthy of respect and protection, and that it should always be supported without adequate justification to the contrary."[393]

Some believe that the 'sanctity of life' principle promotes 'vitalism', a concept that advocates "preservation of human life, even mere metabolism and vital processes, no

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[388] Since the study of ethics is to "seek that to which all rational men could agree", the religious viewpoint is considered by many to be too limited in our modern pluralistic society. "Generally, religious requirements are more stringent than what could be expected of all rational men. They go beyond the reasonable obligation, beyond the call of duty; they require you to go the second mile." See K Clouser, *supra* note 383 at 119.

[389] E. Keyserlingk, *supra* note 386 at 14.

[390] E. Shils, "The Sanctity of Life" in *Life or Death:Ethics and Option* (Seattle: University of Washington Press, 1968) at 12 – 13.

[391] R. Sevensky, *supra* note 385 at 124.

[392] H. Kuhse, *The Sanctity-of-Life Doctrine in Medicine* (Oxford: Clarendon Press, 1987) at 23.

[393] E. Keyserlingk, *supra* note 386 at 49.

matter what the patient's condition."[394] It is this view of the 'sanctity of life' principle held by some health care professionals, that, among other things, made it necessary for Nancy Cruzan's and Karen Quinlan's family to petition a court to have live-sustaining treatment withdrawn due to their condition of permanent unconsciousness. Today however, support vitalism finds little support in medical decision-making.[395]

A more temperate view suggests that the *secular* 'sanctity of life' principle be used to test particular moral rules; an "indeterminate ethical principle to judge and test determinate rules of conduct." [396] This may be a useful approach since "principles and rules appear to remain central in biomedical ethics." [397] Viewed this way, "the 'sanctity of life' principle implies a spectrum of values ranging from the preservation of the species to the inviolability of human bodies, from man in the aggregate (present and future) to man as an individual (present and future).[398] This is the approach we will adopt. We will stay within the parameters of the *secular* 'qualified' sanctity of life principle and examine the particular 'principles and rules' which apply to the situation of the conscientious objector to medical treatment.[399]

However, in our analysis, we must also factor in the specific viewpoint of the conscientious objector on the sanctity of life principle. In the case of Jehovah's Witnesses, this will involve their *religious* viewpoint.

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[394] *Ibid.* at 19.

[395] H. Kuhse, *supra* note 392 at 199.

[396] E. Keyserlingk, *supra* note 386 at 42.

[397] J. Childress, "The Normative Principles of Medical Ethics" in *Medical Ethics* (Boston: Jones & Bartlett, 1997) at 52.

[398] D. Callahan, *supra* note 378 at 208.

[399] It has been said though, that the debate over the 'sanctity of life' issue is "the most controversial and complex medical and ethical issue" facing both the health profession and society in general. There are no 'simple and elegant solutions to the problem.' See A. Gilmore, "Sanctity of Life Versus Quality of Life – The Continuing Debate" (1984) 130 Can. Med. Assoc. J. 181.

2. Jehovah's Witnesses' viewpoint

Jehovah's Witnesses consider human life as sacred, a gift from their Creator. To support this, they point to the Bible, which states the following about God: "For with you is the fountain of life."[400] To them, "(r)espect for life is a sacred obligation to the Giver of life, Jehovah God."[401] They believe that their life does not belong to them, "but is only entrusted to us by God."[402] For this reason, they encourage their members to "cultivate appreciation for life as a gift from God" by maintaining a lifestyle that is conducive to good health. [403] This would include reasonable exercise and avoiding excesses that "can be instrumental in shortening the life span, excesses such as alcoholism, drug addiction and overnutrition."[404]

Considering life as sacred, they prohibit the use of tobacco.[405] Reckless driving, extreme sports and any form of negligence that puts lives in danger are discouraged.[406] They do not allow abortions,[407] nor is suicide an option.[408] Neither do they advocate active euthanasia, even in the case of a suffering patient:

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[400] Psalm 36:9.

[401] *True Peace and Security – How Can You Find It?* (New York: Watchtower Bible and Tract Society of New York, 1977) at 152 – 153.

[402] "Treasure the Real Life" (15 January 1995) The Watchtower 6.

[403] *True Peace and Security – How Can You Find It?*, *supra* note 401 at 152. This would include avoiding a "promiscuous course that often leads to death." See "How Precious Is Life to You?" (15 January 1995) The Watchtower 3.

[404] "Doing What We Can to Maintain a Better Life" (22 April 1977) Awake! 6.

[405] "Keeping God's Congregation Clean in the Time of His Judgment" (1 June 1973) The Watchtower 339: "Tobacco's damaging effect on the body is well known and its befouling effect is just as evident. Surely it does not show respect for the Creator's having given us life if we misuse and befoul our bodies through tobacco addiction."

[406] "How Precious is Life to You" (15 January 1995) The Watchtower 3; "Thrill Sports – Should I Take a Chance?" (8 July 1994) Awake! 9 (extreme sports); "Motorcycles – How Dangerous Are They?" (8 April 1992) Awake! 10 (dangers of high speed motorcycles); "Bullfighting – Art or Outrage?" (8 July 1990) Awake! 19 (bullfighting); "Water Safety Is No Accident" (22 May 1988) Awake! 15 (negligence in water sports).

[407] "Questions from Readers" (15 March 1975) The Watchtower 191.

> "All this, however, does not mean that where a person is suffering greatly from a disease and death is only a matter of time that physician must continue to take extraordinary, complicated, distressing and costly measures to keep the patient alive. There is a great difference between extending the life of a patient and stretching out the dying process. In such cases it would not be violating God's law regarding the sanctity of life to mercifully let the dying process take its due course. The medical profession generally acts in harmony with this principle"[409]

While Jehovah's Witnesses attach great importance to their present life, they believe that the 'true life' is the promised future "everlasting life" on the paradise earth.[410] They believe that to attain this, they must exercise faith in the ransom sacrifice of Jesus Christ and be baptized.[411] While they do not believe that baptism is a sacrament,[412] they hold the view that through baptism they dedicate their lives to God and undertake to do his will.[413] This includes adhering to various Bible principles. Two of these principles include conscientiously objecting to participation in wars and to

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[408] "Why the Rise in Suicide?" (8 August 1975) Awake! 25. With regards to God's judgement of those who do commit suicide, they make the following comment: "But the living may be absolutely confident that He is also merciful and understanding. He alone knows all the complex personal and social factors that can torment an otherwise healthy person into believing he must kill himself. The Bible shows that 'the Judge of all the earth is going to do what is right.' – Gen. 18:25"

[409] "Euthanasia and God's Law" (15 February 1961) The Watchtower 118. This article points to the example of Job (Job 2: 4-10) who "suffered greatly from a very loathsome disease as well as from many misfortunes" yet he remained faithful to God during his suffering. Witnesses believe that suffering does not justify violating the sanctity of life principle through euthanasia. They state that "God's word plainly tells that human life is sacred and that he who takes a human life must forfeit his own (...)." "Mercy Killing – What Do Lawyers Say?" (8 March 1978) Awake! 7.

[410] They base this reasoning on the Bible text of 1 Timothy 6: 17 – 19 which states in part: "they will lay up treasure for themselves as a firm foundation for the coming age, so that they may take hold of the life that is truly life." Verse 12 of the same chapter states: "Fight the good fight of the faith. Take hold of the eternal life to which you were called when you made your good confession in the presence of may witnesses." For them, 'eternal life,' means that God-fearing humans can look forward to life everlasting on the earth transformed into a paradise under the heavenly reign of Jesus Christ as king of God's Kingdom. They also believe a selected few, that is 144,000, will resurrect for 'eternal life' with Christ in his heavenly kingdom. See *Knowledge that Leads to Everlasting Life*, *supra* note 12, c. 10 "God's Kingdom Rules" at 90 – 97.

[411] See footnote 334 and accompanying text.

[412] "Should You be Baptized?" (1 April 1993) The Watchtower 4 at 6: "The Scriptures do not support that widely held religious view that baptism is a sacrament, that is, a religious ceremony imparting merit – grace, holiness, or spiritual benefit – to the one baptized."

[413] "Gaining Peace With God Through Dedication and Baptism" (15 April 1987) The Watchtower 12.

accepting blood transfusions.[414] Their firm stand on these two issues has put them at odds with political and medical authorities.

Their determination to stand firm on their religious beliefs was clearly manifested during Second World War[415]. At that time, Hitler harshly punished German nationals who refused to support his war effort. Jehovah's Witnesses refused to participate in the war effort and this enraged Hitler. As a result, about 10,000 Jehovah's Witnesses were imprisoned and an estimated 2,500 to 5,000 died.[416] Their position was nonnegotiable even though they were offered liberation in return for their signature of a document stating they renounced their faith.[417] They continue to be conscientious objectors to military service down to this day.[418]

With regards to their conscientious objection to blood transfusion, their position is also "nonnegotiable." [419] They take the position that "(t)hose who respect life as a gift

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[414] By not participating in wars they believe they are upholding "the sanctity of blood, of human life and also the standard for God's people to 'beat their swords into plowshares and not learn war anymore.' See "Facing Up to Questions of Conscience" (1 October 1972) The Watchtower 589. They also believe that "to go out on the battlefield and slaughter their fellow believers of another country" would be contrary to Jesus' words: "By this all men will know that you are my disciples, if you love one another." (John 13:35) See *You Can Live Forever in Paradise on Earth, supra* note 27 at 189.

[415] See Video: *Jehovah's Witnesses – Stand Firm Against Nazi Assault* (New York: Watchtower Bible and Tract Society of New York, 1996).

[416] Information obtained at the United States Holocaust Memorial Museum in a pamphlet entitled *Jehovah's Witnesses*. See also S. Graffard & al., *Les Bibelforscher et le nazisme (1933-1945) Ces oubliés de l'Histoire* (Paris: Editions Tiresias, 1991).

[417] This was really a question of loyalty. If they were loyal to Hitler, they would go to war and many would perish on the battlefield, possibly after having killed others. If they refused military service, they were being loyal to their God Jehovah and many would be executed as a result. In this latter case, they would have prized their future 'eternal life' and the life of their fellowman more than their own present life. They would have lived according to the dictates of their conscience. During the Second World War, Witnesses were also imprisoned in several countries for refusing military service including Canada, United States and Australia. However, in these latter countries they were neither tortured nor executed while in prison, contrary to Germany. See W. Kaplan, *State and Salvation* (Toronto: University of Toronto Press, 1989) at 190 – 223.

[418] See for example the story of Fernando Marin who spent 10 years (1964 – 1973) in a Spanish jail for refusing military service in "My Ten Years in Spain's Military Prisons" (1 October 1985) The Watchtower 19.

[419] *How Can Blood Save Your Life? supra* note 6 at 6.

from the Creator do not try to sustain life by taking in blood."[420] Judging by the firm stand they maintain regarding participation in war, physicians can expect most Jehovah's Witnesses to adamantly refuse blood transfusions.

3. Quality of life argument

Before moving on to 'rules of conduct' which have a direct bearing on our discussion, (autonomy and informed consent), it is necessary to briefly address the 'quality of life' concept, since "the sanctity of life principle is not by itself concrete and determinate enough to answer all questions." [421] Some argue that the "marriage of these two concepts" may be possible if extreme views of each are abandoned.[422]

As we have seen, the sanctity of life principle requires *justification* for ceasing to preserve human life.[423] This means that there should be some consensus, at least, that other considerations may be examined. Certainly in the health care context, one of these

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[420] *Ibid.*

[421] E. Keyserlingk, *supra* note 386 at 50. According to D. Callahan, reference to the quality of life criteria poses certain problems. "The problem I think is that quality of life is a systematically ambiguous concept and thus I see it as a conceptual, unguided missile likely to be used in any and all ways by different people with no particular agreement on proper usage." See A. Gilmore, *supra* note 399 at 180.

[422] D. Callahan recommends a "move away from extreme views of the sanctity of life and quality of life. He suggests that the greatest obstacle to the marriage of these two concepts is the lack of agreement on the meaning of the notion of quality." See A. Gilmore, *supra* note 399 at 180. In his final proposals to the Canadian Law Reform Commission, Keyserlingk blesses the marriages between these two principles as follows: "Public policy and law should (continue to) affirm and protect the absolute value, equality and "sanctity" of human life. (...). But at the same time, it should make explicit that what it is affirming and protecting is the absolute value of human *personal* lives, of persons." (...) "Applied to both competent and incompetent patients the determinative criterion is the *patient's perspective*, the patient's benefit." See E. Keyserlingk, *supra* note 386 at 187.

[423] See H. Kuhse & al., "The Quality/Quantity-of-Life Distinction and Its Moral Importance for Nurses" (1989) 26 Int. J. Nurs. Stud. 205: "Despite this widespread theoretical commitment to the sanctity of all human life, there are, however, ultimately few people (if any) who will follow where their theory should logically lead them – namely, to the preservation of all human lives, irrespective of the quality of those lives. Amongst medical professionals the practice of allowing some hopelessly or incurably ill patients to die is near-universal (Singer & al., 1983) and a closer look at the writings of theologians and philosophers who regard themselves as champions of the sanctity-of-life view, reveals that they typically make implicit or covert quality-of-life judgments.

considerations must be the quality of life criterion. In applying the quality of life criterion, it should be remembered that the sanctity of life principle considers all persons as having intrinsic worth and of equal value. To treat patients otherwise could make us guilty of narrowing our view only "to what science can reveal about them" and 'objectifying and diminishing' them to simple "things to be managed."[424] In view of this, it would seem necessary to exclude considerations "such as social worth, social utility, social status or relative worth" and concentrate on the "objective improvement or reduction of discomfort or some other benefit" to the patient.[425] It would be very difficult, even "impossible to determine what will benefit a patient without presupposing some quality-of-life standard and some conception of the life the patient will live after a medical intervention."[426] In this sense, the quality of life criterion will focus on what is beneficial to the patient, what is in the 'best interests' of the patient. This will have particular application to incompetent patients for whom others must decide on their behalf. In these cases, however, advance directives by the patient, if they exist, will have an important bearing on the quality of life analysis. We will discuss this further on.

For the competent patient, the quality of life criterion will be subjective, determined by the patient, since the right to accept or refuse medical treatment in this case is well established both legally and morally. "That clearly and unequivocally establishes a "hands off" policy as regards *anyone else* interfering with that right and imposing treatment for any reason whatsoever."[427] This is reasonable as the competent

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[424] G. Gillett, "Learning to do no Harm" (1993) 18 J. of Med. and Philos. 264.

[425] Keyserlingk proposes this restricted or more qualified meaning of quality of life in response to proponents of the principal who would "welcome the replacement of the "traditional" ethics of the absolute value of human life by an ethic of its relative value and in response to opponents who fear that "any recognition of quality of life factors" is a danger to the "intrinsic worth and equal value of every human." The ultimate aim of the quality of life criteria "is objective improvement and benefit, even if (...) that will often be limited to reducing rather than eliminating the patient's discomfort and dignity." E. Keyserlingk, *supra* note 386 at 51 – 53, 59.

[426] T. Beauchamp & al., *Principles of Biomedical Ethics* (New York: Oxford University Press, 1994) at 216.

