

III. The Issue of “Brain Death” and Organ Transplantation

The great strides, which have been accomplished in transplantation medicine, have made it possible to save a human life through the transplantation of another human’s organs. This possibility has resulted in an immense worldwide demand for transferable organs. There are long waiting lists for organs. This has caused an immense amount of pressure to better facilitate the procurement of such organs. <82> At the 2005 congress, which I will discuss later in detail, Dr. David Hill of Cambridge University (England) reminded of the medical problem that the organs of persons, who had, in fact, already passed away, are generally no longer useful for a transfer. Therefore, a new method had to be found for the removal of organs prior to the actual death. The “brain death” criteria seemed an appropriate solution to this problem. Hence, in 1968, an ad-hoc-committee from the Harvard Medical School introduced a new definition for death, the so-called “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. Prof. Ralph Weber of the University of Rostock wrote:

“As pure as the interest in organ preservation for the rescue of other lives may in itself be, this purposefulness, nevertheless, influences the effort to objectively define death; instead, in the interest of transplantation medicine, it turns into a matter of negotiation – and that cannot be. Therefore, the justification of the concept of brain death must be responded to independent of the possibilities of organ transplantation.”¹⁸²

Pope John Paul II, in a statement at one of the congresses for the Pontifical Academy of Sciences (December 14, 1989), had already stated the following in regard to the determination of time of death:

“In practice, there seems to arise a tragic dilemma. On the one hand there is the urgent need to find replacement organs for sick people who would otherwise die or at least would not recover. In other words, it is conceivable that in order to escape certain and imminent death a patient may need to receive an organ which <83> would be provided by another patient, ... Consequently, in the process there arises the danger of terminating a human life, of definitely disrupting the psychosomatic unity of a person. More precisely, there is a real possibility that the life whose continuation is made unsustainable by the removal of a vital organ may be that of a living person, whereas the respect due to human life absolutely prohibits the direct and positive sacrifice of that life, even though it may be for the benefit of another human being who might be felt to be entitled to preference.”¹⁸³

¹⁸² Zeitschrift für Lebensrecht 11, 2002, 104

¹⁸³ Working Group 10-14 December 1989, R.J. White, H. Angstwurm, C. De Paula (eds), Scripta Varia 83, Vatican City, 1992. <http://www.casinapioiv.va/content/dam/accademia/pdf/sv83pas.pdf>

In the meantime, this “real possibility” has been proved by documented cases, in which the organs could not be obtained from the person declared dead after the “brain death diagnosis”, wherefore that person survived and recovered. Among these were young people, who still had their entire life ahead of them. A particularly dramatic example is that of the priest, Vittorio Mazzucchelli, of the Institute of Christ King Sovereign Priest. After his serious car accident he was declared brain dead. The Superior General, however, protested against the organ harvesting and demanded the transfer to another hospital. Through their care he regained consciousness and finally was healed completely, so that he was again able to pursue his priestly duties. No one can deny that, through the previously prepared organ harvesting, he would have been killed.

The argument that is usually heard in such a case: Then the brain death diagnosis was incorrect and, therefore, the case proves nothing against its validity. This argument is in itself incorrect. For the brain death “diagnosis” is, as distinguished scientists discovered at the congress at the Pontifical Academy of Sciences on February 3 and 4, 2005, not a “diagnosis”, but rather a prognosis that can always be either incorrect or <84> correct. However, whether or not it was incorrect can only be discovered if the organs were not removed from the patient. If they were removed, then the patient is irrevocably dead. Therefore, one cannot say how many people have effectively been killed through organ harvesting since the implementation of the brain death criteria. Based on past experiences, one must assume that this number is quite high.

In regard to the problems of euthanasia, John Paul II, in the encyclical *Evangelium Vitae*, determined:

“Nor can we remain silent in the face of other more furtive, but no less serious and real, forms of euthanasia. These could occur for example when, in order to increase the availability of organs for transplants, organs are removed without respecting objective and adequate criteria which verify the death of the donor” (15).

