

Handout: Critique of the 'Brain Death' Concept in the Writings of Robert Spaemann and Wolfgang Waldstein

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She's gone for ever!
I know when one is dead, and when one lives;
She's dead as earth. Lend me a looking-glass;
If that her breath will mist or stain the stone,
Why, then she lives.¹

I. Robert Spaemann: Philosophical Realism and the Definition of Death

"Is 'brain death' what all mean when they say 'death'?"² · Can life be defined? · Two kinds of definition: a) the Socratic 'what it was to be' of given reality, b) the 'operational' definition of metrical science · The auxiliary role of operational definition in distinguishing border cases vs. the constructive role of definition in positing new objects · "The unity of the living organism is constituted by an anti-entropic process of integration."³ · The distinction between first and second actuality: A thing that cannot function at the moment does not necessarily cease to exist. · The human person exists as long as the human organism is alive · The human person cannot be reduced to the brain.

II. Wolfgang Waldstein: Juridical Realism and the Definition of Death

The objectivity of right · Jurisprudence as the application of what is naturally known to all · In what sense is impartiality necessary? · The ulterior motives behind Brain Death Criteria: "This criterion, as is made clear in the statement, did not serve the purpose of determining a person's objective time of death, but rather, its sole purpose was obviously to enable the removal of a dying person's vital organs, as long as they were still useful for transplantation."⁴ · *In dubio pro vita*.

¹ Shakespeare, *King Lear*, Act 5, Scene 3.

² Robert Spaemann, "Is Brain Death the Death of a Human Person?" in: *Communio* (English ed.) 38.2 (2001), pp. 326-340, at p. 329.

³ Spaemann, "Is Brain Death the Death of a Human Person?" p. 327.

⁴ Wolfgang Waldstein, *Written in the Heart: Natural Law as the Foundation of Human Society*, trans. Rebecca Parker and Michael Waldstein (Brooklyn, NY: Angelico Press, forthcoming).