[427] E. Keyserlingk, *supra* note 386 at 112.

patient has the best vantage point to decide what is in his best interest, whether others agree with the decision or not.

This brings our discussion to the principle of autonomy that allows patients the right to self-determination. In cases where a patient refuses what is deemed to be life-saving medical treatment, does the exercise of self-determination violate the sanctity of life principle? If, as discussed above, we apply the quality of life criterion when addressing sanctity of life, the logical conclusion will be to respect the patient's autonomy.

B. THE PRINCIPLE OF AUTONOMY

No man is good enough to treat another without his consent.[428]

1. Autonomy

To recognize a person as autonomous is to respect him, to recognize his dignity. According to Immanuel Kant, a person's dignity, his sublimity, comes from being morally autonomous.[429] People possess an autonomous, self-legislating will that confers upon them intrinsic worth and dignity. Kant's theory focuses on the individual's unconditional worth and his capacity to determine his own destiny. For John Stewart Mill, a society cannot really be free if it does not recognize the right of an individual to "do as he likes", as long as he does not harm others. He argues that whether the individual's conduct is popular or not, whether it is foolish or not, is irrelevant and that person must be protected "against the tyranny of the prevailing opinion and feeling."[430]

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[428] P. Ramsey, *The Patient as a Person* (London: Yale University Press, 1972) at 137.

[429] E. Kant, "Groundwork of the Metaphysics of Morals" in *Immanuel Kant, Practical philosophy* (Cambridge: Cambridge University Press, 1996) at 85.

[430] J. S. Mill, "On Liberty" in *Essential Works of John Stuart Mill* (New York: Bantam Books, 1965) at 285.

The notion of autonomy is not limited only to certain aspects of one's life. On the contrary, it entails the whole person as he lives out his life. As one writer expressed:

> "The right to control one's body means not only the right to defend oneself against the outside world. It also involves and even primarily refers to a person's right to decide freely and sovereignly on the course of his own life. Freedom, which is essential and basic to human dignity, consists foremost in the freedom to act and live in accordance with one's social, philosophical and religious ideas." [431] [translation]

Respect for the individual's right to autonomy in health care as well as in other aspects of life is part and parcel of the very fabric of the modern democratic society. As stated recently by the Supreme Court of Canada: "All individuals have the right to make personal decisions, to control their bodily integrity, and to refuse unwanted medical treatment. These are not mere legal technicalities: they represent some of the *most deeply held values in society* and form the *basis* for fundamental and constitutional human rights."[432] [emphasis added]

The respect for autonomy is thus not only a legal obligation but also a moral one "in so far as such respect is compatible with equal respect for the autonomy of all potentially affected."[433] The classic example of a person yelling 'fire' in a crowded theater and needlessly putting people's lives in danger illustrates that there are situations where an individual's autonomy can be restricted both morally and legally.

In the health care context, the principle of autonomy has many implications such as the need for informed consent, confidentiality, truth telling, and good communication. More specifically to the issue of the conscientious objector to a medical treatment, the principle of autonomy weighs in favor of the patient's "virtually absolute veto power." [434]

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[431] R. Dierkens, *Les droits sur le corps et le cadavre de l'homme* (Paris: Masson et Cie, 1966) at 42.

[432] *Dobson (Litigation Guardian of)* v. *Dobson* (9 July 1999), File No. 26152, (S.C.C.).

[433] R. Gillon, "Medical Ethics: Four Principles Plus Attention to Scope" (1994) 306 Brit. Med. J. 185.

[434] W. Bartholome, "A revolution in Understanding: How Ethics Has Transformed Health Care Decision Making" (1992) 18 Qual. Rev. Bull. 9.

"The ultimate right to select among available treatments, and to refuse any treatment, rests with the patient because it is the patient's body, and in turn the patient's life, that bears the principal effects of any treatment instituted."[435]

2. Legal recognition of the principle

Courts have long recognized the legal concept of the right of a patient to autonomous decision-making. In 1912, one American judge was of the opinion that "no amount of professional skill can justify the substitution of the will of the surgeon for that of his patient."[436] Two years later, in 1914, the noted American judge Cardozo set out the ground rules when he wrote:

> "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages."[437]

However, there are few early decisions on the explicit duty of doctors to obtain consent from patients. The reason for this, wrote the Supreme Court of Canada, in 1945, is that "it is common and obvious." Once the patient has been examined by the doctor and informed about his options, then it is the patient, and only the patient, who can decide which treatment he will consent to.[438] This was a clearly established principle. Nevertheless, it became necessary for the courts to go a step further and give substance to the principle by elaborating a mechanism to make it work. They did this by adopting the doctrine of *informed consent* that specifies exactly how a patient may exercise autonomy or self-determination. We will examine this notion further on.

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[435] D. Brock, "Death and Dying" in *Medical Ethics* (Boston: Jones & Bartlett, 1997) at 369.

[436] *Bennan* v. *Parsonnet* (1912), 83 *N.J.L.R.* 20 at 26.

[437] *Schloendorff* v. *Society of New York Hospital*, *supra* note 247 at 125.

[438] Some of the older Canadian decisions on the question are: *Slater* v. *Baker* (1767) 2 Wils. K.B. 359, 95 E.R. 860; 22 Hals. (2nd ed.) at 319; *Marshall* v. *Curry*, (1933) 3 D.L.R. 60 Can. C.C. 136 (Nova Scotia); *Mulloy* v. *Hop Sang*, (1935) 1 W.W.R. 714; *Winn* v. *Alexander and the Soldiers' Memorial Hospital*, (1940) O.W.N. 238; *Murray* v. *McMurchy*, (1949) 2 D.L.R. 442; *Kenney* v. *Lockwood Clinic Ltd.*, (1931) 4 D.L.R. 906, O.R. 438; rev. (1932), 1 D.L.R. 507 O.R. 141 (Ontario).

More recently, in 1995, the Canadian Supreme Court did not hesitate to uphold the principle of autonomy in the medical decision-making arena. In a landmark decision concerning the constitutionally protected right of families to choose medical treatment, it stated the following about personal autonomy:

> "In a free and democratic society, the individual must be left room for personal autonomy to live his or her own life and to make decisions that are of fundamental personal importance."[439]

For its part, the Province of Quebec, which has a *civil law* legal system, maintained for many years a paternalist approach to the doctor-patient relationship, giving little deference to the principle of autonomy. In 1899, a Montreal judge concluded that a doctor could proceed without consent with a major operation in the course of a minor operation, if the procedure was deemed necessary. Several decades later, in 1930, after a doctor had removed a patient's ovaries without consent, during an appendectomy, a lawsuit was unsuccessfully launched on the basis of lack of consent. The trial judge viewed beneficence as more important than autonomy. He expressed the prevailing view of this époque when he stated that in similar cases "there is only the honor between the conscience of the doctor and the patient, and between them there is only God as judge." [440] The principles of beneficence and sanctity of life were carried to its limits. This led to the elaboration of the doctrine of 'forced intervention' in cases of 'necessity', in medical settings, a doctrine that was endorsed by leading jurists in the province well into the 1970s.[441] The argument was simple: to be autonomous, you

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[439] *B. (R.)* v. *Children's Aid, supra* note 263 at 368.

[440] *Caron* v. *Gagnon*, (1930) R.J. at 155. (S. Ct.). According to the trial judge: "Suivant le langage des auteurs, dans les cas graves d'interventions chirurgicales, il n'y a que l'honneur entre la conscience du médecin et le patient, et il n'y a entre eux, pour juge, que Dieu. Le médecin qui a agi d'après son savoir, sa conscience et l'honneur, a bien fait. Toute autre doctrine est fausse et dangereuse à la société.

[441] While the doctrine of necessity is a defense long established in criminal law as well as in cases involving a civil allegation of assault or battery, A. Mayrand applies it to the medical situation as a justification to impose a blood transfusion on a non-consenting patient. See influential essay on this doctrine, written by A. Mayrand, *L'inviolabilité de la personne humaine* (Montreal: Wilson & Lafleur, 1975) at 48 - 49. The doctrine was adopted in *Boyer* v. *Grignon* [1988] R..J.Q. at 829. It was however, severely criticized in R. Kouri, "Blood Transfusions, Jehovah's Witnesses and the Rule of the Inviolability of the Human Body" (1975) 5 R.D.U.S. 156.

needed to be alive; thus to prevent a doctor from saving someone's life, even against that person's will, violated his autonomy. "Le respect de la vie, parce qu'il est conforme 'a l'intérêt de l'individu', prime le respect de la volonté" argued Justice Mayrand.[442] Whenever it seemed that a human life was in danger, the doctrine could be applied. Thus, in 1984, Justice Rejean Paul did not hesitate to issue an *ex-parte* order forcing a blood transfusion on a 20-year-old woman suffering from a *post partum* hemorrhage. The argument that her 'life was in danger' seemed to be unjustified, for as soon as she was advised of the court order, she promptly left the hospital and went to a different one where she was successfully treated according to her wishes.[443] Such abuses in the name of the doctrine of 'forced intervention' in cases of 'necessity' led to its demise. Fortunately, by the end of the 1980s, it had largely been discarded.

What is surprising is that, in the Province of Quebec, the principle of autonomy had already been codified into the law since at least 1975. Yet, with regards to health care, it was not fully enforced by the courts before the late 1980s.[444] However, it is now part of both jurisprudence and the new *Quebec Civil Code*, adopted in 1994.[445]

Also surprising, was the strong resistance within the medical community to the principle of autonomy.

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[442] A. Mayrand, *supra* note 441 at 48.

[443] *Lakeshore General Hospital* v. *Methot-Gaudreault*, S. Ct. Montreal, no. 500-05-008750-844, August 1, 1984. Inquiries with relatives revealed that, after a court order was issued, Mrs. Methot-Gaudreault left the hospital of her own accord to be treated elsewhere in harmony with her wishes.

[444] See *Weiss* v. *Solomon*, (1989) R.J.Q. 731 (S. Ct.); *Manoir de la Pointe Bleue (1978) Inc.* v. *Corbeil*, (1992) R.J.Q. 712 (S. Ct.). Also the *Quebec Chart of Human Rights*, (L.R.Q. c. C-12) adopted in 1975 provided at section 1 that: "Every human being has a right to life, and to personal security, inviolability and freedom." The previous *Civil Code of Lower Canada* also had a similar provision at article 19: "The human person is inviolable. No one may cause harm to the person of another without his consent or without being authorized by law to do so."

[445] The *Civil Code of Quebec*, which was adopted in 1994, has the following provision at article 10: "Every person is inviolable and is entitled to the integrity of his person. Except in cases provided for by law, no one may interfere with his person without his free and enlightened consent."

3. Difficulty to introduce into medicine

While the principle of autonomy has emerged in modern democratic society as the most basic and central principle, it has met with strong resistance from the medical establishment. This was mainly due to rampant paternalism that had existed in the profession for centuries. Advances in medicine gave physicians power over death. They came "to play a role reserved to ministers of religion" concerned with the "salvation of mankind from attack by illness." As "authority figure(s) in a white coat", they knew what was best for their patients, there was no need to consult.[446]

The doctor-patient relationship was an unequal partnership often dominated by paternalism. By this we mean "the intentional overriding of one person's known preferences or actions by another person, where the person who overrides justifies the action by the goal of benefiting or avoiding harm to the person whose will is overridden."[447] Such a violation of autonomy could be overt or it could also be concealed. An example of a covert form of paternalism is where a physician withholds critical information from a patient, as in the *Pittman*[448] case, believing such withholding of information to be in the best interest of the patient.

Paternalism has also been described as an "elaborate charade of parentalism." There existed a myth that a patient, in order to heal, had to place himself entirely into the care of the physician. This "was a complex process in which patients – who were scared and sick – often desperately sought out providers who would take care of them and make

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[446] P. Ramsey, *supra* note 446 at 137. Ramsey uses this expression when he argues in favor of doctors taking into account not only medical issues but also their patient's wishes or desires. "Even when he could succeed, a doctor may and sometimes should allow his medical judgment to defer to a patient's estimate of the higher importance of the worth and the relations for which his life was lived."

[447] T. Beauchamp & al., *supra* note 426 at 274.

[448] *Pittman Estate* v. *Bain*, *supra* note 191. In this case, the physician failed to advise his patient, Mr. Pittman, that he had received blood contaminated with HIV. In the meantime, not knowing he was carrying the virus, he infected his wife.

things all better again." Patients, "like good children, passively obeyed and complied with the orders" of the doctor. [449] The 'doctor knows best' attitude was the only one. So, for example, when Benjamin Rush ordered yellow fever victims to be bled, there was no resistance. Patients, like little children, did what they were told.

The transition where health care professionals would begin to respect patients' autonomy was not easy. Early efforts to address medical ethics "from the patient's point of view" such as Joseph Fletcher's 1954 book, *Morals and Medicine*, did not change the balance of power. Neither did advances in therapeutics tackling "crippling infectious diseases such as polio and tuberculosis" and "chronic diseases such as cancer and heart disease" improve the doctor-patient relationship. In fact, in the early 1970s it could be said that "medicine was doing better but patients were feeling worse."[450] However, the 'rights' movement of the 1960s was slowly gaining momentum as individuals were insisting on their right to self-determination in all walks of life. This spilled over into the medical field where government action and court decisions would eventually deal a deathblow to medical paternalism as it had existed for centuries. It became evident that "no man is good enough to cure another without his consent."[451] Few health care professionals advocate outright paternalism today; when they do, they find little support and when they act upon it, they may even end up in court.[452]

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[449] W. Bartholome, "A revolution in Understanding: How Ethics Has Transformed Health Care Decision Making" *supra* note 434 at 7.

[450] D. Rothman, *supra* note 364 at 107.

[451] P. Ramsey, *supra* note 446 at 7.

[452] See for example *Pittman Estate* v. *Bain*, *supra* note 191. In this case the treating physician decided that his patient Mr. Pittman "was too emotionally fragile to be told of his transfusion of bad blood." In *Malette* v. *Shulman*, *supra* note 263 the treating physician was charged with battery for ignoring the wishes of Mrs. Malette expressed in advanced directives and confirmed by her daughter. See also D. Ridley, "Honoring Jehovah's Witnesses' Advance Directives in Emergencies: A Response to Drs. Migden and Braen," *supra* note 334 at 833. Author refers to American cases where doctors have been sued for disregarding the wishes of conscientious objectors to blood transfusion.

Fortunately, today only a feeble shadow of past paternalism still lingers among health care professionals. For example, some authors refer to the overriding of "a *nonautonomous* person's wishes, choices, or actions" who has "compromised ability" as "soft or weak" paternalism.[453] This, however, can hardly be called paternalism, as there is little debate that "persons deserve to be protected from harm caused *to* an individual by conditions *beyond* his or her self-control."[454]

More insidious is "strong or hard" paternalism which is defined as overriding "an autonomous person's wishes, choices, or actions."[455] Advocates of this approach will argue that such an intervention is intended to benefit the patient where risky choices have been made.[456] In the name of *beneficence*, the physician will justify his action by stating that he has a duty to preserve the life of his patient and to provide appropriate treatments. Or, from a *nonmaleficence* standpoint, he may argue that all unnecessary risks must be avoided in order to avoid harming his patient. Such justification for violating a patient's autonomy does not attract the sympathy of today's courts.

