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Trafficking organs for transplantation… and other unethical sources of organs

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In February this year, the Vatican's *Pontifical Academy for Science* held a Conference on Organ Trafficking and Transplant Tourism. The conference identified and analysed a range of unethical practices currently associated with the international trade in human organs and tissues. It also set forth a series of recommendations – for governments, transplant surgeons, transplant societies both national and international, hospitals, general practitioners and others – to respond to these practices.[1]

The abuses identified at the conference are associated with the buying and selling of organs. In this regard, the international trade in organs is just one expression of the exploitation, by entrepreneurial middlemen and some unethical medical professionals, of the gross disparities in economic status of the poor and the rich.

Poor people, often without other social or economic means of support, are vulnerable to inducements to sell their organs. Affluent people, often desperate for a cure for illness and oblivious to the long term effects on their own health (let alone that of the people who sell their organs), are willing to pay large sums and to travel long distances to obtain organs.

In this issue

We discuss some recent developments in the 'sourcing' of organs for transplantation, as well as a notable change in the reasoning which informs AHEC's maintenance of the ban on sex selection for non-medical reasons.

[1] http://www.academyofsciences.va/content/accademia/en/events/2017/organ_trafficking/statement.html; accessed 8th May 2017. These are reprinted in this issue of *Bioethics Outlook.*

Unscrupulous middlemen, brokers, doctors, nurses, working in facilities (which are either unregulated or regulated) make the trade possible. Much progress has been made, both by individuals and by professional medical organizations, to bring this trade (and, more generally, human trafficking) to light, to assist public understanding of what is, in the words of Pope Francis a 'true crime against humanity [that] needs to be recognized as such by all religious, political and social leaders…' [2]

In addition to trafficking, there are other unethical ways of obtaining organs for transplantation. First, the harvesting of organs from executed prisoners clearly breaches the principle that organs should be taken only from people who have truly consented to being donors. Secondly, the taking of organs from people whose deaths have been deliberately brought about by doctors relies upon breaching the principle that doctors should never kill their patients. Each of these scenarios is worth further attention.

Consent to donation

There are various expressions of the principle that organ donation requires the voluntary consent of the person from whom the organs are taken. The two best known versions of this principle are called 'opt-in' and 'opt-out'. An opt-in (or 'contracting-in') approach requires the consent of the donor (either (before death) from the person himself or herself or (after death) as determined by the person's family). An opt-out (or 'contracting-out') approach treats everyone as a presumed 'donor' and requires those who do not wish to donate to 'opt-out'.

Australia has an opt-in system.[3] Singapore and Brazil and some European countries including Spain, Denmark, Finland, Norway, France, Austria, Italy and Belgium have opt-out systems.[4], [5]

[2] *The Guardian,* 6th February 2017

[3] Donation requires either the explicit consent of the donor before death or the judgment of that person's family that donation would be faithful to the wishes of the family member who has now died.

[4] In all but Austria, there remains an obligation to consult with the deceased person's family.

[5] The origins of 'presumed consent' may lie in the practice of European countries of viewing the body after death as the property of the State, a practice which arose at the time of widespread infection associated with great plagues when, with so many deaths and the fear of contagion, relatives were not able to stand in the way of 'public health' measures. Nicholas Tonti-Filippini. *About Bioethics - Transplantation, Biobanks and the Human Body, Connor Court, 2012*

[6] Proponents of 'opt-out' systems claim that their preferred system increases the number of organs and tissues available for transplantation, that it 'normalizes' donation and is more consistent with levels of public support for transplantation, and that is prevents families from ignoring the wishes of the deceased person regarding donation. Proponents of 'opt-in' systems claim that the evidence for increases in organ donation rates in 'opt-out' countries is inconclusive, that presumed consent is at odds with many cultural views regarding the body, and that presumed consent does not encourage the kind of discussion in families that is desirable if social support for organ transplantation is to

There is still a lively debate in the literature as to which of these versions of 'voluntariness' is to be preferred.[6] However common to both 'opt-in' and 'opt-out' approaches is the recognition that the consent of the person from whose body organs are ultimately retrieved and then transplanted is an ethical *requisite* of transplantation.

Both approaches rule out not only the taking of organs from people who have not consented but also the taking of organs from people whose 'consent' is not voluntary - people whose agreement has been coerced. For this reason the taking of organs from condemned prisoners is *universally* condemned, and the buying of organs from poor and disadvantaged people by affluent and advantaged people is *widely* condemned.

