

Feature Article: JAF1385

## POSTMODERN DEATH: ORGAN TRANSPLANTATION AND HUMAN VALUE

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This article first appeared in the CHRISTIAN RESEARCH JOURNAL, volume 38, number 05 (2015). For further information or to subscribe to the CHRISTIAN RESEARCH JOURNAL, go to: <http://www.equip.org/christian-research-journal/>.

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### SYNOPSIS

Although organ transplantation has saved many lives, there remain ethical issues especially regarding determining when a patient dies. Brain death has been widely accepted and has changed the basis for determining death from biology to philosophy. Donation after cardiac death has evolved as an alternative method where a patient is allowed to die in a controlled manner in an attempt to save organs for donation. Both methods of determining death have the potential to decrease our human value at the end of life.

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When she was thirteen years old, Jahi McMath suffered devastating complications during surgery for sleep apnea. For the past sixteen months, she has been on a ventilator and has been fed with a feeding tube. Her heart continues to beat, and her lungs continue to function. She also has continued to grow and mature after her injuries occurred. Her body continues to maintain her temperature, and her skin heals if it has been injured. In many ways, she appears very similar to many patients that are

currently being treated in intensive care units around the country. However, there is one very important difference.

She is legally dead.

Jahi was declared legally brain dead shortly after injuries she sustained during her surgery. The hospital sent out a letter to her family expressing sorrow at her death,<sup>1</sup> and medical experts predicted that her organs were going to deteriorate quickly.<sup>2</sup> There was a certificate of death issued, and Jahi's family could legally donate her organs. Sadly, the hospital fought to remove Jahi from her life support, arguing that they had no obligation to treat a human corpse. She was transferred to a different facility, and her family continue to care for her. As of the time of this writing, her family has taken the unprecedented step to petition the court to rescind the initial certificate of death. Now seventeen months after her surgery, a judge will determine whether or not Jahi is a living human being.

Organ donation and transplantation has been one of the most successful medical advancements in the past century. When challenged with a widely accepted technology that has saved so many lives, we may be tempted to endorse it without reservation. In fact, one may argue that as followers of Christ, we should be at the forefront of volunteering our organs for the life of another human being when we are no longer in need of them.

Stories like Jahi's remind us that for all of the good that has resulted from transplantation, serious ethical questions still remain. Most of these issues revolve around the concept of human death. From the very beginning of organ donation and transplantation, physicians have been following the "dead-donor" rule. Organs that are essential to life would not be removed until the donor was no longer living. An organ donor is generally defined via two methods of pronouncing death: *brain-dead donors* and *nonbeating heart donors*. There are persistent ethical questions regarding both methods of organ donation, and we should soberly assess the impact that organ donation has on the perceived value of human life and death.

Death has for millennia been understood to occur when the biological body that we possess ceases to function. This traditionally has been confirmed by the permanent cessation of heart and lung function. The problem with this definition today is that waiting until a human being fits the criteria for biological death excludes many organs that could otherwise be donated. Most organs deteriorate very quickly when the heart and lungs cease to function, so physicians have sought a way to procure organs before they degrade. The ideal scenario is to keep the organs healthy right up until they are removed. One way to accomplish this and still hold to the dead-donor rule was simply to redefine what it means to actually die, thus the advent of brain death.

## **A Brief History of Brain Death**

Telling the difference between a human being that is alive and one that is dead was relatively uncontroversial for many, many years. However, that changed with a committee of thirteen men in 1968. The Harvard Ad Hoc Committee recognized new criteria in which the medical community could declare a human being in an “irreversible coma” and thus could ethically remove life support and harvest organs for donation.<sup>3</sup> The goal was to find straightforward ways to determine that the entire brain was irreversibly nonfunctional.

The concept of brain death has been revised a number of times since then; the criteria for determining brain death has steadily become less stringent. For example, a flat electroencephalogram is no longer needed to confirm a patient lacks brain activity. Furthermore, complex-spontaneous movement no longer precludes a diagnosis of brain death.<sup>4</sup> Unlike death itself, the criteria for determining it is far from permanent and continues to evolve.

## **BRAIN DEATH ETHICS**

Although brain death has been widely accepted by both the medical establishment and the public, there remain a number of concerns and ethical issues concerning both the philosophy and practice of declaring a human being brain dead. A full examination of all of these controversies is beyond the scope of this article, but as followers of Christ, we should be aware of these issues before we consider volunteering for organ donation. We should also note the effect that the general acceptance of brain death has had on how we perceive human value.