Most physicians have now moved so far away from the extreme paternalistic approach of bygone years that some complain they have gone too far. They want to recapture lost power for the physician. One writer complains: "Too often, "autonomous" patients and families are asked to make critical medical decisions on the basis of neutrally presented statistics, as free as possible from the contaminating influences of physicians." He claims this represents a threat as serious as medical paternalism and would suggest allowing the "physician to support and *guide* the patient's decision making without surrendering the medical power." This would

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[453] J. Childress, *supra* note 397 at 43.

[454] T. Beauchamp & al., *supra* note 426 at 277 – 278.

[455] J. Childress, *supra* note 397 at 43.

[456] T. Beauchamp et al., *supra* note 426 at 277.

include "strong recommendations and vigorous exchange of ideas and perspective."[457] Hark! one hears here the definite ring of paternalism! Since old habits die hard, vigilance is necessary as the slippery slope of paternalism could easily begin at this point. For example, one can easily imagine the kind of harassment a patient would have to face when objecting to blood transfusions for religious reasons where the physician has strong personal and anti-religious views regarding the objection. But we will address this matter further on.

While some form of paternalism may be acceptable and even necessary, ie. making choices for those who have never been competent, paternalism that violates the autonomy or right to self-determination of a patient is not acceptable. As stated by Engelhardt, "paternalistic medicine, (...) may be not only oppressive and vexatious, but in the long run injurious to the health of patients by not encouraging patient responsibility."[458] One understands why a paternalistic approach to medicine that is in direct conflict with the autonomy or the right to self-determination of a patient had to be discarded.

However, because of the "temptation in medicine to use the authority of the physician's role to foster or perpetuate the dependency of patients," more than simply a principle was needed.[459] Nothing less than a concrete rule that would become both a legal and moral requirement would do. Rising from the ashes of cruel and deadly medical research, the Nuremberg Code made a first attempt by stating: *The voluntary*

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[457] T. Quill & al., "Physician Recommendations and Patient Autonomy: Finding a Balance between Physician and Patient Choice" (1996) 125 Annals of Intern. Med. 764. The author does admit that there is a "potential for abuse of physician power" under his proposed "relationship-centered model".

[458] H. Engelhardt, *The Foundations of Bioethics* (Oxford: Oxford University Press, 1996) at 320. Englehardt goes on to explain "given particular value commitments, paternalism should not be avoided. One must treat infants in a *paternalistic fashion. The very senile must be similarly treated. The moral issue is the extent to which paternalism* in health care is allowable and desirable."

[459] T. Beauchamp & al., *supra* at 426 at 127.

consent of the human subject is absolutely essential. From this evolved the doctrine of 'informed consent,' a concept that would revolutionize the doctor-patient relationship.

C. THE RULE OF INFORMED CONSENT

Physicians today must obtain an informed consent from their patients before proceeding with treatment. It is more than a legal rule that carries grave consequences if violated. It is also an ethical or moral duty imposed on all health care professionals. Informed consent is now considered part of 'good medical care.'[460] This relatively modern phenomenon evolved from necessity as medicine progressed into the 20th century giving physicians unusual power over death.[461]

1. Development of the principle and its rules

The need to obtain consent from patients was made disturbingly evident during the Nuremberg trials. "University trained and university appointed researchers" who "possessed first rate medical credentials and had pursued notable careers" had carried out merciless experimentation on helpless victims during the Nazi regime.[462] Atrocities resulted in the torture and murder of humans to serve the goals of science and medicine.[463] The "bedrock principle of medical ethics – that the physician acted only to

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[460] L. Nora, "Medicolegal Aspects of Informed Consent" (1998) 16 Neuro. Clin. 214.

[461] I. Illich, *Limits to Medicine* (Toronto: McClelland & Steward Ltd., 1976) at 205. The author, commenting on the power of physicians over death, writes: "Like all other major rituals of industrial society, medicine in practice takes the form of a game. The chief function of the physician becomes that of an umpire. He is the agent or representative of the social body, with the duty to make sure that everyone plays the game according to the rules. The rules, of course, forbid leaving the game and dying in any fashion that has not been specified by the umpire. Death no longer occurs except as the self-fulfilling prophecy of the medicine man."

[462] D. Rothman, *supra* note 364 at 63.

[463] C. Enlow, "The German Medical War Crimes: Their Nature and Significance" (1947) 139 JAMA at 801 -805. See also R. Lifton, *The Nazi Doctor: Medical Killing and the Psychology of Genocide* (New York: Basic Books, 1986); A. Capland, ed., *When Medicine Went Mad: Bioethics and the Holocaust* (Totowa: Humana Press, 1992). At page 64: "Among the studies in which human beings were used in research were the analysis of high-altitude decompression

promote the well-being of the patient" had been grossly violated.[464] The Nuremberg trials resulted in the Nuremberg Code that imposed the duty of obtaining voluntary consent from research subjects. This new requirement did not, however, result in any major changes in the patient-doctor relationship. In fact, in the United States, experimentation without consent, continued well into the late 1960s.

In 1965, a researcher, by the name of H. Beecher, upset some of his colleagues during a lecture where he presented evidence that dangerous medical experimentation was being carried out on unwitting patients in the United States. They accused him of being an "irresponsible exaggerator." [465] However, he went on to publish the information in 1966 in a medical journal and his article received extensive media attention.[466] In this article, he submitted twenty-two examples of published studies carried out by American researchers in which the health and safety of patients were endangered without their knowledge.[467] Prominent university medical school clinics such as Harvard Medical School and Georgetown University, along with leading professors and investigators, were involved in these questionable studies.[468] This revelation led to legal and ethical

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on the human body; attempts to make sea water drinkable; the efficacy of sulfanilamide for treating gunshot wounds; the feasibility of bone, muscle, and joint transplants; the ability to treat burns caused by incendiary bombs; the efficacy of polygal for treating trauma-related bleeding; the efficacy of high-dose radiation in causing sterility; the efficacy of phenol (gasoline) injections as a euthanasia agent; the efficacy of electroshock therapy; the symptoms and course of noma (starvation-caused skin gangrene); the postmortem examination of skeletons and brains to assess the effects of starvation; the efficacy of surgical techniques for sterilizing women; and the impact of stress and starvation on ovulation, menstruation, and cancerous growths in the reproductive organs of women. A variety of other studies were carried out on twins, dwarves, and those with genital defects. Some camp inmates were used as subjects to train medical students in surgery." See also G. Annas & al., *The Nazi Doctors and the Nuremberg Code* (New York: Oxford University Press, 1992); A. Ivy, "Nazi War Crimes of a Medical Nature" (1949) 139 JAMA 131; L. Alexander, "Medical Science Under Dictatorship" (1949) 241 New Eng. J. of Med. 39.

[464] D. Rothman, *supra* note 364 at 89.

[465] *Ibid.* at 72.

[466] H. Beecher, "Ethics and Clinical Research" (1966) 274 NEJM 1354.

[467] *Ibid.*. Among the "troubling practices" engaged in without the consent or knowledge of patients which Beecher documented were: injection of live cancer cells in human subjects; induction of hepatitis in mentally defective children; insertion of a needle through a bronchus into the left atrium of the heart; exploration of physiologic responses and testing of new drugs.

[468] D. Rothman, *supra* note 364 at 77 – 78.

debates that eventually resulted in the obligation to obtain informed consent from patients in both research and clinical settings.

Fortunately, informed consent is now mandatory. It has been defined as "an *autonomous authorization* by individuals of a medical intervention or of involvement in research." Such an authorization needs to meet both ethical principles and legal rules. From an ethical viewpoint, the notions of informed consent have been described as follows:

I. Threshold Elements (Preconditions)

1. Competence (to understand and decide)
2. Voluntariness (in deciding)

II. Information Elements

3. Disclosure (of material information)
4. Recommendation (of a plan)
5. Understanding (of 3. and 4.)

III. Consent Elements

6. Decision (in favor of a plan)
7. Authorization (of a chosen plan)[469]

As one writer noted, "a review of informed consent leaves one with a sense that medical standards and ethical standards on this issue are more stringent than the legal ones (..)."[470] Naturally, whatever the standard used, the elements of informed consent must be such that the average person will be able to make autonomous choices without having to meet such high standards that only a few educated and reflective individuals could qualify to make medical choices.

While the extent to which the different proposed elements are fully implemented may vary from one physician to another, they will all, nevertheless, need to meet the

[469] T. Beauchamp & al., *supra* note 426 at 145 - 146. For a discussion of each element see pp 146 – 170.

[470] L. Nora, *supra* note 460 at 214 .

minimal *legal* requirements of informed consent. The Canadian Supreme Court has described this legal obligation as follows:

> In summary, the decided cases appear to indicate that, in obtaining the consent of a patient for the performance upon him of a surgical operation, a surgeon, generally, *should answer* any specific questions posed by the patient as to the risks involved and should, without being questioned, *disclose* to him the nature of the proposed operation, its gravity, any material risks and any *special or unusual risks* attendant upon the performance of the operation.[471] [emphasis added]

This case, described as "strong medicine to improve the doctor-patient relationship", established the full disclosure standard by the doctor (of information pertinent to the particular patient) before obtaining consent, failing which a negligence action could ensue.[472] As a result, physicians are encouraged to maintain "good patient communication" and to make use of "education materials, including written forms, videotapes, or other documents" to educate their patient about the proposed intervention.[473] Consent should never be "taken for granted."[474] Even though consent is a well established requirement, it is of interest that the Krever Commission observed that it was not the general practice of Canadian hospitals to obtain informed consent before administering blood transfusion or blood products. According to the Commission, consent should also be obtained in those cases.[475]

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[471] *Hopp* v *Lepp*, [1980] 2 S.C.R. 192 at 210. See also companion case *Reibl* v. *Hughes* [1980] 2 S.C.R. 180 at 184.

[472] E. Picard "Consent to Medical Treatment in Canada" (1981) 19 Osgoode Hall L. J. 140. The basic requirement of disclosure was "what the average prudent person, the reasonable person in the patient's particular position, would agree to or not agree to, if all material and special risks of going ahead with the surgery or foregoing it were made known to him." See L. Rozovsky &al., *The Canadian Law of Consent to Treatment* (Toronto: Butterworths Canada., 1990) at 8.

[473] L. Nora, *supra* note 460 at 214. See also A. Loyd &al., "Patients' ability to recall risk associated with treatment options" (1999) 353 The Lancet 645 and response by M. Gattellari & al., "Informed consent: what did the doctor say?" (1999) 353 The Lancet 1713. (Discussion of patient's understanding and remembering information given to them by the physician and the use of information aids.)

[474] J. Horty, Esq., "Informed Consent: Patient Can Set Limits" (1992) 8 OR Manager 16.

[475] H. Krever, *supra* note 4 at 61 – 66. According to Justice Krever, "There is a growing realization that patients who may be given a transfusion of allogeneic blood (blood from one or more other persons) in the course of treatment should be advised of the risks and benefits involved, and of the alternatives open to them. (..) There is a growing sense that the treating physician should obtain the patient's prior consent to any administration of blood and blood products." (p. 61) See also K. Capen, "Informed Consent and Blood Transfusions: What does Krever's Interim

There are those who argue that it is impossible to obtain a truly informed consent – as it would involve communicating to the patient the physician's understanding of the "goals, nature and hazards" of the proposed procedure.[476] Adopting such a view would mean that only doctors and well educated individuals could exercise the right of self-determination in a medical setting, all others would be forced to defer to the physician. This would obviously be a gross violation of the principle of autonomy. A more reasonable approach is to recognize the positive right of consent of individuals, a right that flows from their status as persons. Thus, if given the amount and kind of information relative to the purpose at hand, competent patients can and do make "meaningful decisions" that permit them to give truly 'informed consent'.[477]

Another factor, which must be considered when obtaining from a patient informed consent, whether explicit or implicit, is the *competence* of the individual. As mentioned by justice Cardozo "(e)very human being of adult years and *sound mind* has a right to determine what shall be done with his own body (...)"[478]. Adults are presumed competent and it is those who claim incompetence who must "bear the onus of supporting their assertion."[479] While there are many theories on competency,

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Report Mean to Doctors?" (1995) 152 Can. Med. Assoc. J. 1663. In this article the author highlights the importance of good communication between the physician and the patient on the issue of blood transfusion in order to obtain true consent instead of relying solely on a written consent form." During July, 1999 inquiries were made by Anne-Marie Gaucher, MD with 15 Montreal area hospital regarding obtaining specific consent for blood transfusion. Nine hospitals responded. Of the nine, only one hospital was using a specific consent form for all blood transfusions. In the other eight cases, consent was obtained only for prolonged programs of blood transfusion... In the United States, the Joint Commission on Accreditation of Healthcare Organizations has specifically required that institutions document informed consent for transfusion. See K. Sazama, "Practical Issues in Informed Consent for Transfusion" (1997) 107 Am. J. Clin. Pathol. S72.

[476] F. Ingelfinger, "Informed (But Uneducated) Consent," (1972) 287 *New Eng. J. of Med.* 465.

[477] B. Freedman, "A Moral Theory of Consent" (1975) 5 Hast. Cent. Rep. at 5. See also T. Grisso, *Evaluating Competeencies – Forensic Assessments and Instruments* (New York: Plenum Press, 1986) 320. "The abilities in question are not a patient's aptitude for reasoning about information concerning the world in general, but rather the capacity to reason with information of a type relevant for treatment decisions."

[478] See *supra* note 247.

[479] K. Madigan, "Presumptions Respecting Mental Competence" (1994) 39 Can. J. Psych. 147.

"competence is determined primarily by whether a person has the capacity to decide autonomously, and not by whether a person's best interests are protected."[480]

2 Consent and refusal treated differently

"The right to consent comprehends the right to refuse."[481] If the patient decides to refuse a particular treatment when exercising his right of informed consent (refusal), the physician is then "stripped of professional authority and power and is left to plead with the patient and to use the only force any of us should have over the lives of others, namely that of language or moral persuasion."[482]

Yet, if a patient refuses a recommended treatment, his competency may well be questioned and an assessment of competency is often requested. This is done "often with the clear expectation that the patient will be found incompetent so that treatment can proceed."[483] It seems that many physicians have difficulty accepting that their patient may not always agree with proposed treatment. Yet, it has been noted that the majority of patients refusing treatment are found to be competent.[484] This illustrates that "(t)here is a fine line, however, between sensible measures to ensure that the patient fully comprehends the consequences of a refusal and a reversal to paternalism, whereby patients' competence is unquestioned as long as they concur with the doctor."

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[480] T. Beauchamp & al., *supra* note 426 at 141. Some have proposed a sliding-scale strategy in which competency is directly related to the risk attached to the decision. See J. Drane, "Competency to Give an informed Consent: A Model for Making Clinical Assessments" (1984) 252 JAMA 925. Others have proposed different standards of abilities or skills to assess competence such as ability to state a preference, abilities to understand information and to appreciate one's situation and ability to reason through a consequential life decision. See T. Beauchamp & al., *supra* note 426 at pp. 136 – 138.