In 2013, China announced that the sourcing of organs for transplantation would conform to international ethical standards (implying that China would cease to use executed prisoners as a source of organs).[7] In 2014, Chinese transplant surgeons announced a 'new era for organ transplantation' in that country[8], but as others subsequently pointed out it was premature of the Chinese authors to announce such a 'new era' since organs from executed prisoners were still be used.[9]

The Chinese authorities always said that these organs were retrieved only with the consent of the prisoners who were to be executed, but this interpretation of 'consent' has never been accepted by international medical or human rights organizations. The World Medical Association says that *'Free and informed decision making is a process requiring the exchange and understanding of information and the absence of coercion. Because prisoners and other individuals in custody are not in a position to give consent freely and can be subject to coercion, their organs must not be used for transplantation except for members of their immediate family.'*[10]

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thrive and expand. Ian Kerridge, Michael Lowe, Cameron Stewart. *Ethics and the law for health professionals,* The Federation Press, 2009.

[7] On November 2nd, 2013, the China Organ Transplant Committee (OTC) announced the *Hangzhou Resolution*. According to the *Hangzhou Resolution*, organ transplant hospitals must strictly comply with the "Regulation on Human Organ Procurement and Allocation (Interim)" which was promulgated by National Health and Family Planning Commission (NHFPC) in August that year to 'ensure the sources of the organs for transplantation meet the commonly accepted ethical standards in the world'.

[8] Sun, Q. Gao X, Wang H, Ko, DS, Li XC. A new era for organ transplantation in China. *Lancet,* 2014: 383: 1971-72.

[9] Delmonico, Fl. Capron, A. Danovitch, GM. Levin, A. O'Connell, PJ. Organ Transplantation in China - not yet a new era. *Lancet*, 2014; 384; 741.

[10] World Medical Organization. Statement on Organ and Tissue Donation. 2012: accessed 22 May 2017

Now, though it seems that it is no longer possible for wealthy foreigners to purchase 'fresh organs' (virtually on demand) in China, all is not yet as it should be. Just this year, the editors of the journal *Liver International* had to retract an article, on the safety of liver transplantation at a transplant centre in China, which they had published in their prestigious journal, because they could not rule out the possibility that the data contained in the article may have referred to the use of organs retrieved from executed prisoners.

The authors claimed that the organs came from donors who had suffered 'cardiac death'.[11] But, when the difficulty of accepting this claim was pointed out[12] , and the authors did not reply to requests for proof of the ethical sourcing of the organs used in the paper's data, the paper was retracted by the journal editors.[13] Indeed, the journal editors added that, in the absence of 'detailed, exhaustive and undisputable evidence' demonstrating that organs did not come from executed prisoners, the authors would be subject to a life-long embargo from submitting their work to that journal. Rogers *et al* rightly pointed out that publishing the paper had *itself* breached the ethical requirement that the *reporting* of results of organ donation must conform to the ethical principle that organ donation be voluntary.[14]

'Euthanasia' as a source of organs for transplantation

Several years ago, two Australian ethicists (Dominic Wilkinson and Julian Savulescu) canvassed a variety of possible methods for increasing the supply of organs for transplantation.[15] They argued that, if the current shortfall in the supply of organs is to be addressed, some *radical* changes to the ethical framework for organ transplantation should be considered. Some of the options they advanced involved rejecting the principle of donor consent. They considered that, for instance, even though it would violate the principle that organs should be taken only from people who have consented to be donors, some form of 'organ conscription' would have advantages in terms of efficiency, cost and distributive justice!

Some of the other options they advanced would rely on breaching the injunction that doctors should never kill their patients: Wilkinson and Savulescu called these options variously 'organ donation euthanasia', 'cardiac euthanasia prior to organ donation' and

[11] Mario Mondelli Editor-in-Chief, Zobair Younossi Co-Editor, Francesco Negro Co-Editor. *Liver International*, 2017; 37: 768.
[12] Wendy A Rogers, Maria A Fiatrone Singh, Jacob Lavee. Papers based on data concerning organs from executed prisoners should not be published. Letter to Editor, *Liver International*, 2017; 37:769
[13] Mondelli et al, op cit.
[14] Rogers et al, op cit.
[15] D. Wilkinson & J. Savulescu. Should we allow organ donation euthanasia? Alternatives for maximising the number and quality of organs for transplantation. *Bioethics.* 2012: 26,1: 32-48

'neuro-euthanasia prior to organ donation'. They admitted that each of them would be '… technically, a form of killing – active euthanasia', but suggested that 'organ donation euthanasia' may provide the strongest case for euthanasia because of the 'benefits of donation, for the individual and for others'.[16]

