



Scholl Institute of Bioethics

Bioethics Review

Vol 18 No 2

The Scholl Institute of Bioethics is a nonprofit, Judeo-Christian organization that addresses bioethical issues including euthanasia, physician-assisted-suicide, the withholding or withdrawing of food and water from non-dying patients, brain death, organ transplantation, genetic engineering, and the rights of disabled or mentally ill persons.

Brain Death Reconsidered - Revised

by Germaine Wensley R.N.

Citing a critical need for transplantable organs in the U.S. has prompted an urgent call for people to give the "gift of life" by agreeing to be an organ donor. This is surely a generous thing to contemplate. Even the Catholic Church teaches that organ donation *after death* is a noble and meritorious act to be encouraged as an expression of generous solidarity.¹ And therein lies the rub – "after death." A growing body of physicians are questioning the diagnosis of brain death as true death. Before applying that pink donor sticker to your driver's license, it might be prudent to look at some of these opinions.

Discussion of tissue and organ donations from a living person who remains living and usable tissues obtained from a truly dead person will not be covered in this article. These fall in a different category, and there is little controversy surrounding them. Rather it will concentrate on singular, unpaired organs vital to the existence of a person, the most obvious one being the heart.

Traditionally death had been defined and determined as irreversible cessation of cardio-pulmonary (heart/lung) functions. With the advent of the "transplant age" more was ushered in than the innovative, intricate surgical techniques, sophisticated machines, and cutting-edge medications. In 1968 an Ad Hoc Committee of Harvard University's Medical School suggested a new way to define death. The total and irreversible cessation of all brain functions "irreversible coma" or "brain death" was introduced. "So what drove the Harvard Ad Hoc Committee to turn back the calendar and construct a lower standard for death?" asks Dick Teresi in a *Discover Magazine* article. "To a growing number of scientific critics it appears that the committee was fixated on freeing up human organs for transplant."²

After Harvard's Ad Hoc Committee defined "brain death", it established a set of guidelines to determine when cessation

of all brain functions occurs. Since then many more versions of criteria to diagnose "brain death" have been devised. The result is that major differences exist in the guidelines and a person can be diagnosed "brain dead" under one set,

but alive by another. This may be what prompted Seema Shaw J.D. to write "... I have argued that brain death should be understood as an unacknowledged status legal fiction. A legal fiction arises when the law treats something as true, though it is known to be false or not known to be true, for a particular legal purpose."³

Anesthesiologist and ethicist Robert Truog M.D. and Professor Franklin D. Miller PhD. both of Harvard University have

written, "We contend that the proposition that brain death constitutes death of the human being is incoherent and, therefore, not credible. It is important to emphasize that our current practices of vital organ donation are inconsistent with the dead donor rule."⁴

Pediatric neurologist D. Alan Shewmon M.D. was a renowned "brain death" advocate until he had an epiphany while intently studying the issue. He discovered that many "brain dead" patients manifest integrative functions that can only be accomplished by the body working as a whole: they can assimilate nutrients, fight infections and foreign bodies, undergo sexual maturation, and successfully complete the gestation of a fetus, to name a few.⁵ In his research Dr. Shewmon compiled around 140 cases of brain-dead patients whose hearts continued to beat, and whose bodies did not disintegrate past one week's time. In one remarkable case, the patient survived 20 years after the diagnosis of "brain death" before succumbing to cardiac arrest.⁶

More recently the tragic story of Jahi McMath hit the news igniting a national debate about the diagnosis of "brain death" and its surrounding issues. At age 13 Jahi

Criteria for "brain death" vary. One could be declared dead by one set of criteria, but alive by another

went into UCSF Children's Hospital Oakland, CA for a complex nose and throat surgery to help her sleep better. Following the surgery she started hemorrhaging, went into cardiac arrest, and within hours was diagnosed as "brain dead" even though her heart was still beating. The state subsequently issued a death certificate for her. The family, believing she was still very much alive, resisted pressure to donate her organs, but then doctors wanted to remove her from the ventilator. Under protest from the hospital Jahi's family moved her to a hospital in New Jersey where she could receive the treatment she needed including the ventilator and a feeding tube. After that Jahi was then cared for by her loving family in an apartment. Her mother said she was severely brain injured, not "brain dead" but alive. Jahi's mother describes how she was responding to simple commands, reacted to noxious odors, reached puberty and menstruated, and was taking breaths on her own. Nearly five years after being declared dead the family lawyer issued a press release saying Jahi had died as the result of complications associated with liver failure.