[481] H. Emson, *The Doctor and the Law* (Toronto: Butterworths Canada, 1989) at 126.

[482] W. Bartholome, *supra* note 434 at 9.

[483] M. Katz, "Psychiatric Consultation for Competency to Refuse Medical Treatment" (1995) 36 Psychoso. 34.

[484] *Id.*

Physicians need to understand that the right to consent means the right to make a choice. Whether the choice is to accept the proposed medical treatment, or to refuse it, the choice belongs to the patient, and the patient alone. While the physician may not agree with the decision, the fact remains that all ethical principles and rules must give way to the "fundamental right" of patients to determine what shall be done to their body. "The concepts inherent in this right are the bedrock upon which the principles of self-determination and individual autonomy are based."[485] While this seems to be an established fundamental rule in the practice of modern medicine, physicians nevertheless need to be regularly reminded that "the code of ethics of our profession clearly recognizes a patient's right to reject any medical care recommended."[486]

3. Informed consent in emergency situations through advanced directives

There is however an exception to the rule of informed consent. This is the emergency situation where the patient is in life- or health-threatening circumstances and is unable to give his consent. In these cases, the physician may proceed with "treatment that is necessary for the sake of the life or health of the patient"[487] if the following criteria are met:

1. The patient must be unconscious or incapable of making a decision, and without the presence of someone who is legally competent to make the decision.
2. The patient must need treatment immediately to preserve health or prevent death.

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[485] *Malette* v. *Shulman*, *supra* note 263 at 336.

[486] M. Overs, "Patients can refuse treatment by MD" (15 December 1990) Fam. Prac. 8.

[487] L. Rozovsky, *The Canadian Law of Consent to Treatment* (Toronto: Butterworths Canada Ltd., 1990) at 20; See also *Marshall* v. *Curry*, *supra* 438; *Murray* v. *McMurchy*, *supra* 438; *Parmley* v. *Parmley* [1945] 4 D.L.R. 81 (S.C.C.).

3. A reasonable person would consent to the treatment, and it is probable that this patient would consent if conscious and capable of giving or withholding consent.[488]

When these conditions are met, one cannot say that the patient's autonomy has been violated. Absent the ability to exercise one's right to self-determination, the principles of beneficence and nonmaleficence will prevail. However, the emergency treatment doctrine applies only if "under the circumstances, a reasonable person would consent and the probabilities are that the patient would consent."[489] If there are clear indications that the patient would not consent to the proposed treatment, then even in an emergency, the physician cannot proceed. This principle is clearly set out in the *Quebec Civil Code* at article 13, where "consent to medical care is not required in the case of emergency" unless "the care is unusual or has become useless or where its consequences could be intolerable for the person."[490] If a physician is to know that a certain 'care' is unacceptable or intolerable to a patient, some form of advance directive will be necessary. Many individuals have opted for this. In 1992, for example, is was estimated that more that ten million advanced directives (living wills) had been executed in the Unites States, while thousands of living will forms had been distributed across Canada.[491]

In Canada, the issue of consent through advanced directives was thoroughly canvassed by the Ontario Superior Court and the Court of Appeal in the *Malette* case

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[488] *College Notices*, Issue No. 21, Nov. 1990 put out by The College of Physicians and Surgeons of Ontario.

[489] *Proposals for an Advance Health Care Directive Act*, Law Reform Commission of Saskatchewan, Report to the Minister of Justice, Dec. 1991 at 11.

[490] Article 13 of the *Quebec Civil Code* reads: "Consent to medical care is not required in case of emergency if the life of the person is in danger or his integrity is threatened and his consent cannot be obtained in due time. It is required, however, where the care is unusual or has become useless or where its consequences could be intolerable for the person."

[491] J. Downie, "Where There is a Will, The May Be a Better Way: Legislating Advanced Directives" (1992) 12 Healt. Law in Can. 73. On early attempts by Canadian provinces to introduce living wills legislation, see L. Linden, "Living Wills and Substitute Decision-Making" (July 1991) Ont. Med. Rev. 33.

mentioned earlier.[492] The Advance Medical Directive carried by Jehovah's Witnesses, requesting that alternatives to blood or blood products be used even in a life-threatening situation, was found to be a valid expression of a person's wishes regarding medical treatment.[493] The treating physician had disregarded the "unqualified instructions" set out in Mrs. Malette's card and as a result he was charged with battery. In this unfortunate situation, described as a "continuing battle between a patient's rights and a physician's obligations", the victory was clearly on the side of respect for patients' autonomy.[494] Whether through the contemporaneous expression of one's wishes or by way of advance directives, a higher value will be placed on a patient's values and preferences than on the physician's values and obligations. And so it should since, as Ramsey expressed it, "no man is good enough to cure another without his consent."

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[492] *Malette* v. *Shulman*, *supra* note 263 and accompanying text. See also J. Wahi, "Are Living Wills Valid?" (May-June 1990) Home Health Care 38. Author sees in the *Malette* decision as the "first in Canada to recognize a specific form of written advance directive for medical treatment." See also B. Trent, "Jehovah's Witnesses and the transfusion debate: "We are not asking for the right to die" (1991) 144 Can. Med. Assoc. J. 770 at 774. In this article the president of the *CMPA*, Normand Belliveau, explained why the *Malette* decision was not appealed to the Supreme Court of Canada: "The law is quite clear on this and we couldn't find any error in law in the judgement, so we had no real basis for appeal. If we feel we have a leg to stand on, we'll go all the way the Supreme Court of Canada to defend our doctors but in this case, we just didn't have that leg to stand on, neither in conscience nor in law."

[493] See L.Rozovsky & al., "Jehovah's Witness Case Sets Precedent – Controversy over a patient's right to refuse treatment" (May 1990) Physic. Man. 68. According to the author "This decision makes it clear that any doctor giving a blood transfusion to an unconscious patient in contravention of a written notification not to do so, will be liable in battery, even though the result may be to save the life of the patient." This author, who is an important contributor to medicolegal writings had stated earlier that the Advance Medical Directive was invalid because the patient had signed it when not confronted with the emergency. The *Malette* decision corrected this erroneous viewpoint. See L. Rozovsky, *Canadian Hospital Law* (Toronto: Canadian Hospital Association, 1974) at 39 - 40.

[494] L.Rozovsky & al., "Jehovah's Witness Case Sets Precedent – Controversy over a patient's right to refuse treatment" *supra* note 493 at 68.

CHAPTER 3

RELIGIOUSLY MOTIVATED OBJECTIONS TO A MEDICAL TREATMENT NECESSITATE DIFFERENT RULES

The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding.[495]

A. WHAT RULES SHOULD APPLY

"One of the more challenging ethical and medicolegal issues that many physicians face is caring for the patient who refuses specific therapeutic interventions based on religious or social dogma."[496] To determine what rules or principles should apply in these cases, we have chosen the example of Jehovah's Witnesses because their longstanding conscientious objection to blood transfusion poses an apparent dilemma for many physicians. They also "provide the largest single group of patients with a clearly defined belief, totally at odds with one type of potentially life-saving medical treatment."[497] It follows that ethical and legal solutions found to manage their situation, without violating both dignity and autonomy, could also apply and be helpful in dealing with other conscientious objectors in similar circumstances. We will attempt to address this issue in this concluding chapter.

When confronted with a patient who refuses blood transfusion because of his religious beliefs, many physicians seem at a loss as to what to do, and "confusion" and "emotional bias" often set in.[498] In this context of religious and moral disagreement, where "(t)he occupational hazard of medicine is arrogance,"[499] some patients have been

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[495] *Olmstead* v. *US*, 277 US 472 at 479 (1927) Justice Brandeis.

[496] D. M. Rothenberg, "The Approach to the Jehovah's Witness Patient" (1990) 8:3 Anesth.. Clin. Of N. Amer. 589.

[497] G. Gilmartin, *supra* note 377 at 106.

[498] *Supra* note 246 and accompanying text.

[499] C. Elliot, "Second opinions: a right or a concession?" (1995) 311 B.M.J. 671.

"clandestinely transfused (...) or abandoned to truly suboptimal management, making death inevitable"[500] Obviously this is immoral, unethical, and illegal.

No doubt, such insistence on a therapy that is not only refused by the patient, but that entails potentially lethal risks, is due to habit and "blind adherence to a therapeutic regimen."[501] Indeed, a 'mystical aura' has been attached to the use of blood throughout history. Blood's 'reputation of mythical proportions'[502] and its 'magical' properties have made it a favorite medical treatment for millenniums. Pharaohs bathed in it, epileptics drank it, whereas Galen, Patin and Rush were all convinced that without a 'good bleed,' there was no chance of recovery. During and after the wars of this century, the 'queen of remedies' gradually switched from bloodletting to blood transfusion therapy.[503] However, the 'mystical aura' remained, as euphoria over the use of blood as the 'gift of life' gained momentum. Practices revolving around transfusion medicine developed into "long-held dogmas" difficult to modify.[504] "Over-enthusiastic transfusionists'[505] having a 'shallow and narrow understanding' of blood medicine transfused needlessly, causing the deaths of many.[506] Unnecessary transfusions resulted "from excessive and unfounded fear of the risk from not transfusing."[507] However, the reality of the lethal dangers of

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[500] M. Henry, "Emergency treatment of Jehovah's Witnesses" (1991) 80 South African Med. J. 626; See also R. Ferdinand, "Jehovah's Witnesses and Advance Directives" (1996) 96 A.J.N. 64 for an example where a patient's refusal was not respected."; R. K. Spence, "The Status of Bloodless Surgery" (1991) V Transf. Med. Rev. 274 at 284. The author states: "this has led to past disasters, with Jehovah's Witness patients bleeding to death from surgically correctable lesions while physicians have stood by. We have received many transfer patients in shock, having extremely low Hb levels who subsequently died. Many could have been saved if earlier action had been taken."

[501] *Supra* note 131 and accompanying text.

[502] *Supra* note 201 and accompanying text.

[503] *Supra* note 165 - 180 and accompanying text.

[504] M. Henry, *supra* note 500 at 627.

[505] *Supra* note 190 and accompanying text.

[506] *Supra* note 200 and accompanying text. When testifying before the Krever Commission, victims of AIDS through contaminated blood administered to them without their consent seriously questioned "whether a blood transfusion was medically indicated." See H. Krever, *supra* note 4 at 62 - 63. See also S. Saxena, "Iron-Deficiency Anemia: A Medically Treatable Chronic Anemia as a Model for Transfusion Overuse" (1993) 94 Amerc. J. Of Med. 121.

[507] C. Kitchens, *supra* note 336 at 113.

blood therapy became evident with the deaths of tens of thousands in different parts of the world from blood contaminated with HIV and hepatitis.[508] Yet, even after clear evidence of the serious dangers associated with blood medicine during the blood scandal years, individuals continued to be pressured into consenting to the treatment.[509]

As happened with bloodletting, the 'magic' of blood transfusions is fading. Physicians are being reminded of the legal ramifications of blindly administering blood.[510] Bloodless surgery is rapidly gaining acceptance.[511] One physician predicts that bloodless surgery "will one day be prevalent", while another envisions that it "is quite possible in the very near future [blood] transfusion will be eliminated altogether."[512]

Many in the medical community may still view blood as 'life saving'[513], yet alternate forms of treatment are also proving to be 'life-saving.'[514] As stated by a spokesman for Jehovah's Witnesses who has acted as liaison with the medical community for several years:

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[508] See *supra* c. 1, section B, number 3: "Tainted blood scandal".

[509] Claude Labelle went in to Montreal's Sacré-Coeur Hospital on November 5, 1991 for heart bypass surgery. After the surgery, he remained anemic and lethargic. The doctors recommended a blood transfusion to get him back on his feet but Labelle had heard about the tainted blood affair and refused to consent. The attending nurse explained to him that 'It is impossible to get AIDS from blood since all blood is tested.' Mr. Labelle acquiesced and by November 1993, he was again off his feet, this time dead from AIDS. As he had feared, the blood was contaminated. See A. Picard, *The Gift of Death*, *supra* note 170 at 225.

[510] M. A. Clay, "Ethical and Legal Implications of Bloodless Medicine and Surgery" (1999) 14:1 J. Intensive Care Med. 34 at 37; J. M. Burns, "When patients refuse blood transfusion: meeting the medical and legal challenge" (1997) 3 Adv. in Legal Med. 261.

[511] See *supra* Chapter 1, section C, number 3. Medical Alternatives to Blood Transfusion.

[512] C. Godec, Chairman of Urology at Long Island College Hospital, in Brooklyn, New York, quoted in "Are Blood Transfusions Really Necessary?" (22 August 1999) Awake! 31. See also A. Kreidie, "Bloodless surgery making a comeback with patients" (19 October 1993) Med. Post 19 at 21.

[513] The Royal College of Surgeons of England, *supra* 344 at 1 states: "Nevertheless, a number of conditions can only be successfully treated by homologous transfusion. These include some anaemias and excessive blood loss."

[514] R. K. Spence & al., *supra* note 78 at 1109. See also *supra* notes 297 - 320 and accompanying text.

> "The fact is that the vast majority of Jehovah's Witnesses who refuse "life-saving" blood transfusions do not die. So, if they refuse a "life-saving" blood transfusion and yet do not die, then the treatment that they did accept must also be "life-saving." [515]

Hence, contrary to popular belief, it is evident that refusing a blood transfusion is not medically irrational and does not automatically lead to death.[516]

Witnesses have had to fight strenuously for their right to refuse what they believe to be religiously unacceptable medical treatment. This has been done in part through the courts. However, they have also endeavored to educate the medical community on both their religious stance and on the viability of alternatives to blood transfusion. At the same time, their Hospital Liaison Committees have successfully promoted and advocated a better doctor-patient relationship. As a result, many physicians now have an improved understanding of the ability of the body to heal without the use of transfused blood.[517] Many now agree that bloodless medicine makes good sense and have implemented such programs in their hospitals.[518]

The success of the Witnesses in having their stance respected by health care professionals reveals that in certain situations, more than just the traditional rules of

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[515] E. Rosam, *supra* note 343 at 1150. See also C. Kitchens, "Are Transfusions Overrated? Surgical Outcome of Jehovah's Witnesses" *supra* note 336 at 119: "Are the benefits of transfusion greatly overrated? If not transfusion Jehovah's Witnesses actually results in little acute extra morbidity and mortality and avoids a significant amount of costs and chronic complications, should patients receive fewer transfusions? Indeed, authors of these very reports have raised this question and have extended these practices (i.e., fewer or no transfusions and the use of normovolemic hemodilution and hypotensive anesthesia) to their routine patients."

[516] See *supra* c. 1, sec. C, number 3 "Medical Alternatives to Blood Transfusion". It is now becoming more and more common to hear reports of complicated surgery being performed without the use of blood. For example, on June 25, 1999 DateLine NBC aired a program entitled "Keeping the faith: bloodless surgery." NBC's chief science correspondent, Robert Bazell, reported on 18-year-old Stacey Singletary's successful brain surgery. Dr. Frank Forte of Englewood Hospital, New Jersey, performed the complicated surgery, without the use of blood transfusion. Another example: on February 4, 1999, a Montreal daily reported that an open-heart operation had been successfully performed on a two-year-old infant without blood transfusion. See H. Duma, "Bambin opéré sans transfusion sanguine" *La Presse* (4 February 1999) A14.