The idea that the sources of organs for transplantation should include 'euthanasia' has already been taken up in both the Belgium and the Netherlands (in both of which countries 'euthanasia' is legal). The first case of organ donation after euthanasia in Belgium was recorded in 2005; the practice was deemed 'acceptable' within the Eurotransplant region in 2008; and in 2016 it was reported that a 'combined procedure' has been a source of organs for transplantation more than 40 times in Belgium and the Netherlands. [17]

Once the prohibition on doctors either killing their patients or helping them to commit suicide is abandoned, then further possibilities open up. Some years ago, it was proposed that doctors should not have to wait until the patient dies before they remove organs: so long as the patient was close to death and had consented to having his death brought about in circumstances which favour organ retrieval, then the 'dead donor rule' could be abandoned.[18] Widening the pool of available organs in this way is currently illegal in Belgium and Holland, but some doctors there think the idea is worth considering.[19]

The influence of consequentialist theory

A 'consequentialist' claim is central to all such proposals. Consequentialism (or utilitarianism) says that whether an action is right or wrong *all* depends on the consequences. Thus a consequentialist will say that there is no ethical difference between, on the one hand, a doctor withdrawing life-prolonging treatment judged to be therapeutically futile or overly-burdensome and allowing the patient to die and, on the other, a doctor deliberately bringing about a patient's death. After all, they say, the consequence – the death of the patient – is the same in both cases. Ordinary common sense ethics, not driven by a theory, recognizes a profound difference between these two acts. [20]

[16] Wilkinson & Savulescu, op cit. p 41

[17] Bollen, J. ten Hoopen, R. Ysebaert, D. van Mook, W. van Heurn, E. Legal and ethical aspects of organ donation after euthanasia in Belgium and the Netherlands*, J Med Ethics,* 2016, 42: 486-489

[18] R. M. Arnold & S.J. Younger. The Dead Donor Rule: should we stretch it, bend it, or abandon it? *Kennedy Inst Ethics J*, 1993: 3: 263-278. R. M. Veatch. Abandon the Dead Donor Rule or Change the Definition of Death, *Kennedy Inst Ethics J* 2004: 14: 261-276

[19] Bollen, J. et al, op cit.

[20] John Quilter Common sense ethics: do theories clarify or distort our ethical outlook? *Bioethics Outlook,* 27, 3, September 2016

Vatican Resolution on Organ Trafficking

In accordance with the Resolutions of the United Nations and the World Health Assembly, the 2015 Vatican Summit of Mayors from the major cities of the world, the 2014 Joint Declaration of faith leaders against modern slavery, and the Magisterium of Pope Francis, who in June 2016, at the Judges' Summit on Human Trafficking and Organized Crime, stated that organ trafficking and human trafficking for the purpose of organ removal are "true crimes against humanity [that] need to be recognized as such by all religious, political and social leaders, and by national and international legislation," we, the undersigned participants of the Pontifical Academy of Sciences Summit on Organ Trafficking, resolve to combat these crimes against humanity through comprehensive efforts that involve all stakeholders around the world. [21]

Poverty, unemployment, and the lack of socioeconomic opportunities are factors that make persons vulnerable to organ trafficking and human trafficking for the purpose of organ removal. Destitute individuals are victimized in schemes of organ trafficking when induced to sell their organs in a desperate search for a better life. Similarly, desperate are the patients who are willing to pay large amounts and travel to foreign destinations as transplant tourists to obtain an organ that may keep them alive, oblivious of the short and long-term health consequences of commercial transplantation. Unscrupulous brokers and health care professionals make organ trafficking possible, disregarding the dignity of human beings. The operative procedures are performed in unauthorized facilities that clandestinely serve transplant tourists. But organ trafficking can also occur at legitimate facilities, in situations where individuals who are willing to sell their organs present themselves to transplant centres as a relative or altruistic friend of the recipient. The media have made an important contribution to public understanding in highlighting the plight of trafficked individuals by publishing their independent investigations of transplant-related crimes and corrupt healthcare professionals and unregulated facilities.

A number of international legal instruments define, condemn, and criminalize these practices, namely the United Nations Protocol against Trafficking in Persons (Palermo Protocol), the Council of Europe Convention against Trafficking in Human Beings, and the Council of Europe Convention against Trafficking in Human Organs. We support these documents, which assert that the transplant professionals who commit or abet these crimes should be held legally accountable whether the offenses take place domestically or abroad.