### **Biology or Philosophy: How Should We Determine Death?**

The introduction of brain death criteria changed the definition of death from a biological standard to a philosophical one. Both the original Harvard committee as well as the Universal Determination of Death Act (UDDA) in 1981 justified whole brain death as occurring because a brain dead individual lacked the integrated functioning of an alive human being.<sup>5</sup> In other words, the brain integrated the function of the organism to the point that, without it, you merely have a collection of living human tissues. This concept was challenged when Dr. Alan Shewmon demonstrated a large number of integrated functions that many brain dead individuals continue to perform even if their brain ceases to function.<sup>6</sup>

More recently, in 2008, President Bush's bioethics committee published a white paper attempting to clarify some of the issues surrounding brain death.<sup>7</sup> They acknowledged that somatic integration failed as an adequate philosophical justification for death. Instead, they proposed a new one: a brain dead human lacks the ability to perform the "essential work" of an organism. The paper states, "Total brain failure can continue to serve as a criterion for declaring death—not because it necessarily indicates complete loss of integrated somatic functioning, but because it is a sign that this organism can no longer engage in the essential work that defines living things."<sup>8</sup>

The notion that the entire philosophical underpinning supporting brain death can change over time is bewildering. If we justified brain death by claiming that an individual no longer has integrated functioning, and then it was demonstrated that he or she actually did, one would expect that we would rethink the entire theory of brain death.

Instead, we kept the same definition and simply found a different philosophical way supposedly to justify it. It is important to remember that we are discussing a decision that impacts the life and death of a human being. Death is itself final and unchangeable, but the same cannot be stated about the philosophical foundation used to declare it.

The philosophical term "essential work" is also quite troubling. Clearly, this is a functional definition: human beings cease to be organisms when they lose enough capabilities that they no longer can perform essential work. Who decides which functions add up to essential work? The spontaneous abilities to breathe and to retain brain stem reflexes are included in essential work. Conversely, the ability to fight infection, heal wounds, or gestate and deliver a live human child are not considered characteristics that demonstrate that a human being is alive. Believe it or not, brain death criteria allows it to be possible to be both dead and a pregnant mother at the exact same time.

### **Dead and Delivering**

As of 2012, there have been twenty-two published reports of brain dead mothers supporting and delivering (via Caesarian section) live human infants. Twenty of these children survived with no remarkable complications. A more recent report revealed that one mother gestated her child for 110 days after she was declared brain dead.<sup>9</sup> A mother in Grand Rapids, Michigan, even carried twins for a month after she was declared brain dead from a catastrophic aneurism, eventually delivering twin boys. It should be noted that the mothers in each of these cases had no legal rights or standing, as fitting for someone who is dead. After being declared dead, supported with life

support, and gestating a baby for weeks or months, many of these women have one final surgery to donate their organs to others.

### **Pressure to Harvest**

As previously stated, the criteria for declaring brain death has become less stringent over time. This is cause for concern in and of itself; but it also appears that when declaring death, many physicians feel comfortable being even more liberal than what the standards allow. In an editorial in the journal *Nature*, the authors admit that physicians “know that when they declare that someone on life support is dead, they are usually obeying the spirit, but not the letter, of the law.”<sup>10</sup> With such a large gap between available organs and those who desire them, there is pressure on physicians to treat those who are almost dead as if they were actually dead.

There have also been multiple reports of misdiagnosis. Zack Dunlap was a twenty-one-year-old who suffered severe head trauma during a vehicular accident. A scan showed no blood flow to his brain, and he was pronounced dead. On his license he had requested to be an organ donor, and his body was supported as the transplant team was called. As the transplant team was en route to the hospital via helicopter, Zack’s family thought they saw him move. A nurse first explained that it was just a primitive reflex, but then he clearly moved purposefully in response to a painful stimuli. Zack regained consciousness five days later, and returned home forty-eight days after the accident, able to walk and speak.<sup>11</sup> As author Dick Teresi puts it, “I trust my doctor with my life. I’m just not sure that I trust her with my death.”<sup>12</sup>

### **Intrinsic Value**

The majority of organ donations that have occurred have come from patients that have been declared brain dead. However noble the intentions of those involved in developing and implementing these criteria as well as the public acceptance of them, the ethical questions have not gone away. The transition from determining death from biology to philosophy based on characteristics of functioning should give us pause. If we as human beings are intrinsically valuable based on the one whose image we bear, we should question being declared dead merely because we lack certain subjectively chosen functions, or because we have lost the theoretical philosophical concept of personhood. There has been another more recent development in organ donation over the past few decades, and at first glance this change may appear to be a positive one.

Although brain death criteria have been well accepted, there has been one unforeseen problem with them. Due to better seat belt use, bicycle helmets, and the

general decrease in violent crime, there have been a lower number of patients suffering the type of catastrophic brain trauma that has traditionally resulted in brain death.<sup>13</sup> As a result, there has been a return to declaring death the old-fashioned way—but in a much more controlled manner.