[517] *Supra* note 317 and accompanying text.

[518] *Supra* notes 296 - 324 and accompanying text.

'informed consent' are necessary. Physicians too need to be informed.[519] In fact, in the circumstances of religiously or morally motivated refusal of a recommended treatment, an "informed doctor" is the key. The physician needs to make "intelligent, informed choices" as to how to treat the patient, which alternatives to recommend, or where to transfer the patient if necessary. In matters of moral or religious disagreement, ignorance can breed intolerance. However, an 'informed doctor' will be more likely to treat the "patient as a person" and not simply as a "customer" or a "case."[520]

1. Traditional rules of informed consent are insufficient

Informed consent is the gateway to a patient's autonomy.[521] The patient is the one who decides which treatment to accept, if any. The decision of the patient "will be based on information given by the clinician."[522] While consent forms may be signed, these only "document that some discussion has taken place."[523] It is during these discussions, that the physician is expected to provide information "in a manner intelligible to the hearer and at a pace at which the recipient can digest it."[524] This information must include available alternatives and associated risks. The patient will then exercise his autonomy "by deciding which treatment option to accept."[525]

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[519] L.J. Findley & J. Fletcher: "Jehovah's Witnesses and the Right to Refuse Blood" (1988) 88:7 New York State J. of Med. 464. "(...) Whether or not a physician supports the Witnesses' beliefs, all physicians must understand their patient's religious credos concerning medicine."

[520] O. Argy, "Standards of Care" (1996) 275 JAMA 1296.

[521] See *supra* c. 2, Sec. C: "The Rule of Informed Consent".

[522] A. Sommerville, *Medical Ethics Today: Its Practice and Philosophy* (London: B.M.J. Publishing Group, 1993) at 7.

[523] *Ibid.* at 9.

[524] *Ibid.* at 7.

[525] *Ibid.*

This approach addresses the issue of consent from the 'patient needs to know' viewpoint. The physician has the ethical and legal responsibility to provide medical information to a patient and should be "caringly available" to assist in clarifying "any misconceptions."[526] Yet, in cases of religious or moral objections to a treatment, medical information is not the most important factor. Putting undue emphasis on transmitting this information may in fact result in a breakdown of communication and be detrimental to care. The patient's values, beliefs and wishes must take precedence.

2. When medical information becomes of secondary importance

It is not difficult to understand why medical information regarding a proposed treatment which has been refused for religious or moral reasons, would be of secondary importance. Witnesses, for example, "have *absolutely* refused the transfusion of blood and primary blood components ever since these techniques became universally available. This is a *deeply-held* core value (...)."[527] Their position is "*nonnegotiable.*"[528] In such a situation, information regarding the proposed treatment would be of secondary importance, since the treatment, on its face, is unacceptable. What becomes important is first of all to understand the religious or moral objection and secondly, to discuss possible alternatives. The same may be true for a Roman Catholic who absolutely refuses an abortion or a Muslim who will not consent to treatment involving pork derivatives.[529]

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[526] *Ibid* at 8.

[527] The Royal College of Surgeons of England, *Code of Practice for the Surgical Management of Jehovah's Witnesses*, *supra* note 344 at 1.

[528] *How Can Blood Save Your Life?* *supra* note 419.

[529] See S. Manners, *supra* note 5 at 17, 18.

While the physician should be concerned that the patient understands the possible risks of the alternative treatment and the benefits of the proposed treatment, the deeply held beliefs of the individual must be understood and respected. Only an 'informed doctor' will be adequately prepared to do so.

To focus only on the medical aspect of the proposed treatment during the informed consent process would miss the real objective of the endeavor. The principle of informed consent was developed to protect the patient's autonomy from the encroachments of medical paternalism. Respect for a patient's deeply held beliefs and values goes to the very heart of autonomy. Since the physician's "first and primary goal is to support life," conflict may seem unavoidable when a patient refuses a recommended treatment. However, if the focus switches from the 'informed patient' to the 'informed doctor' approach, the physician will be in a better position to understand and respect the patient's beliefs and values.

3. Need for physicians to be properly informed

When faced with a Witness patient who refuses a blood transfusion, the reaction of a poorly informed physician is often "anger" and "frustration." "Tactics of opposition too often include emotionally loaded persuasion, threats, deception, and withdrawal from the patient's care."[530] This reaction may well be due to ignorance. One survey revealed that of those who responded, most physicians and medical students did not understand why Witnesses refuse blood. The survey concluded that "professionals need to know more about Witnesses, why they refuse transfusion, and how strongly they believe in the

[530] I. Andrews, *supra* note 356 at 2.

refusal."[531] The requirement for physicians to be informed would apply equally to most other refusals of treatment based on moral or religious grounds.

A properly informed physician, armed with an understanding of the beliefs and values of the patient, as well as with available information on alternatives,[532] will be empowered to "provide net medical benefit to patients with minimal harm – that is beneficence with non-maleficence."[533] This will "not only respect but also enhance" the patient's autonomy.[534]

B. "INFORMED DOCTOR" MORE LIKELY TO RESPECT PATIENT'S BELIEFS

> *Transfusion certainly makes the surgeon feel better, but it may not make the patient feel better. Perhaps we all have a tendency to transfuse to make ourselves more comfortable. I think when we have a Jehovah's Witness, we'll do well to consider his point of view*[535]

1. Understanding breeds respect

When physicians disagree with Witness patients regarding refusal of blood transfusion, often the "root of the controversy lies not in the patient's convictions,

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[531] S. Duh, "Physician Reaction to Refusal of Blood Transfusions by Jehovah's Witnesses" (1987) 79 J. Nat. Med. Assoc. 467.

[532] Legal advisers are warning physicians to "assess the efficacy and safety of the treatment" before proceeding with blood transfusion therapy. This will involve keeping up to date with information regarding the risks associated to blood as well as new alternatives available. Physicians should obtain the patient's specific consent before administering blood products. See M. A. Clay, *supra* note 510 at 37. See also B. Grainger, "Legal and ethical considerations in blood transfusion" (1997) 156 :11 Can. Med. Assoc. J. 550.

[533] R. Gillon, *supra* 433 at 185.

[534] *Ibid.*

[535] Comments by Dr. Englbert Dunphy, *supra* note 301.

which are usually firm, but in the physician's inability to accept the stipulation and proceed with care."[536] This has been described as the "physician denial of patients' ability to choose rational, ethically sound medical or life goals."[537] Such a denial represents a serious "threat to autonomy and well-being."[538]

Physicians must realize, moreover, that their "instincts to protect patients against their own decisions, including the conscientious instinct to sustain life, are limited by law."[539] Ethical standards, however, go beyond basic legal requirements. They develop and offer an ideal of ethical behavior for the physician.[540] Based on the premise that patients have a right to self-determination, while physicians are granted "a privilege to treat their patients,"[541] physicians are encouraged to "explore the reasoning" and "understand the values and goals that underlie decisions to refuse care."[542] This will obviously foster a good relationship.[543]

For example, a physician should comprehend that for a Witness patient, what is at stake "is not merely the low degree of bodily invasion, but the violation of the integrity of the person as encompassing psychological, social, spiritual, as well as

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[536] J. Cooper, Jr, "Perioperative Considerations in Jehovah's Witnesses" (1990) 28:4 Intern.. Anesth.. Clin. 210

[537] C. Meyers, "The impact of physician denial upon patient autonomy and well-being" (1992) 18:3 J. Med. Ethics 135.

[538] *Idem.*

[539] B. Dickens, "Medical Priority of Patient's Wishes" (1991) 7:1 Hum. Med. 7 at 9.

[540] M-H. Parizeau & A. Carbonneau, "Analyse éthique du consentement à l'acte transfusionnel et repères juridiques dans le contexte canadien et québécois" in *Consentement éclairé et transfusion sanguine* (Rennes: Éditions ENSP, 1996) at 161.

[541] J. E. Thomas, "Ethical Reflections on Patient Refusals of Life-Saving Treatment" (1991) 5:4 Transf. Med. Rev. 259.

[542] J. Adams, *supra* note 266.

[543] See O. Argy, "Another Standare of Care – Patient, *In Reply*" 276:6 JAMA 450: "(...) the patient's perception is influenced by the physician through effective communication, clinical acumen, and empathy. Physicians will enhance their relationships with patients by displaying these skills and concern, and the patient will perceive the reality that the physician is an ally and not an adversary."

physical, well-being."[544] Not to respect the Witnesses' refusal would be "a personal insult of a very deep and cutting nature."[545]

Physicians also need to understand that the request for non-blood management is scientifically sound. Clinical alternatives are available, effective, and becoming an accepted part of sound medical practice. The dramatic rise of centers for bloodless medicine and surgery shows that concerns about allogeneic blood are no longer of a strictly religious nature.[546] "The recent shift away from the liberal use of transfusions in clinical medicine suggests that the standard of practice regarding the use of allogeneic blood is undergoing significant revision."[547]

2. Unethical coercion

Some authors have proposed a form of paternalistic intervention in which the physician decides what is best for patients and then argues with them with the objective of changing their position.[548] Such an approach is clearly unethical in the presence of deeply held values and beliefs. This may be more easily understood if the reverse situation is imagined. How would fellow health care professionals react if a physician, himself one of Jehovah's Witnesses, attempted to argue and convince patients that blood transfusions are a grave violation of God's law and must be avoided at all cost? Such conduct would be judged unacceptable. No physician should try to impose his own

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[544] J. E. Thomas, *supra* note 541 at 260.

[545] M. Wreen, "Autonomy, religious values, and refusal of lifesaving medical treatment" (1991) 17 J. Med. Ethics 124 at 128.

[546] *Supra* note 318 - 321 an accompanying text.

[547] M. A. Clay, *supra* note 510 at 37.

[548] See *supra* note 281 and accompanying text.

personal values and beliefs on a patient. Such attempts are not only unethical but are also counterproductive, "leading to destruction of the doctor-patient relationship."[549]

The ailing patient has left his social environment and enters the hospital, 'a stranger in a strange land' – in a world of which he knows neither the language, the rites nor the traditions.[550] This 'patient in pajamas' must now confront the 'authority figure in a white coat.' Secure in his element, the physician is armed with scientific and medical knowledge, empowered and determined to save lives. Given the setting, and considering that "physicians often regard their perspective as better than the perspective of their religiously recalcitrant patient", coercion would be both immoral and unethical.[551]

C. THE CARING PHYSICIAN

It is clear that conscientious objection to a recommended medical treatment poses an ethical and legal challenge to health care professionals. This challenge, however, need not lead to confrontation. Consistent with the physician's responsibility to provide net medical benefit to patients with minimal harm, serious consideration must be given to the value and belief system of the objector. The caring physician who takes on the role of an 'informed doctor' will serve his patients well, in keeping with fundamental legal and ethical principles.

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[549] R. K. Spence, *supra* note 500.

[550] M-H. Parizeau & A. Carbonneau, *supra* note 540 at 168.

[551] J. E. Thomas, *supra* note 541 at 260.

Far from violating the sanctity of life principle, this approach will enhance the patient's life as an autonomous individual in control of his own destiny. As a result, the physician and the patient will together play a positive and determining role in the healing process.

BIBLIOGRAPHY

LEGISLATION

Infants Act, R.S.B.C. 1979, c. 196.

Medical Consent of Minors Act, N.B. Acts, 1979, c. 41.

Proposals for an Advance Health Care Directive Act, Law Reform Commission of Saskatchewan, Report to the Minister of Justice, Dec. 1991.

Quebec Chart of Human Rights, 1975 (L.R.Q., c. C-12).

Civil Code of Quebec, Art. 13, 14.

JURISPRUDENCE

Adler v. *Ontario*, [1996] 3 S.C.R. 607

B. (R.) v. *Children's Aid*, [1995] 1 S.C.R. 315

Bennan v. *Parsonnet* (1912), 83 N.J.L.R. 20 at 26

Boyer v. *Grignon*, [1988] R.J.Q. at 829

Caron v. *Gagnon*, (1930) R.J. at 155. (S. Ct.)

Chaput v. *Romain*, [1955] S.C.R. 834

Crouse Irving Memorial Hospital, Inc. v. *Paddock*, 127 Misc. 2d 101, 485 N.Y.S.2d 433 (Sup. Ct. Onondaga County 1985)

Dobson (Litigation Guardian of) v. *Dobson*, Supreme Court of Canada, File No. 26152, December 8, 1999: July 9

Evelyn Estrella v. *Princess Margaret Hospital*, June 2, 1999, Court. File No. 99-CV-170514

Fosmire v. *Nicoleau*, 551 N.E.2d 77 at 83

Fosmire v. *Nicoleau*, 75 N.Y.2d 218, 551 N.E.2d 77, 551 N.Y.S.2d 876 (1990), 144 A.D.2d 8, 536 N.Y.S.2d 492 (1989)

844, August 1, 1984.

Malette v. *Shulman & al.*, 63 O.R. (2d) 243 at 268 (Ont. Sup. Ct., 1987).

Malette v. *Shulman*, 67 D.L.R. (4th) 321 (Ont. C.A. 1990).

Manoir de la Pointe Bleue (1978) Inc. v. *Corbeil*, [1992] R.J.Q. 712 (S. Ct.)

Marshall v. *Curry* (1933), 3 D.L.R. 60 Can. C.C. 136 (Nova Scotia)

Marshall v. *Curry* (1933), 3 D.L.R. 260 (N.S.S.C)

McKenzie v. *Doctors' Hosp. of Hollywood, Inc.*, 765 F. Supp. 1504, 1505 (S.D. Fla. 1991)

Mercy Hosp., Inc. v. *Jackson*, 489 A.2d 1130, 1131 (Md. Ct. Spec. App. 1985).

Mulloy v. *Hop Sang*, (1935) 1 W.W.R. 714.

Murray v. *McMurchy* (1949), 2 D.L.R. 442.

Norwood Hospital v. *Munoz*, 409 Mass. 116, 564 H.E.2d at 1017 (1991).

Norwood Hospital v. *Munoz*, 564 N.E. 2d 1017, 1019-20 (Mass. 1991).

Olmstead v. *US*, 277 US 472 at 479 (1927).

Parmley v. *Parmley*, [1945] 4 D.L.R. 81 (S.C.C.).

Pittman v. *Bain*, [1994] 19 C.C.L.T. (2d) 1 (Ont. Ct. Gen. Div.)

Powell v. *Columbian Presbyterian medical Center*, 49 Miscf. 2d 215, 267 N.Y.S.2d 450 (Sup. Ct. N.Y. County 1965).

Public Health Trust v. *Wons*, 541 So. 2d at 96 (Fla. 1989), 500 So. 2d at 679 (Fla. Dist. Ct. App. 1987).

Re A.Y., 111 348 A.P.R. 91 (Nfld. Fam. Ct. 1993).

Re L.D.K., 48 R..F.L. (2d) 164 (Ont. Prov. Ct.).