The legal instruments of the recent past are an important link to emerging innovative policy to combat social inequality. Trafficking in human beings for the purpose of organ removal

[21] http://www.academyofsciences.va/content/accademia/en/events/2017/organ_trafficking/statement.html; accessed 8th May 2017

and organ trafficking are contrary to the United Nations General Assembly 2030 Agenda for Sustainable Development as an issue of human rights and social justice because the poor are exploited for their organs and yet not able to receive a transplant if they suffer organ failure. Jeffrey Sachs has written that *"Sustainable development argues that economic policy works best when it focuses simultaneously on three big issues: first, promoting economic growth and decent jobs; second, promoting social fairness to women, the poor, and minority groups; and third, promoting environmental sustainability".* Countries in conflict and without domestic stability can become the locations of transplant-related crimes.

Progress has been made by healthcare professionals aligned with the Declaration of Istanbul to curtail organ trafficking. Nevertheless, a number of destinations for transplant tourism remain around the world where appropriate legislation to curtail these crimes and protect the poor and vulnerable do not exist or are poorly enforced. These practices also persist because some states have failed in their responsibility to meet the need of their citizens to obtain an organ transplant.

Thus, aware of the UN Sustainable Development Goals, the UN Palermo Protocol on Human Trafficking, the Resolutions of the World Health Assembly (2004 and 2010), the Council of Europe Convention against Trafficking in Human Beings, the Council of Europe Convention against Trafficking in Human Organs, the Madrid Resolution on Organ Donation and Transplantation, and the Declaration of Istanbul, and as a result of the data on organ trafficking presented at this PAS Summit on Organ Trafficking, we the undersigned pledge our commitment to combat these illicit and immoral practices as a community of stakeholders fulfilling the directive of Pope Francis to combat human trafficking and organ trafficking in all their condemnable forms.

The following recommendations from the PAS Summit on Organ Trafficking are proposed to national, regional and municipal governments, to ministries of health, to the judiciary, to religious leaders, to professional healthcare organizations, and to the general public for implementation around the world:

1. That all nations and all cultures recognize human trafficking for the purpose of organ removal and organ trafficking, which include the use of organs from executed prisoners and payments to donors or the next of kin of deceased donors, as crimes that should be condemned worldwide and legally prosecuted at the national and international level.

2. That religious leaders encourage ethical organ donation and condemn human trafficking for the purpose of organ removal and organ trafficking.

3. That nations provide the resources to achieve self-sufficiency in organ donation at a national level—with regional cooperation as appropriate—by reducing the need for transplants through preventive measures and improving access to national transplant programs in an ethical and regulated manner.

4. That governments establish a legal framework that provides an explicit basis for the prevention and prosecution of transplant-related crimes, and protects the victims, regardless of the location where the crimes may have been committed, for example by becoming a Party to the Council of Europe Convention against Organ Trafficking.

5. That healthcare professionals perform an ethical and medical review of donors and recipients that takes account of their short- and long-term outcomes.

6. That governments establish registries of all organ procurement and transplants performed within their jurisdiction as well as all transplants involving their citizens and residents performed in another jurisdiction, and share appropriate data with international databanks.

7. That governments develop a legal framework for healthcare and other professionals to communicate information about suspected cases of transplant-related crimes, while respecting their professional obligations to patients.

8. That responsible authorities, with the support of the justice system, investigate transplants that are suspected of involving a crime committed within their jurisdiction or committed by their citizens or residents in another jurisdiction.

9. That responsible authorities, insurance providers, and charities not cover the costs of transplant procedures that involve human trafficking for the purpose of organ removal or organ trafficking.

10. That healthcare professional organizations involved in transplantation promote among their members awareness of, and compliance with, legal instruments and international guidelines against organ trafficking and human trafficking for the purpose of organ removal.

11. That the World Health Organization, the Council of Europe, United Nations agencies, including the United Nations Office on Drugs and Crime, and other international bodies cooperate in enabling a comprehensive collection of information on transplant-related crimes, to yield a clearer understanding of their nature and scope and of the organization of the criminal networks involved.[22]

[22] *The 77 signatories to the resolution included Professor Jeremy Chapman, Director of the Division of Medicine and Cancer Westmead Hospital, Sydney, Australia, and Professor Phil O'Connell, Immediate Past President of the Transplantation Society Sydney, Australia.*

Sex selection for non-medical reasons:

Why did AHEC maintain its prohibition?