The pope spoke here in the subjunctive “can”. In the meantime, such organ harvestings have, with the help of the brain death criteria, become a worldwide reality. Even Church institutions joined the “Harvard Report” without hesitations. And so, in August, 2000, even the Pontifical Academy for Life prepared a message by the pope for the XVIII International Congress of the Transplantation Society, which was to give the pope’s consent to the brain death criteria. The text was sent, first, to the Congregation for the Doctrine of the Faith, at a time when Cardinal Ratzinger was not in Rome. In the absence of their prefect, the Congregation inserted clarifications in regard to the moral safety and informed consent into the text, which, as has been proven, in themselves already rule out the use of the brain death criteria because it is precisely this safety, which, on an objective level, is not attainable. The text was then, however, forwarded to the pope and the address was held in its corrected form. <85>

The speech was then, however, immediately interpreted as a papal endorsement of the brain death criteria. When high-level American scientists dared to present their concerns regarding to this issue to the pope, the majority of the board of directors (Consiglio Direttivo) of the Pontifical Academy for Life was outraged over this “defiance” towards the pope, to which I, as a member of the minority, can testify. The concerns that were raised, however, induced the Holy Father to conduct a new examination of the “signs of death” through a new congress. This congress, to which the American scientists were also invited, was held on February 3 and 4, 2005, at the Pontifical Academy of Sciences in Vatican City. At this congress, distinguished scientists strived to “explore once again, in a serious interdisciplinary study, the particular question of the ‘signs of death’, on the basis of which a person’s clinical death can be established with moral certainty”¹⁸⁴. I can only convey two of the most important results from the final document of this meeting.

Nr. 10 of the “Conclusions”, which is comprised of 13 sections, states:

“There is overwhelming medical and scientific evidence that the complete and irreversible cessation of all brain activity (in the cerebrum, cerebellum and brain stem) is not proof of death. The complete cessation of brain activity cannot be adequately assessed. Irreversibility is a prognosis, not a medically observable fact. We now successfully treat many patients who in the recent past were considered hopeless.

11. A diagnosis of death by neurological criteria alone is theory, not scientific fact. It is not sufficient to overcome the presumption of life.” <86>

Furthermore it states:

“12. No law whatsoever ought to attempt to make licit an act that is intrinsically evil.” Thereto, the text from *Evangelium Vitae* (nr. 90) is cited. “I repeat once more that a law which violates an innocent person’s natural right to life is unjust and, as such, is not valid as a law. For this reason I urgently appeal once more to all political leaders not to pass laws which, by disregarding the dignity of the person, undermine the very fabric of society.”

“13. The termination of one innocent life in pursuit of saving another, as in the case of the transplantation of unpaired vital organs, does not mitigate the evil of taking an innocent human life. Evil may not be done that good might come of it.”¹⁸⁵

The final document was signed by 15 of the 25 participants at the meeting. With that, the recent clarification of the “signs of death”, requested by Pope John Paul II, is at hand and clearly corrects the pope’s statements from 2000, however, only upon the Holy Father’s request and as his bequest, so to speak, in connection with *Evangelium Vitae*.

One would think that the responsible ecclesiastical authorities should have been thankful for the pope’s achievement, which came so shortly before his death, and for the results based on meticulous, scientific research, which were presented in the process. But no! Bishop Marcelo Sánchez Sorondo, chancellor of the Pontifical Academy

¹⁸⁴ John Paul II. in his February 5, 2005 letter to the Pontifical Academy of Sciences.

¹⁸⁵ <http://www.initiative-ka0.de/brain-death-is-not-death.pdf>

of Sciences, for whom the results of the meeting were a shock, prohibited the publication of the records! In the meantime, however, what had already permeated the media, was the fact that, as a result of the publication ban through the Pontifical Academy of Sciences, there exists a book concerning the issue of *Finis Vitae*, which had been published <87> in 2006 in English and, in 2007, in Italian, by Roberto de Mattei, Vice-President of the Consiglio Nazionale delle Ricerche. It contains some texts from participants of the 2005 congress, or those, who because of their texts, hadn't been admitted in the first place, such as myself. Notwithstanding these facts, "Die Tagespost" (Sep. 6, 2009) had to report:

"Cardinal Javier Lorenzo Barragan, President of the Pontifical Council for the Pastoral Care of Health Care Workers, has explained to the news agency, ANSA, that the Catholic Church follows the scientific statements, according to which the death of a person can be determined when, after six hours, brainwaves can no longer be measured, regardless of whether or not the body of the person concerned is being artificially ventilated and the heart is still beating."