Re L.D.K.; C.A.S. v. *K.* (1985) 48 R.F.L. (2d) 164 (Ont. Prov. Ct.)

Region 2 Hospital Corp. v. *Walker*, 4 R.F.L. (4th) 321 (New Brunswick Ct. App. 1994)

Reibl v. *Hughes*, [1980] 2 S.C.R. 180 at 184.

Schloendorff v. *Society of New York Hospital*, (1914), 211 N. Y. 125.

Slater v. *Baker* (1767) 2 Wils. K.B. 359, 95 E.R. 860; 22 Hals. (2nd ed.) at 319.

Superintendent of Belchertown State School v. *Saikewicz*, Mass. 370 N.E. 2d 417 (1977).

U.S. v *Garber*, 589 F. 2d 843, 845 (5th Cir. 1979).

United States v. *George*, 239 F. Supp. 752 (D. Conn. 1965).

Weiss c. *Solomon*, [1989] R.J.Q. 731 (S. Ct.).

Werth v. *Taylor*, 475 N.W.2d 426 (Mich. Ct. App. 1991).

Winn v. *Alexander and the Soldiers' Memorial Hospital*, (1940) O.W.N. 238.

SECONDARY MATERIAL: MONOGRAPHS

1999 Yearbook of Jehovah's Witnesses (New York: Watchtower Bible and Tract Society of New York, 1999).

A.M.S., Le refus des transfusions sanguines (Guyancourt: A.M.S.,1990).

Annas, G. & al., *The Nazi Doctors and the Nuremberg Code* (New York: Oxford University Press, 1992).

Arnold, E., *The Early Christians After the Death of the Apostles* (New York: Plough Publishing House, 1972).

Beauchamp, T., & al., *Principles of Biomedical Ethics* (New York: Oxford University Press, 1994).

Bendixen, H. H., "Preface" in *Blood and Blood Products* (Washington: National Academy Press, 1996).

Benson, J., *The Holy Bible, Containing the Old and New Testaments* (New York: 1839).

Binns, L. E., *Innocent III* (London: Methuen & Co. Ltd., 1931).

Boyd, K., "Moral and Religious Dilemmas" in *Critical Care – Standards, Audit and Ethics* (London: Arnold, 1996).

Brock, D., "Death and Dying" in *Medical Ethics* (Boston: Jones and Bartlett, 1997).

Brockliss, L. & Jones, C., *The Medical World of Early Modern France* (Oxford: Clarendon Press, 1997).

Burton-Bradley, B. G., *A History of Medicine in Papua New Guinea* (Kingsgrove: Australasian Medical Publishing Company Limited, 1990).

Butterfield, L. H., ed., *Letters of Benjamin Rush, 1793-1813*, vol. II (Princeton, N.J.: Princeton University Press, 1951).

Calhoune, L., "Blood Product Preparation and Administration" in *Clinical Practice of Transfusion Medicine*, 3d. ed. (New York: Churchill Livingstone, 1995).

Callahan, D., *The Sanctity of Life* (Boston: Beacon Press, 1968).

Calvin, J., *Commentaries on The First Book of Moses called Genesis* (Edinburgh: The Edinburgh Printing Company, 1847).

Capland, A., ed., *When Medicine Went Mad: Bioethics and the Holocaust* (Totowa: Humana Press, 1992).

Catholic Hospital Association, *Religious Aspects of Medical Care: A Handbook of Religious Practices of All Faiths* (St-Louis: The Catholic Hospital Association, 1978).

Childress, J., "The Normative Principles of Medical Ethics" in *Medical Ethics* (Boston: Jones and Bartlett, 1997).

Clarke, A., *The Holy Bible, Containing the Old and New Testaments* (New York: Carlton & Porter, 1856).

Clarke, A., *The New Testament of our Lord and Savior Jesus Christ* (New York: Carlton & Phillips, 1856).

Crosby, H., *The New Testament in Both Authorized and Revised Versions* (Boston: Carles F. Alden & Company, 1884).

Dalderby, J., *The Ecclesiastical History of the Second and Third Centuries* (London: Francis & John Rivington, 1845).

Davis, J. D., *The Westminster Dictionary of the Bible* (Philadelphia: The Westminster Press, 1944).

Delitzsch, F., *A New Commentary on Genesis* (Edinburgh: T. & T. Clark, 1888).

Dierkens, R., *Les droits sur le corps et le cadavre de l'homme* (Paris: Masson et Cie, 1996).

Dods, M., *The Works of Aurelius Augustine, Bishop of Hippo*, vol. V (Edinburgh: T. & T. Clark, 1822).

Driver, S. R., *The Book of Genesis* (London: Methuen & Co., 1904).

Ellis, P. J., *Transfusion Therapy, Principles and Procedures* (Rockville: Aspen Systems Corporation, 1981).

Emson, H., *The Doctor and the Law* (Toronto: Butterworths Canada, 1989).

Engelhardt, H., *The Foundations of Bioethics* (Oxford: Oxford University Press, 1996).

Eusebius, *An Ecclesiastical History*, trans. Cruse, C.F. (Samuel Bagster and Sons, Paternoster Row, 1842).

Fakhry, I., & al., "Blood Transfusions and Disorders or Surgical Bleeding" in *Textbook of Surgery* (Philadelphia: W.B. Saunders, 1997).

Family Care and Medical Management for Jehovah's Witnesses (New York: Watchtower Bible and Tract Society of New York, Inc., 1995).

Farr, A.D., in his book *God, Blood and Society* (Aberdeen: Impulse Publications Ltd., 1972).

Fleming, A., *Medical Milestones* (Baltimore: The Williams & Wilkins Co., 1952).

Flint, A., *Practice of Medicine* (Philadelphia: Henry C. Lea's Son and Company, 1881).

Fuller, A. G., *Complete Works of the Rev. Andrew Fuller, with a Memoir of his Life* (London: G. & J. Dyer, Paternoster Row, 1846).

Garrison, F. H., *An Introduction to the History of Medicine* (London: W. B. Saunders Company, 1929).

Gilmartin, G., "Jehovah's Witnesses" in *Ethical Issues in Anaesthesia* (Oxford: Butterworth-Heinemann, 1994).

Graffard, S., et al., Les Bibelforscher et le nazisme (1933-1945) Ces oubliés de l'Histoire (Paris: Editions TIRESIAS, 1991).

Grisso, T., *Evaluating Competencies – Forensic Assessments and Instruments* (New York: Plenum Press, 1986).

Gruber, U. F., *Blood Replacement* (Heidelberg: Springer-Verlag Berlin, 1969).

Guiou, N. M., *Transfusion, A Canadian Surgeon's Story in War and in Peace* (Yarmouth: Stoneycroft Publishing, 1985).

Hall, S. G., *Women among the Early Martyrs* in *Martyrs and Martyrologies* (Oxford: Blackwell Publishers, 1993).

Halsted, W. S., *Surgical Papers* (Baltimore: Johns Hopkins Press, 1924).

Hastings, J., ed., *Dictionary of the Bible* (New York: Charles Scribner's Sons, 1963).

Héritier, J., *La sève de l'homme* (Paris: Éditions Denoël, 1987).

Houdre, J.-P., *Aperçu sur l'historique de la transfusion sanguine depuis les origines jusqu'au XIXème siècle* (Paris: L'imprimerie R. Foulon & Cie, 1968).

How Can Blood Save Your Life? (Georgetown: Watch Tower Bible and Tract Society of Canada, 1990).

Illich, I., *Limits to Medicine* (Toronto: McClelland & Steward Ltd., 1976).

Institute of Medicine, *HIV and the Blood Supply: An Analysis of Critical Decisionmaking* (Washington: National Academy Press, 1995).

Is there a Creator Who Cares About You? (New York: Watchtower Bible and Tract Society of New York, Inc., 1998).

Ispahany, B., *Islamic Medical Wisdom The Tibb Al-A'Imma* (London: The Muhammadi Trust of Great Britain and Northern Ireland, 1991).

Jehovah's Witnesses in the Twentieth Century (Georgetown: Watch Tower Bible and Tract Society of Canada, 1989).

Joseph, N., & al., "Blood Salvage Techniques" in *Blood Conservation in the Surgical Patient* (Baltimore: Williams & Wilkins, 1996).

Kant, E., "Groundwork of the Metaphysics of Morals" in *Immanuel Kant, Practical Philosophy* (Cambridge: Cambridge University Press, 1996).

Kaplan, W., *State and Salvation - The Jehovah's Witnesses and Their Fight for Civil Rights* (Toronto: University of Toronto Press, 1989).

Kevy & Gorlin, "Red Cell Transfusion" in *Hematology of Infancy and Childhood*, 5th ed.

(Philadelphia: W.B. Saunders, 1998).

Keyserlingk, E., *Sanctity of Life or Quality of Life* (Ottawa: Minister of Supply and Services Canada, 1979).

Khushf, G., "The Sanctity of Life: A Literature Review" in *Sanctity of Life and Human Dignity* (Dordrecht: Kluwer Academic, 1996).

King, L. S., *Medical Thinking - A Historical Preface* (Princeton: Princeton University Press, 1982).

Knowledge That Leads to Everlasting Life (New York: Watchtower Bible and Tract Society of New York, Inc., 1995).

Krever, H., "Interim Report" in *Commission of Inquiry of the Blood System in Canada* (Ottawa: Canada Communication Group, 1995).

Kuhse, H., *The Sanctity-of-Life Doctrine in Medicine* (Oxford: Clarendon Press, 1987).

L'Ancien, P., trans. Ernout, A., *Histoire naturelle* (Paris: Société d'édition "Les belles lettres", 1962).

Lang, D., & al., "Blood Conservation in Jehovah's Witnesses" in *Blood Conservation in the Surgical Patient* (Baltimore: Williams & Wilkins, 1996).

Lifton, R., *The Nazi Doctor: Medical Killing and the Psychology of Genocide* (New York: Basic Books, 1986).

Luther's Works (Church and Ministry III) (E. Gritsch ed. N.d.).

Masson, A. H.B., "History of the Blood Transfusion Service in Edinburgh" (Edinburgh: Alastair H. B. Masson, 1993) at 92.

Mayrand, A., *L'inviolabité de la personne humaine* (Montreal: Wilson & Lafleur, 1975).

McCullough, J., *Transfusion Medicine* (New York: McGraw-Hill, 1998).

McDuff, J., *Le sang qui tue* (Montreal: Libre expression, 1995).

McGarvey, J. W., *A Commentary on Acts of Apostles* (Lexington: Transylvania Printing and Publishing Co., 1872).

Mill, J. S., "On Liberty" in *Essential Works of John Stuart Mill* (New York: Bantam Books, 1965).

Miller, W.V., "Adverse Effects of Blood Transfusion" in *Transfusion Therapy, Principles and Procedures* (Rockville: Aspen Systems Corporation, 1981).

Milner, J., *The History of the Church of Christ* (London: Thomas Cadell, In the Strand, 1834).

Moeller, W., *History of the Christian Church A.D. 1 - 600* (New York: The Macmillan Co., 1902).

Mollinson, P. L., Engelfriet, C. P. & Contreras, M., *Blood Transfusion in Clinical Medicine*, 9th ed. (Oxford: Blackwell Scientific Publications, 1993).

New International Version of The Holy Bible (East Brunswick, New Jersey: International Bible Society, 1984).

Newton, I., *The Chronology of Ancient Kingdoms Amended* (London: Printed for J. Tonson, J. Osborn and T. Longman, 1728).

Oberman, H.A., *"The History of Transfusion Medicine" in Clinical Practice of Transfusion Medicine*, 3rd ed. (New York: Churchill Livingstone, 1995).

Organized to Accomplish Our Ministry (New York: Watch Tower Bible and Tract Society of New York, 1989).

Oritz de Montellano, B. R., *Aztec Medicine, Health and Nutrition* (London: Rutgers University Press, 1990).

Osler, W. & McCrae, T., *The Principles and Practice of Medicine* (New York: D. Appleton and Company, 1920).

Parizeau M.-H. et Carbonneau, A., "Analyse éthique du consentement à l'acte transfusionnel et repères juridiques dans le contexte canadien et québécois," in *Consentement éclairé et transfusion sanguine* (Rennes : Éditions ENSP, 1996) at 161.

Pellegrino, E., "Toward an Expanded Medical Ethics: The Hippocratic Ethic Revisited" in *Hippocrates Revisited A Search for Meaning* (New York: Medcom Press, 1973).

Penmery, J.-J., *Les Origines de la Transfusion Sanguine* (Amsterdam: B. M. Israel N. V., 1974).

Percival, H.R., *The Seven Ecumenical Councils of the Undivided Church*, vol. XIV (New York: Charles Scribner's Sons, 1900).

Picard, A., *The Gift of Death* (Toronto: HarperCollins Publisher Ltd., 1995).

Pichon, J., *Le Ménagier de Paris*, vol. I (Paris: Société des bibliophiles français, 1846).

Pirie, A., *A Dissertation on Baptism and Letters on the Sinai Covenant; together with an Inquiry into the Lawfulness of Eating Blood* (Edinburgh: J. Pillans & Sons, Lawnmarket, 1806).

Porter, R., *The greatest Benefit to Mankind* (New York: W. W. Norton & Company, 1997).

Ramsey, P., "The Morality of Abortion" in *Moral Problems: A Collection of Philosophical Essays* (New York: Harper & Row, 1971).

Ramsey, P., *The Patient as a Person*, (London: Yale University Press, 1972).

Roberts, A. & Donaldson, J., *The Ante-Nicene Fathers. Translations of The Writings of the Fathers down to A.D. 325* (New York: Charles Scribner's Sons, 1925).

Robinson, C. H., *The Life of Otto Apostle of Pomerania* (New York: The Macmillan Company, 1920).

Rossi, E. C., Simon, T. L. & Moss, G. S., *Principles of Transfusion Medicine* (Baltimore: Williams & Wilkins, 1991).

Rothman, D., *Strangers at the Bedside* (New York: Basic Books, 1991).

Rozovsky, L., & al., *The Canadian Law of Consent to Treatment* (Toronto: Butterworths Canada, 1990).

Rozovsky, L., *Canadian Hospital Law* (Toronto: Canadian Hospital Association, 1974).

Rutkow, I. M., *American Surgery, An Illustrated History* (New York: Lippincott-Raven, 1998).

Sazama, K., "Adverse Effects of Blood Transfusions" in *Conn's Current Therapy* (Philidelphia, Saunders, 1999).

Schaff, P. & Wace, H., *A select Library of Nicene and Post-Nicene Fathers*, vol. II (New York: The Christian Literature Company, 1894).

Sharma, P. V., *History of Medicine in India from Antiquity to 1000 A.D.*, (New Delhi: Indian National Science Academy, 1992).

Shils, E., "The Sanctity of Life" in *Life or Death: Ethics and Options* (Seattle: University of Washington Press, 1968).

Smith, W., *A Dictionary of the Bible* (Chicago: The John C. Winston Company, 1884).

Soloman, "A History of Transfusion Medicine" in *III American Association Blood Banks, Administrative manual* (A. Ross ed., 1990).