## **NONBEATING HEART DONATION**

A patient who suffers a severe neurologic injury but does not meet the criteria for brain death can now have his or her organs donated via a newer protocol. If someone has irreversible injuries and is being kept alive by artificial means, organs can be donated even if there is brain activity. This is called donation after cardiac death (DCD). The patient is brought to the operating room where a surgical transplant team awaits. The breathing tube keeping the patient alive is removed, and the patient's heart is closely monitored while the medical team waits for it to stop. If the heart stops within one hour of removing the breathing tube, they wait an additional five minutes, and then declare the patient dead. The surgical team then springs into action. Although the lack of oxygen renders the lungs and heart unusable for donation, other organs can successfully be harvested in this manner.

### **Ethics Redux**

Awkwardly, there are many times the “not dead yet” patient refuses to cooperate. The heart has its own internal pacemaker, and it sometimes takes longer than one hour to stop beating when deprived of oxygen. If this occurs, then the organs are deprived of oxygen for too long and are useless for donation. The patient is then brought back to the intensive care unit not to be revived, but to await death. There also is unease about the amount of time that the heart is stopped before death is declared. The time of five minutes was chosen because the heart can occasionally spontaneously restart itself. Five minutes was arbitrarily selected as a time in which the heart stoppage was deemed irreversible.<sup>14</sup> However, some transplant physicians have attempted to shorten that interval.

In Colorado, there was a published report about an attempt to use the nonbeating heart protocol on a child donor in order to transplant a young heart. They first shortened the time to wait from five minutes to three minutes. When that was unsuccessful, the hospital ethics committee allowed them to attempt a harvest merely seventy-five seconds after the heart stopped beating.<sup>15</sup> This attempt was successful, but many have questioned whether the donor's heart could have restarted in such a short time.<sup>16</sup>

This attempt to control the time and means of death in order to harvest organs directly goes against how physicians treat patients in every other situation. As one doctor involved in the DCD protocol stated, "In this situation we have to do everything we have been taught not to do. We stop everything until the patient dies."<sup>17</sup> Once the patient is dead, a huge flurry of medical interventions is then performed.

With DCD, we are controlling the manner in which the profoundly disabled die in an attempt to use their organs. Even if that concept is morally sound, the potential for abuse in the future is greatly concerning. Human beings should be recognized as having value regardless of their abilities. We risk further degrading that concept when we choose which individuals we allow to die potentially to benefit others. Our culture continues to value human beings for what they can do as opposed to for what they are. It is easy to imagine a future where efforts to treat profoundly disabled patients focus not on the patients themselves but on their value for spare parts for another. This may seem severe, but have we not already begun an attitudinal shift in that direction?

### **The Gift of Life or Compulsory Donation?**

We have always considered organ donation a voluntary gift that one individual can make for the benefit of another. However, the growing disparity between available organs and sick individuals that desire them can foster an attitude of entitlement among the needy. The language used by transplant advocacy groups can encourage this. For example, the American Transplant Association states on their website, "On average, 21 people die every day from the lack of available organs for transplant."<sup>18</sup> Unfortunately, many people die every day from a variety of illnesses, including a number of cases of organ failure. However, no one actually dies as a result of someone else not donating their organs. No one has the right to expect the parts of another person's body if he or she becomes sick.

We have already started to modify our views on donation. Many countries no longer wait for someone to sign a donor card to qualify as an organ donor. In many countries, there is a presumptive consent to organ donation, which means that unless a patient specifically "opts out," it is assumed that they consent to donating their organs.<sup>19</sup> In the United States, the District of Columbia allows hospitals to prepare a patient to be an organ donor even before the family gives consent. Roger Evans from the Mayo Clinic once quipped, "When people refuse to donate, depriving individuals of organs that could save their lives, maybe we should consider that a homicidal act."<sup>20</sup> Right now, mandatory organ donation from "almost but not quite dead" bodies are found in the stories of many popular dystopian novels.<sup>21</sup> The fact that we seem to be heading in that direction should be alarming.

## From Legal Fiction to Real Truth

The discussion of organ donation from a Christian ethical standpoint is quite challenging. On one hand, there is so much good that has resulted from this technology. Young patients are living full lives because of these life-saving techniques. How do you look at a child who would have lost her parent if not for a transplantation and not be moved? I will admit to a certain trepidation in exploring this topic.