For a transplant to be successful, the organ must be as fresh as possible. In the case of heart donors, their hearts need to be beating during removal. If a person's heart is still beating, can the person be truly dead?

It's an unsettling fact is that a person diagnosed as "brain dead" may not look dead at all. A dramatic case in point was related by heart surgeon Walt Franklin Weaver M.D. He had performed a number of heart transplants with no reservations believing he was performing a good for society. No doubt most medical personnel involved in transplantation feel the same way. But when Dr. Weaver was called in to evaluate a young motorcycle crash victim as a potential heart donor, something inside him changed. The teenage boy was on a ventilator, he had warm, healthy looking skin, self-controlled temperature, a sustained blood pressure and was producing urine. "He had all the signs of a living human being and *none of the signs of a truly dead human being*. I had blinded myself to the fact that donors are most definitely 'truly' alive," he wrote. Shortly afterwards Dr. Weaver stopped doing heart transplants.⁷

There are those in the medical community who have always insisted that some patients diagnosed as "brain dead" may not be dead. Paul A. Byrne M.D. was a pioneer in challenging the idea of "brain death." In 1979 about eleven years after Harvard's new definition was established and the transplant industry began to flourish, Byrne wrote an article questioning that diagnosis which was published in *The Journal of the American Medical Association (JAMA)*. As a point of interest after that information was printed, widely read medical journals would not accept articles opposing "brain death." Nevertheless over the years Dr. Byrne collected information pertaining to numerous cases where patients labeled brain dead have "returned from the dead." The reason being, says Byrne, is that "brain death is never really death."⁸

Most donated organs come from those diagnosed as "brain dead." One study documented some brain activity in up to 20 percent of people declared "brain dead", suggesting that the condition may be misdiagnosed. "We have been taking organs out of those patients by the thousands," says medical ethicist Norman Frost M.D., "and they are not "brain dead."⁹

We can't deny there are many individuals living today because of the gift of organs, but there is too much we don't know, and I might add, haven't been told. We do know this: if a person is not truly and certainly dead, it is morally wrong to remove a vital organ that would unquestionably render him or her dead. We need to err on the side of life. It is never right to kill one person even if it is to benefit another.

Is hope on the horizon? Researchers have discovered methods to grow organs using patient's own living cells. They caution that the work they are doing is experimental and costly, and creating complex organs is still a ways off. But they are increasingly optimistic about the possibility.¹⁰ Their optimism may not be misplaced. In 2001 seven children received brand new bladders made from their own stem cells.¹¹ The bottom line is that research, soul searching, and caution must be exercised before one attaches an organ donor sticker to one's driver's license - particularly if one is young and has healthy organs.

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NOTES

1. 2296 Catechism of the Catholic Church, Second Edition
2. "The Beating Heart Donors" Discover Magazine, May 2012
3. Seema K. Shah, Piercing the Veil: The Limits of Brain Death as a Legal Fiction, 48 U. Mich. J. L. Reform 301 (2015).
4. Franklin G. Miller and Robert D. Truog, "Rethinking the Ethics of Vital Organ Donations", The Hasting Center Report, 2008 November-December
5. www.austriacolab.com/AustriacoLab/Publications_files/AUSTRIACO-BrainDeathStudiaMoralia.pdf
6. www.melissacaulk.com/tag/dr-alan-shewmon/
7. Unpaired Vital Organ Transplantation -Secular Altruism? Has killing become a virtue?, *Finis Vitae, Is 'Brain Death' True Death*, de Mattei, Roberto, editor, Byrne, Paul M.D. update editor, 2009 Life Guardian Foundation.
8. "Doctor Says "Brain Dead" Man Saved from Organ Harvesting," March 27, 2008, LifeSiteNews.com
9. Gower, Timothy, "Fatal Flaw", the *Boston Globe*, March 9, 2008
10. www.nytimes.com/2012/09/16/health/research/scientists-make-progress-in-tailor-made-organs.html?_r=0
11. "Engineering New Organs Using Our Own Living Cells," Discover Magazine, March 2015

Further reading recommendations: www.organfacts.net and www.thelifeguardianfoundation.org