Sommerville, A., *Medical Ethics Today: Its Practice and Philosophy* (London: B.M.J. Publishing Group, 1993).

Spence, R. K., "Management of Surgical Patients with Special Problems" in *Clinical Practice of Transfusion Medicine*, 3d ed. (New York: Churchill Livingstone, 1995).

Spence, R.K., "Beneficial Aspects of Surgical Transfusion" in *Blood and Blood Products: Safety and Risk* (Washington: National Academy Press, 1996).

Spence, R. K., "Blood Saving Strategies in Surgical Patients," in *Clinical Practice of Transfusion Medicine*, 3rd edition, (New York: Churchill Livingstone, 1995) at 521.

Spencer, W.G. (trans.), *Celsus de Medicina* (Cambridge: Harvard University Press, 1960).

Starr, D., *Blood, An Epic History of Medicine and Commerce* (New York: Alfrede A. Knopf, 1998).

Stevens, C.E., "The Epidemiology of Non-A Non-B Hepatitis in the United States" in *Blood Transfusion, Blood Components and Hepatitis*, Second USA-USSR Joint Symposium, Bethesda, Maryland, 24-26 September 1979 (U.S. Department of Health and Human Services, 1980) 43.

Swisher & Petz, *Overview and General Principles of Transfusion Medicine: Clinical Practice of Transfusion Medicine*, 3d ed. (New York: Churchill Livingstone, 1996).

Tannahill, R., *Flesh & Blood* (London: Abacus, 1996).

Tertullian Apologetical Works and Minucius Felix Octavius, transl. R. Arbesmann, *et al.* (Washington: The Catholic University of America Press, Inc., 1950).

The Bible, God's Word or Man's? (New York: Watchtower Bible and Tract Society of New York, Inc., 1989).

The Royal College of Surgeons of England, *Code of Practice for the Surgical Management of Jehovah's Witnesses* (London: The Royal College of Surgeons of England, 1996).

Titmuss, R. M., *The Gift Relationship* (London: George Alloen & Unwin Ltd., 1970).

True Peace and Security - How Can You Find It? (New York: Watchtower Bible and

Tract Society of New York, Inc., 1977).

Veatch, R., "Medical Ethics, An Introduction" in *Medical Ethics* (Boston: Jones and Bartlett, 1997).

Verhey, A., "Scripture and Medical Ethics: Psalm 51:10A, The Jarvik VII, and Psalm 50:9" in *Religious Methods and Resources in Bioethics*, ed. by P. Camenisch (Boston: Kluwer Academic, 1994).

Wailoo, K., *Drawing Blood* (Baltimore: The Johns Hopkins University Press, 1997).

Wesley, J., *Explanatory Notes upon the New Testament* (London: Wesleyan Conference Office, 1754).

Williams, F., *The Sanctity of Life* (London: Faber and Faber, 1958).

Wilson, B., "Complications of Blood Transfusions" in *Complications in Surgery and Their Management* (Philadelphia: Saunders, 1961).

Wolf & Gold, "Current Practice of Blood Transfusion in Cardiac Surgery" in *Blood Conservation in Cardiac Surgery* (New York: Springer, 1998).

You can live forever in Paradise on Earth (New York: Watch Tower Bible and Tract Society of New York, Inc., 1989).

SECONDARY MATERIAL: ARTICLES & CONFERENCES

"An "Exclusion Clause" Recommended" *The Watchtower,* (December 15, 1950) 524.

"Early Christians Under Roman Rule" *The Watchtower* (March 1, 1951) 137.

"Are Blood Transfusions Really Necessary?" *Awake!* (August 22, 1999) 31.

"Baptism" *The Watchtower* (August 1, 1958) 472.

"Be Faithful to God "Who Looks On in Secret"" *The Watchtower* (April 15, 1985) 12.

"Blood Transfusion - One Doctor's Opinion" *Awake!* (January 8, 1949) 12.

"Blood Transfusions: Why Many are Taking a Fresh Look" *Awake!* (September 8, 1978) 16.

"Bread of Life" Available for All" *The Watchtower* (February 15, 1986) 18.

"Bridging the Gap Between Doctors and Witness Patients" *Awake!* (November 22, 1990) 21.

"Bullfighting - Art or Outrage?" *Awake!* (July 8, 1990) 19.

"By Man's Way or by God's Way - Which?" *The Watchtower* (December 1, 1967) 721.

"Canada's 'Tainted Blood' Inquiry" *Awake!* (June 8, 1995) 20.

"Compte rendu du colloque de Bordeaux du 8 novembre 1986" (1986).

"Consensus Conference: Blood Management-Surgical Practice Guidelines" (1995) 170 Amer. J. of Surg. 1S.

"Dangers of Blood Transfusion" *Awake!* (October 22, 1948) 12.

"Doctor-Patient Communication - A Key To Success" *Awake!* (March 8, 1991) at 12.

"Doctors Take a New Look at Bloodless Surgery" *Awake!* (December 8, 1998) at 18.

"Doing What We Can to Maintain a Better Life" *Awake!* (April 22, 1977) at 6.

"Elders, Judge With Righteousness" *The Watchtower* (July 1, 1992) 19.

"Euthanasia and God's Law" *The Watchtower* (February 15, 1961) 118.

"Facing Up to Questions of Conscience" *The Watchtower* (October 1, 1972) 589.

"Gaining Peace With God Through Dedication and Baptism" *The Watchtower* (April 15, 1987) 12.

"How precious Is Life to You?" *The Watchtower* (January 15, 1995) 3.

"Immovable for the Right Worship" *The Watchtower* (July 1, 1945) 195.

"Is Blood Transfusion Scriptural?" *Awake!* (September 22, 1949) 25.

"Jehovah's Witnesses and the Medical Profession Cooperate" *Awake!* (November 22, 1993) at 24.

"Keep on Walking in Jehovah's Way" *The Watchtower* (May 15, 1999) 19.

"Keeping God's Congregation Clean in the Time of His Judgment" *The Watchtower* (June 1, 1973) 339.

"Le Sang" *La Recherche* 24 (May 1993).

"Medical Alternatives to Blood Transfusions" (Report of proceedings and recommendations of conference *Building a Blood System in the 21st Century*, Toronto, 3-4 November 1997) (1997) Hospital Information Services (Canada) for Jehovah's Witnesses 57.

"Mercy Killing – What Do Lawyers Say?" *Awake!* (March 8, 1978) at 7.

"Motorcycles – How Dangerous Are They?" *Awake!* (April 8, 1992) at 10.

"My Life With Hemophilia" *Awake!* (June 22, 1987) at 21.

"My Ten Years in Spain's Military Prisons" *The Watchtower* (October 1, 1985) 19.

"New Scandal erupts in France over export of blood products" *The Medical Post* (17 November 1992) 60.

"Nonblood Treatment – What Experts Say" *Awake!* (March 8, 1999) at 19.

"One Reason for God's Vengeance" *The Watchtower* (December 15, 1927) 376.

"Pioneering Bloodless Surgery with Jehovah's Witnesses" *Awake!* (March 8, 1991) at 12.

"Prison sentences for French blood transfusion officials" *New Scientist* (31 October 1992) 8.

"Seminars to improve Relations Between Doctors and Jehovah's Witnesses" *Awake!* (March 22, 1995) at 19.

"Settling Doctrinal Differences" *Zion's Watch Tower* (April 15, 1909) at 117.

"Should Babies Be Baptized?" *The Watchtower* (March 15, 1986) 7.

"Should You be Baptized?" *The Watchtower,* (April 1, 1993) 4 at 6.

"The Apostolic Council" *Zion's Watch Tower* (November 15, 1892) at 350.

"The Christian Congregation and Its Operation," *The Watchtower* (October 1, 1977) 600.

"The Most Precious Fluid in The World" *Awake!* (October 22, 1990) at 15.

"Thrill Sports – Should I Take a Chance?" *Awake!* (July 8, 1994) at 9.

"Treasure the Real Life," *The Watchtower* (January 15, 1995) 6.

"Walk as Instructed by Jehovah," *The Watchtower* (June 15, 1991) 13 at 17.

"Water Safety Is No Accident" *Awake!* (May 22, 1988) at 15.

"Why the Rise in Suicide?" *Awake!* (August 8, 1975) at 25.

ABC NEWS, 20/20 aired on March 19, 1987, hosts Hugh Downs & Barbara Walters, producer Joseph R. Lovett and correspondent Tom Jarriel.

Adams, J., "Respecting the Right to Be Wrong" (1998) 5 Acad. Emerg. Med. 753.

Alexander, L., "Medical Science Under Dictatorship," (1949) 241 New Eng. J. of Med. at 39.

Andrews, L., "Legal, Ethical, and Medical Guidelines for Jehovah's Witnessses in Surgery" (1979) 34 Week. Anest. Upd. 1.

Argy, O., "Another Standare of Care – Patient, *In Reply*," 276:6 JAMA 450.

Atighetchi, D., "Bioethics and Islam," in Proceedings of the 10th World Congress on Medical Law, Jerusalem (Israel) Aug. (1994) 26;

Baron, C.H., "Blood, Sin, and Death: Jehovah's Witnesses and the American Patients' Rights Movement" (Colloquim on "Sang et droit", University of Paris X (Nanterre), 14-15 May 1993).

Bartholome, W., "A Revolution in Understanding: How Ethics Has Transformed Health Care Decision Making" (1992) Qual. Rev. Bull. 9.

Beeson, P.B., "Jaundice Occurring One to Four Months After Transfusion of Blood or Plasma" (1943) 121 JAMA 1332.

Blajchman, M.A., "Transfusion-Related Issues in Jehovah's Witness Patients" (1991) V Trans. Med Rev. 243.

Bleecher, H., "Ethics and Clinical Research" (1966) 274 NEJM 1354.

Blundell, J., "Experiments on the Transfusion of Blood by the Syringe" (1818) IX Medico-Chir. Tr. 56.

Blundell, J., "Some Accounts of a Case of Obstinate Vomiting in which an Attempt was Made to Prolong Life by the Injection of Blood Into the Veins" (1818) X Medico-Chir. Tr. 310.

Bonakdar, M. I. & al., Major Gynecologic and Obstetric surgery on Jehovah's Witnesses" (November 1982) 60:5 Obst. & Gyn. 587.

Bragg, R., "Fake Witnesses Avoid Transfusions" *The Toronto Star* (25 February 1997) A9.

Bryan, L. Jr., "Blood-Letting in American Medicine, 1830 - 1892," (1964) 38 *Bull. Of the Hist. Of Med.* 516 at 519.

Bueckert, D., "Bloodless Medicine Continuing to Gain in Popularity" *The Globe and Mail* (4 January 1997) A10.

Burns, J. M., "When patients refuse blood transfusion: meeting the medical and legal challenge," (1997) 3 *Advances in Legal Med.* 261.

Capen, K., "Informed Consent and Blood Transfusions: What does Krever's Interim Report Mean to Doctors?" (1995) 152 *Can. Med. Assoc. J.* at 1663.

Carlson, D.-L., "Clients Living Proof of Canada's Tainted-Blood Scandal" (13-19 June 1994) Law Times 4.

Chown, B., "Transfusions are Dangerous" (1 December 1957) 77 Can. M. A. J. 1037.

Clay, M. A., "Ethical and Legal Implications of Bloodless Medicine and Surgery," (1999) 14:1 *J. Intensive Care Med.*34 at 37;

Clouser, K., "The Sanctity of Life: An Analysis of a Concept" (1973) 78 Ann. of Med. Eth. 165.

Cooley, D.A. & al., "Open Heart Surgery in Jehovah's Witnesses" (June 1964) 13 Amer.

J. of Card. 779.

Cooper, J., Jr, "Perioperative Considerations in Jehovah's Witnesses" (1990) 28:4 Internat. Anesthesiol. Clinics at 210.

Crosby, W. H., "Misuse of Blood Transfusions" (December 1958) Blood 1198.

Curran, J. & al., "Acquired Immunodeficiency Syndrome (AIDS) Associated with Transfusions" (12 January 1984) New Eng. J. of Med. 69.

Davis, S., "The Refusal of Life-Saving medical Treatment vs. the State's Interest in the Preservation of Life: A Clarification of the Interests at Stake" (1980) 58 Wash. Univ. Law Quarterly 85.

DeCastro, R., "Bloodless surgery: Establishment of a program for the special medical needs of the Jehovah's Witness community—The gynecologic surgery experience at a community hospital," (1999) 180 Am.. J. Obstet. Gynecol. at 1491.

Delmas, D. & Garay, A., "Le Bureau d'information Hospitalier des Témoins de Jéhovah" (July 1993) no. 88 La Gaz. de la Tranf. 36-38.

Devine, R., "Save the Body, Lose the Soul" (1989) Heal. Prog. 68.

Diamond, L. K., "History of Blood Banking in the United States" (1965) 193 JAMA 40-45.

Dickens, B., "Medical Priority of Patient's Wishes," (1991) 7:1 Humane Medicine 7 at 9.

Dixon, J., "Blood: Whose Choice and Whose Conscience" (1988) 88 N.Y St. J. of Med. 463.

Dobroszcki, J., & al., "A Cluster of Transfusion-Associated Babesiosis Cases Traced to a Single Asymptomatic Donor" (1999) 281 JAMA 927.

Dougherty, K., "La fin des transfusions?" (1 May 1999) *L'Actualité* 18.

Downie, J., "Where There is a Will, The May Be a Better Way: Legislating Advanced Directives" (1992) 12 Health Law in Can. 73

Drane, J., "Competency to Give an informed Consent: A Model for Making Clinical Assessments" (1984) 252 JAMA 925.

Duh, S., "Physician Reaction to Refusal of Blood Transfusions by Jehovah's Witnesses," (1987) 79 *J. Nat. Med. Assoc.* at 467.

Duma, H., "Bambin opéré sans transfusion sanguine," *La Presse* (4 February 1999) A14.

Editorial (1984) 2 Lan. 1434.

Elliot, C., "Second opinions: a right or a concession?" (1995) 311 B.M.J. at 671.

Ellison & Silberstein, "A Commentary on Three Consensus Development Conferences on Transfusion Medicine" (1990) 8 Anest. Clin. No. Am. 624.

Ely, E.W. & Bernard, G.R., "Transfusions in Critically Ill Patients" (11 February 1999) 340:6 New Eng. J. of Med. 468.

Estes, J. W., "George Washington and the Doctors: Treating America's First Superhero" (January-February 1985) Med. Her. 43.

Ferdinand, R., "Jehovah's Witnesses and advance directives" (1996) 96 A.J.N. at 64.

Findley, L., "Blood Transfusion in Adult Jehovah's Witnesses, A Case Study of One Congregation" (1982) 142 Arch. Intern. Med. 606.

Ford, J., "The Refusal of Blood Transfusions by Jehovah's Witnesses" (1955) Feb. Linacre Quarterly at 3.

Freedman, B., "A Moral Theory of Consent" (1975) 5 Hastings Cen. Rep. at 5

Garay, A. & Goni, P., "La valeur juridique de l'attestation de refus de transfusion sanguine" (13 August 1993) no. 97 14.