Yet as followers of Christ we need to be committed to truth. Many scholars are now recognizing the truth about brain death—that it is a legal fiction that exists in order to justify organ donation and still satisfy the dead-donor ethical standard.<sup>22</sup> Robert Truog recommends that we treat brain death as we treat someone who is “legally blind.” We know that they have some sight, but from a legal standpoint, they are blind enough to have lost the ability to be recognized as sighted. He sees death in a similar fashion: “While not biologically dead, their profound degree of neurological impairment has led to the view that, for all legal purposes, they can be treated as if they are dead.”<sup>23</sup> Should we be taking organs from human beings that we know are merely “almost dead”?

Perhaps we need to consider a new ethic that allows one to provide the gift of organ donation to others without having to follow the legal fiction of brain death or be subjected to the chaotically “controlled” death of a DCD. It would be ideal that at the end of life, our intrinsic value would still be weighed heavily, and we would not be valued merely for our parts. We should not have to pretend to “play dead” to accomplish this.

Even if our intentions are noble, and much good has resulted from organ donation, the present practice of organ donation and harvest has questionable protection for the value of life for donors. We are valuable because we are made in the image of our Creator, and we do not lose that value when we are unable to perform tasks or function at a certain level. Using the profoundly disabled patient as a merely instrumentally valuable spare parts dispenser is something that we can never allow. We may not be there yet, but it is wise to be vigilant and concerned to ensure that it never happens.

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## NOTES

- 1 Doug Strauss, "Jahi McMath: Statement of Children's Hospital Oakland," *San Jose Mercury News*, December 29, 2014.
- 2 David DeBolt, "Jahi McMath: Medical Experts Say Organ Failure Inevitable," *San Jose Mercury News*, April 29, 2015.
- 3 A definition of irreversible coma. "Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death," *Journal of the American Medical Association* 205, 6 (1968): 337–40.
- 4 L. Docemici et al., "Frequency of Spinal Reflex Movements in Brain-dead Patients," *Transplantation Proceedings* 36, 1 (January–February, 2004): 17–19.
- 5 J. Verheijde et al., "Brain Death, States of Impaired Consciousness, and Physician-Assisted Death for End-of-Life Organ Donation and Transplantation," *Medicine, Health Care, and Philosophy* 12, 4 (November 2009): 409–21.
- 6 D. A. Shewmon, "Chronic 'Brain Death': Meta-Analysis and Conceptual Consequences," *Neurology* 51, 6 (1998): 1538–45.
- 7 *Controversies in the Determination of Death: A White Paper of the President's Council on Bioethics* (Washington, D.C.: President's Council on Bioethics, 2008).
- 8 Ibid.
- 9 A. Said et al., "A Brain-Dead Pregnant Woman with Prolonged Somatic Support and Successful Neonatal Outcome: A Grand Rounds Case with a Detailed Review of Literature and Ethical Considerations," *International Journal of Critical Injury and Injury Science* 3, 3 (July–September 2013): 220–24.
- 10 Delimiting Death," *Nature* 461.7264 (2009): 570.
- 11 Mike Celizic, "Pronounced Dead, Man Takes 'Miraculous' Turn," Today News, <http://www.today.com/news/pronounced-dead-man-takes-miraculous-turn-2D80555113>.
- 12 Dick Teresi, *The Undead: Organ Harvesting, the Ice-Water Test, Beating-Heart Cadavers: How Medicine Is Blurring the Line between Life and Death* (New York: Pantheon, 2012), 49.
- 13 D. Sanghavi, "A New Approach to Organ Donation," *The New York Times Magazine*, December 20, 2009.
- 14 Ibid.
- 15 B. Boucek et al., "Pediatric Heart Transplantation after Declaration of Cardiocirculatory Death," *New England Journal of Medicine* 359 (2008): 709–14.
- 16 J. Bernat, "The Boundaries of Organ Donation after Circulatory Death," *New England Journal of Medicine* 2008 (2008): 669–71.
- 17 Teresi, *The Undead*, 251.
- 18 <http://www.americantransplantfoundation.org/about-transplant/facts-and-myths/>.
- 19 I. Kennedy et al., "The Case for 'Presumed Consent' in Organ Donation," *The Lancet* 351.9116 (1998): 1650–52.
- 20 R. Weiss, "Organ Demand Forces Dilemmas," *Washington Post* A01 (November 24, 1997).
- 21 The popularity of Neil Shusterman's Unwind series is an example of this shift in thinking.
- 22 Seema K. Shah, "Piercing the Veil: The Limits of Brain Death as a Legal Fiction," *University of Michigan Journal of Law Reform* 48 (2015), 301; available at <http://repository.law.umich.edu/mjlr/vol48/iss2/1>.

- 23 Robert D. Truog and Franklin G. Miller, "Changing the Conversation about Brain Death," *The American Journal of Bioethics* 14, 8 (2014): 9–14.