Bernadette Tobin[1]

In April, the National Health and Medical Research Council (NHMRC) issued its long-awaited revision of the *Ethical Guidelines on Assisted Reproductive Technology in Clinical Practice and Research.*[2] These guidelines are written by the Australian Health Ethics Committee (AHEC), a principal committee of the NHMRC. The provision in the new guidelines which captured most public attention was the continuation of the prohibition on sex selection for non-medical reasons. As one newspaper put it: 'National guidelines oppose push to allow parents to choose sex of IVF babies'. [3]

Since the Reproductive Technology Accreditation Committee of the industry body which accredits IVF clinics - the Fertility Society of Australia - requires compliance with NHMRC Guidelines, these new Guidelines form part of the regulatory environment which governs the operations of reproductive medicine clinics. It is for this reason that some practitioners were disappointed about the maintenance on the prohibition on sex selection for non-medical reasons: it acts as a barrier to a service they would like to be able to offer. What is interesting is the change in the reasoning of AHEC, between 2004 and 2017, for maintaining the prohibition.

2004 Guidelines

In 2004, the relevant provision said: *'Sex selection is an ethically controversial issue. The Australian Health Ethics Committee believes admission to life should not be conditional on a child's being a particular sex. Therefore, pending further community discussion, sex selection*

[1] Bernadette Tobin chaired the sub-committee of the Australian Health Ethics Committee which drafted the 2004 version.

[2] The Guidelines were last issued in 2004, and then, in 2007, lightly revised to accommodate the *Research Involving Human Embryos Act 2002* and the *Prohibition of Human Cloning Act 2002.*

[3] *Sydney Morning Herald*, 20th April 2017

(by whatever means) must not be undertaken except to reduce the risk of transmission of a serious genetic condition.'

In an Appendix intended to foster community discussion, sex selection was recognized to be a controversial issue, and reasons in favour and against its availability were set out.

Reasons given in support of the availability of sex selection included: that it permits 'family balancing', that it may enable parents to fulfil religious obligations or cultural expectations; that it is properly thought of as a matter for individual autonomy.

Reasons given for opposing the availability of sex selection included: that is it incompatible with the parent-child relationship being one that involves unconditional acceptance; that it may be an expression of sexual prejudice, in particular against girls (for as practiced around the world it generally reflects and contributes to bias and discrimination against women); that it harms men in some cultural groups (by contributing to the shortage of women for men to marry).

2017 Guidelines

In 2017, under the heading 'Sex selection for non-medical purposes is not currently supported', the relevant provision in the new Guidelines says: *'Sex selection techniques may not be used unless it is to reduce the risk of transmission of a genetic condition, disease or abnormality that would severely limit the quality of life of the person who would be born*.'

In its Process Report, the writers of the 2017 Guidelines recognize that there are differences of opinion about the acceptability of sex selection practices. Indeed, they report that a majority of the members of AHEC thought that there may be some circumstances in which there is nothing unethical about the use of sex selection for non-medical purposes. However, they maintained the prohibition because '… as with any controversial practice, Australian society needs to be ready, both socially and politically, for there to be a change in its availability'.

In spite of the fact that the 2017 Guidelines maintain the position of the 2004 Guidelines, there are notable differences between the two discussions.

Differences

In 2004, AHEC decided against the availability of sex selection because of the social *undesirability* of practices which rely on, or foster, a view of parental love as something which may reasonably be *conditional* on a child's having a particular characteristic (specifically, a particular biological sex). AHEC's thinking in 2004 belongs to a recognizable tradition of thought about human love (which is found in Christianity's emphasis on the

inalienable worth of every human being) according to which the highest form of human love embodies an acceptance of the *other* which is *unconditional*. Parental love for a child typically comes closest to that ideal, and love between adults strives to realize it.

It is not (as) clear why, in 2017, AHEC maintained the prohibition on availability of sex selection. In this newer document there is no hint of the ideal of human love as *unconditional*. Rather it seems that the view which prevailed concerned how such matters should be decided: specifically, that sex selection is a matter of such controversy within the community that it should be addressed by legislators rather than by an unelected ethics committee.