Garcia, F., Juri, H., Lapin, R., "Anemia and Anesthesia" (1986) 4 J. of Blood. Med. and Surg. 15.

Garrison, F.H., "The History of Bloodletting" (1 March 1913) N.Y. Med. J. 432-437, 498-501.

Gattellari, M., & al., "Informed consent: what did the doctor say?" (1999) 353 The Lancet 1713.

Gillett, G., "Learning to do no Harm" (1993) 18 J. of Med. and Philos. 264.

Gillon, R., "Medical Ethics: Four Principles plus attention to scope" (1994) 306 Brit.

Med. J. 185.

Gilmore, A., "Sanctity of Life versus Quality of Life - The Continuing Debate" (1984) 130 Can. Med. Assoc. J. 181.

Grainger, B., "Legal and ethical considerations in blood transfusion" (1997) 156 :11 Can. Med. Assoc. J. 550.

Green, M., "Biblical Laws Relating to Blood Transfusion: The Judaic Laws and Principles" (1991) V Trans. Med. Rev. 247.

Grzelak, I., & al., "Blood Transfusions Downregulate Hematopoiesis and Subsequently Downregulate the Immune Response" (1998) 38 Trans. 1104.

Haug, M., & al., "Practitioner or Patient - Who's in charge?" (1981) 22 J. of Heal. and Soc. Behav. 215.

Hebert, P. C. & al., "A Multicenter Randomized, Controlled Clinical Trial of Transfusion Requirements in Critical Care" (11 February 1999) 40:6 New Eng. J. of Med. 409.

Henry, M., "Emergency treatment of Jehovah's Witnesses" (1991) 80 South African Med. J. at 626.

Higginson, A., "Report of Seven Cases of Transfusion of Blood, with a Description of the Instrument Invented by the Author" Liverpool Medical and Chirurgical Journal 1 (1857) 102 - 110.

Horty, J., Esq., "Informed consent: patient can set limits" (1992) 8 OR Manager 16.

How, W. G., "Religion, Medicine and Law" (October 1960) Can. Bar J. 365-432.

Howe, E., "Influencing a patient's religious beliefs: mandate or no-man's land?" (1995) 6 J. Clinical Ethics 194;

Ingelfinger, F., "Informed (But Uneducated) Consent" (1972) 287 New Eng. J. of Med. 465.

Ivy, A., "Nazi War Crimes of a Medical Nature" (1949) 139 JAMA at 131.

Jehovah's Witnesses and the Question of Blood (New York: Watchtower Bible and Tract

Society of New York, Inc., 1977) at 10.

Jenish, D., "Bad Blood" *Maclean's* (19 September 1994) 22.

Jonas, H., "Philosophical Reflections on Experimenting with Human Subjects" (1969) 98 Daedalus 219.

Jones, H. W. & Mackmull, G., "The Influence of James Blundell on the Development of Blood Transfusion" (1928) Ann. of Med. Hist. 244-247.

Jonsen, "Blood Transfusions and Jehovah's Witnesses" (1986) 2 Clin. Car. Clin. 97.

Kambouris, A. A., "Major Abdominal Operations on Jehovah's Witnesses" (June 1987) 53 The Am. Surg. 350-356.

Katz, M., "Psychiatric Consultation for Competency to Refuse Medical Treatment" (1995) 36 Psychosomatics 34.

Kay, J. H., "Need for Blood in Open Heart Surgery" (3 December 1973) 226:10 JAMA 1230.

Kitchens, C., "Are Transfusions Overrated? Surgical Outcome of Jehovah's Witnesses" (1993) 94 Amer. J. of Med. at 118.

Koop, C., "The Sanctity of Life" (1978) 75 J. of the Med. Soc. of N. J. 62.

Kouri, R., "Blood Transfusions, Jehovah's Witnesses and the Rule of the Inviolability of the Human Body" (1975) 5 R.D.U.S. 156.

Kreidie, A., "Bloodless surgery making a comeback with patients" *Medical Post* (Oct. 19, 1993) 19 at 21.

Kuhse, H., & al., "The Quality/Quantity-of-life Distinction and its Moral Importance for Nurses" (1989) 26 Int. J. Nurs. Stud. 205.

Lammers, P., "Dealing with other cultures and religions emphasized at recent ethics conference" (1987) 45 AORN J. 1211;

Lehmann, "Decision analysis: A Language for Survival in the Era of Managed Care" (August 1997) Contemp. Ped. 69.

Lindeboom, F. A., "The Story of a Blood Transfusion to a Pope" (1954) 9 J. Hist. Med.

455.

Linden, L., "Living Wills and Substitute Decision-Making" (July 1991) Ont. Med. Rev. 33.

Lloyd, A., & al., "Patients' ability to recall risk associated with treatment options" (1999) 353 The Lancet 645.

MacKenzie, D., "How Safe is Europe's Blood?" (15 January 1994) New Sci. 12.

Macklin, R., "Ethical Relativism in a Multicultural Society" (1998) 8 Kennedy Institute of Ethics J. 1.

Macklin, R., "The Inner Workings of an Ethics Committee: Latest Battle over Jehovah's Witnesses" (February - March 1988) Hast.Cent.Rep. 16.

Madigan, K., "Presumptions Respecting Mental Competence" (1994) 39 Can. J. Psych. 147.

Malyon, D., "Transfusion-Free Treatment of Jehovah's Witnesses: Respecting the Autonomous Patient's Rights" (1998) 24 J. Of Med. Ethics 302

Malyon, D., "Transfusion-Free Treatment of Jehovah's Witnesses: Respecting the Autonomous Patient's Motives" (1998) 24 J. of Med. Ethics 376.

Manners, S., "When religious faith dictates treatment," (1984) Dec. *Canadian Doctor* 16;

McClintock and Strong's Cyclopoedia, vol. 1 (Grand Rapids: Baker Book House, 1981) at 834.

McClure, R.D., & Dunn, G.R., "Transfusion of Blood" (March 1917) XXVIII:313 J. H. Hosp. Bull. 102.

Meyers, C., "The impact of physician denial upon patient autonomy and well-being" (1992) 18:3 J. Med. Ethics 135.

Minuck, M. & Lambie, R. S., "Anesthesia and Surgery for Jehovah's Witnesses" (27 May 1961) 84 Can. Med. A. J. 1187-1191.

Muramoto, O., "Bioethics of the Refusal of Blood by Jehovah's Witnesses: Part 1. Should Bioethical Deliberation Consider Dissident's Views?" (1998) 24 J. of Med. Ethics 230.

Muramoto, O., "Bioethics of the Refusal of Blood by Jehovah's Witnesses: Part 2. A

Novel Approach Based on Rational Non-Interventional Paternalism" (1998) 24 J. of Med. Ethics 301.

Najand, A., "Anesthésiste-réanimateur et Témoins de Jéhovah" (1992) no. 11 Ann. Fr. Anesth. Réanim. 237-240.

Napier, J. A., "Towards More Rational Use of Red Cells" (1994) 343 *The Lancet* 1280.

Nau, J.-Y., & Nouchi, F., "Fatal Attraction in Prisoners' Blood" (26 April 1992) Guard. Week. 15.

Nelson, C. L., & al., "Total Hip Arthroplasty in Jehovah's Witnesses without Blood Transfusion" (March 1986) 68-A:3 J. of Bo. & Jt. Surg. 350-353.

Nielsen, W., "The Biblical Laws Against Transfusions Reexamined - A Christian Physician's Viewpoint" (October 1991) V:4 273.

Nora, L., "Medicolegal Aspects of Informed Consent" (1998) 16 Neuro. Clin. 214.

Ottenberg, R., & Kaliski, D. J., "Accidents in Transfusion" (13 December 1913) 61 JAMA 2138-2140.

Overs, M., "Patients can refuse treatment by MD" (15 December 1990) Fam. Prac. 8.

Packard, F. R., "Guy Patin and the Medical Profession in Paris in The Seventeenth Century" (1922) IV Ann. of Med. Hist. 358, 363-364.

Patel, T., "French 'cut corner' Over HIV Testing" (13 March 1993) New Sci. 13.

Pepper, W., "Benjamin Rush" (1890) XIV:17 JAMA 599.

Picard, A., "Blood Victims May See Cash by Year's End" *The Globe and Mail* (29 November 1993)

Picard, A., "France Makes an Example of Misdeeds" *The Globe and Mail* (17 September 1993) 219 .

Picard, A., "Krever report fallout looks devastating," *The Globe and Mail* (28 November 1997) A1

Picard, A., "Tragedy Prompts Bloodless Solutions" *The Globe and Mail.* (18 May 1996) A1, A8.

Picard, E., "Consent to Medical Treatment in Canada" (1981) 19 Osgoode. Hall L. J.

140.

Polk, H., & al., "Blood Management Practice Guidelines: Conference Highlights" (1995) 170 Amer. J. of Surg. 15.

Quill, T., & al. "Physician Recommendations and Patient Autonomy: Finding a Balance between Physician and Patient Choice" (1996) 125 Ann. of Intern. Med. 764.

Rafuse, J., "Better Planning Could Have Saved Life of Woman Who Refused Transfusion, MD says" (1 May 1993) Can. Med. Assoc. J. 1596.

Rhoden, "Litigating Life and Death" (1988) 102 Harv. L. Rev. 375.

Ridley, D., "Honoring Jehovah's Witnesses' Advance Directives in Emergencies: A Response to Drs. Migden and Braen" (1998) 5 Acad. Emer. Med. 825.

Risse, G., "The Renaissance of Bloodletting: a Chapter in Modern Therapeutics" (1979) 34:1 J. of Med. Hist. Of Med. 3.

Robb, N., "Jehovah's Witnesses Leading Education Drive as Hospitals Adjust to No Blood Requests" (15 February 1996) 154:4 Can. Med. Assoc. J. 557.

Robblee, J.A., "Alternatives to Blood Transfusion: The Surgical Perspective" (Report of proceedings and recommendations of conference *Building a Blood System in the 21st Century*, Toronto, 3-4 November 1997) 17.

Rosam, E., "Patients' Rights and the Role of the Emergency Physician in the Management of Jehovah's Witnesses" (1991) 20 Ann. of Emerg. Med. 1151.

Rothenberg, D. M., "The Approach to the Jehovah's Witness Patient" (1990) 8:3 Anesthesiol. Clin. Of N. Amer.589.

Routh, C., "Remarks Statistical and General on Transfusion of Blood" (1849) 20 Med. Times 114.

Rozovsky, L., & al., "Jehovah's Witness Case Sets Precedent – Controversy over a patient's right to refuse treatment" (May 1990) Physic. Man. 68

Saéz-Alquézar & al., "Evaluation of the Performance of Brazilian Blood Banks in Testing for Chagas' Disease" (1998) 74 Vox Sanguinis 228.

Sandiford, F. M., & al., "Aorto-Coronary Bypass in Jehovah's Witnesses" (1974) 68 J. of Thor. & Cardio. Surg. 1-7.

Saxena, S., "Iron-Deficiency Anemia: A Medically Treataable Chronic Anemia as a Model for Transfusion Overuse" (1993) 94 Amerc. J. Of Med. at 121.

Sazama, K., "Practical Issues in Informed Consent for Transfusion" (1997) 107 Am. J. Clin. Pathol. at S72.

Schmidt, P. J., "Transfusion in America in the Eighteenth and Nineteenth Centuries" 279:24 New Eng. J. of Med. 1319-1320.

Seigworth, G. R., "Bloodletting Over the Centuries" (December 1980) N. Y. St. J. of Med. 2024-2027.

Sevensky, R., "The Religious Foundations of Health Care: A Conceptual Approach" (1983) 9 J. of Med. Ethics 165.

Sher, G., "The Blood Conservation Program at The Toronto Hospital" (Report of proceedings and recommendations of conference for *Building a Blood System in the 21st Century*, Toronto, 3-4 November 1997) 46.

Siddall, A.C., "Bloodletting in American Obstetric Practice, 1800 – 1945" (1980) 54 Bull. of the Hist. of Med. 102.

Spence R. K., *et al.*, "Elective Surgery without Transfusion: Influence of Preoperative Hemoglobin Level and Blood Loss on Mortality" (1990) 159 Am. J. of Surg. at 320.

Spence, R. K., & al., "Transfusion and Surgery" (1993) XXX Curr. Prob. In Surg. 1105.

Spence, R. K., "The Effects of Hemoglobin Levels and Blood Loss on Surgical Mortality" (July 1989) Inf. Surg. 264.

Spence, R. K., "The Status of Bloodless Surgery" (1991) V Transf. Med. Rev. 274 at 284.

Spence, R., "Blood Management Policies for Jehovah's Witnesses", Appendix 2, (1995) 170 Amer. J. of Surg. at 148

Stehling & al., "A Survey of Transfusion Practices Among Anesthesiologists" (1987) 52 Vos Sanguinis 61,62.

Stevenson, M., "Refusing measles vaccine may put others at risk: study" *The Gazette* (July 7, 1999) A12.

Tartter, P. I., "Immunologic Effects of Blood Transfusions" (1995) 24 Immuno Inv. 277.

The College of Physicians and Surgeons of Ontario, *College Notices*, Issue No. 21, Nov. 1990.

Thomas, J. E., "Ethical Reflections on Patient Refusals of Life-Saving Treatment" (1991) 5:4 Transf. Med. Rev. 259.

Thomas, J. M., "Nonblood Management in Obstetrics and Gynaecology" (May 1997) J. SOGC 475.

Thomson & al., "Blood Component Treatment: A Retrospective Audit In Five Major London Hospitals" (1991) no. 44 Clin. Path. 734, 736.

Trent, B., "Jehovah's Witnesses and the Transfusion debate: "We are not asking for the right to die" (1991) 114:770 Can. Med. Assoc. J. 774.

Two Hospitals Offering Patients Options of "Bloodless Surgery" 13:12 Mod. Health 50.

U.S Congress, Office of Technology Assessment Task Force, *Blood Technologies, Services, and Issues*, (1988) at 121.

Unger, "Medical-Legal Aspects of Blood Transfusion" (1960) 60:2 N. Y. St. J. of Med. 237.

Viele, M., & al., "What Can We Learn About the Need for Transfusion from Patients who Refuse Blood" (1994) 34 Transf. 396.

Wahi, J., "Are Living Wills Valid?" (May-June 1990) Home Health Care 38.

Williamson, L., & al., "Reporting Serious Hazards of Transfusions: The SHOT Program" (1998) 12 Trans. Med. Rev. 28.

Winslow, R., professor of Medicine at the University of California at San Diego during the presentation "Is There A Potential Need for Blood Substitutes in Civilian and Noncivilian Situations?" (Address to the IV International Symposium on Blood Substitutes, 20 August 1991).

Wreen, M., "Autonomy, religious values, and refusal of lifesaving medical treatment" (1991) 17 J. Med. Ethics 124 at 128.

Zauder, H. L., "How Did We Get a "Magic Number" for Preoperative Hematocrit/Hemoglobin Level?" (Address to the National institutes of Health

Consensus Development Conference, June 27, 1988.)

Zeitz, E., "Legal Reasoning and Medical Decision Making" (1998) 5 Acad. Emerg. Med. 755.