Indeed, a majority of members of AHEC apparently thought that there are in fact circumstances in which there is nothing ethically wrong with the practice: specifically, (a) when an individual or couple has two daughters and would like a son, (b) when a couple have a blended family consisting of two male children (who are step-brothers) and the couple would like a daughter.[4],[5]

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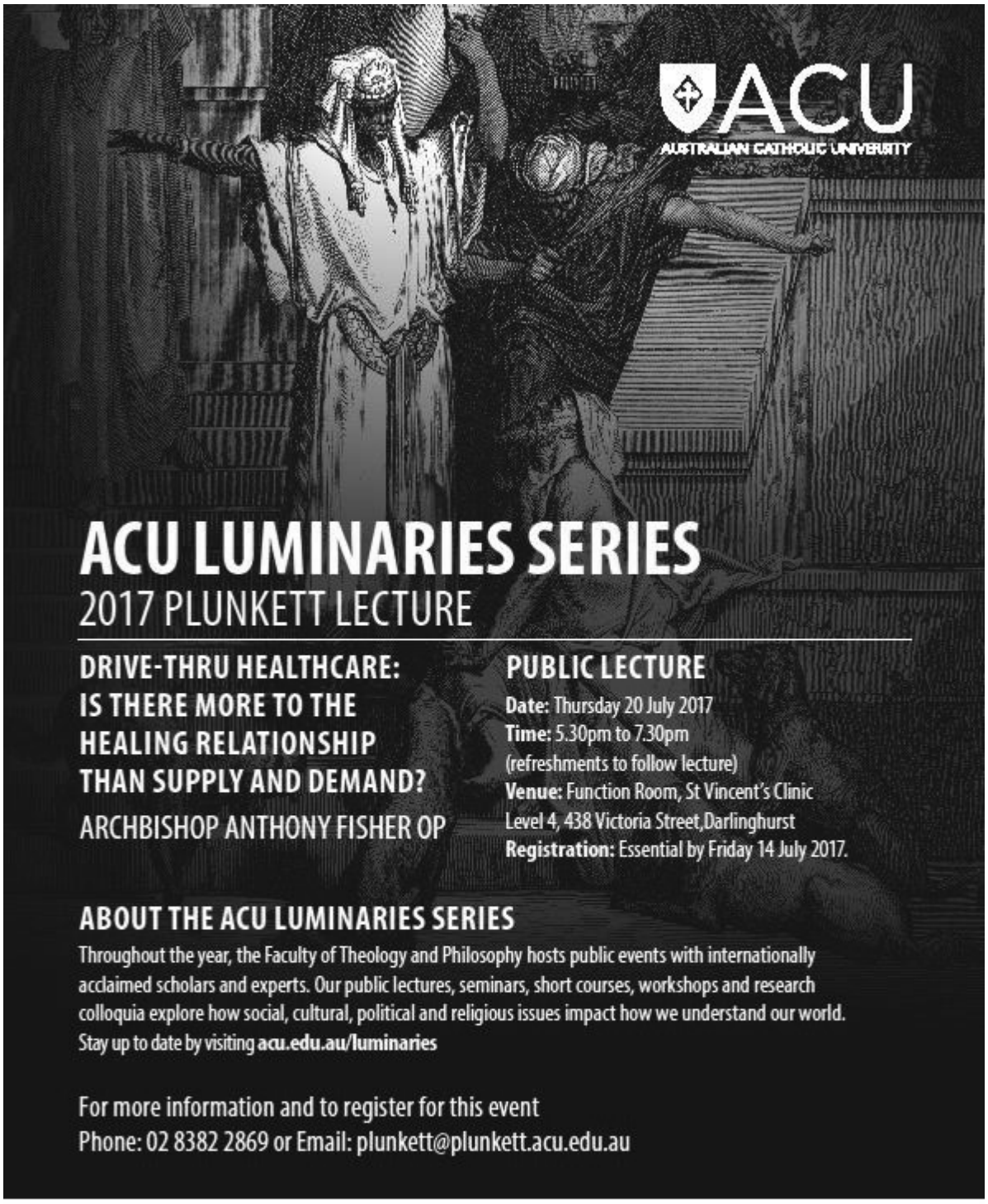
[4] They say: '*Notwithstanding the social and political considerations, AHEC saw merit in permitting access to ART activities to select the sex of a human embryo prior to embryo transfer to introduce variety to the sex ratio of offspring within a family, where (i) the intended parent(s) have (collectively) two or more offspring of the one sex and no offspring of the opposite sex, (ii) the intended parent(s) have been provided with relevant information and counselling, and (iii) the decision to permit access is made on a case-by-case basis, following consideration of the principles which should guide the provision of any assisted reproductive procedure.'*

[5] For a different objection to sex selection, that is, that it is underpinned by the same assumptions as those which underpin sexism and gender inequality, see Rodie, C. 'There is nothing harmless about IVF sex selection', *Sydney Morning Herald,* 25th April 2017



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