Cardinal Barragan has obviously identified "science" with the "Harvard report", which was declaredly not a result of scientific research, but rather the "new definition" of death that had been dictated with the sole purpose of procuring organs. Cardinal Barragan could have inferred the actual scientific results from the congress' 2005 "Conclusions". However, these, apparently, were not brought to his attention due to the Pontifical Academy of Sciences' publication ban. If the Catholic Church truly wishes to follow the "scientific statements", then the clarification, requested by Pope John Paul II. and made by the congress in 2005, must be acknowledged. However, the Pontifical Academy of Sciences has, to this day, refused to do this. Rather, it has publicly accused those who have dared to declare their doubts regarding the brain death criteria of ignorance. This matter involves internationally acclaimed directors of clinics, who truly know of what they speak. Prof. Alan Shewmon's, M.D. (USA), way of truth regarding this question is particularly impressive. After a prolonged struggle in search of the truth regarding this question and after clinical experiences, he came to the conviction that the so-called "brain death" cannot, in fact, <88> imply the death of a human being. He was able to illustrate this in numerous publications. This was made clear to me through the writings of Dr. David M. Hargroder (February 26, 2003), which were made accessible to me. After having himself carried out organ transplantations for many years, he began to have doubts about the actual death of a "brain dead" person. For upon the removal of, for instance, the heart of a "brain dead" person for transplantation, the heart, which was still beating, had to be stopped either through injection or another method. These methods, evidently, led him to have serious doubts about the "moral certainty" of the patient's death and convinced him that he was, in fact, killing the patient. The popular term: "Heart Beating Cadaver Donors" was no longer able to hide the reality of the act of killing. These days, one can actually remove the still beating heart; however, in that case, one is removing it from that person, therefore, making his or her death imminent.

A television film, which was aired in the “Bayrischer Rundfunk” in 1995, dealt in detail with the question of brain death. This film, amongst other things, also reported on the case of Jan Kerkhoff, who, after a car accident, which resulted in an intracranial injury, was diagnosed with brain death. His wife was asked to allow the removal of the organs. However, due to the fact that the cardiac function, blood pressure, and all other vital functions were normal, the wife was convinced that her husband was still alive. Therefore, she did not give permission to remove the organs. Indeed, her husband did, in fact, awake from unconsciousness, was healed, and now lives a healthy life again. In the film, together with his wife, he was able to report on the events surrounding the declaration of this brain death. However, as I was then told, the film resulted in the editor being prohibited by the director from broadcasting such programs ever again. One cannot bring to light such unpleasant facts about transplantation medicine <89> via the television. I also know of a case where two adolescents, who had sustained intracranial injuries after motorcycle accidents, had two very different fates after being treated by their respective doctors, who each reacted differently to the situation. In the one case, the representative in charge of transplantations had the patient transported via helicopter to the Vienna General Hospital (AKH), where his organs were then removed. In the other case, the attending physician was able to prevent the patient from being evacuated. His accident had occurred in the summer, just prior to his Matura (high school exit exam). He was treated and rescued in the intensive care unit. Had he also been flown to the AKH in Vienna, as intended by the transplantation representative, who had already ordered the helicopter, there would not have been a Matura, but rather, a funeral. The Brazilian doctor, Cicero G. Coimbra, has proven that especially with children and adolescents, certain methods of treatment for intracranial injuries can save lives, but that particularly with these, the interest in valuable organs prevails so much so that a rescue effort is not even attempted.

In 1976, Dr. Paul Byrne, professor for pediatrics at the Medical University of Ohio (USA), had already had an experience, which clearly demonstrated the problems pertaining to the brain death criteria. A child, patient Joseph, had already been on mechanical ventilation for six weeks and the EEG was interpreted as being equivalent to a brain death. Dr. Byrne, however, did not remove the organs and continued the treatment. The child was saved. By the time this case was reported, Joseph was already married and the father of two children. He was a professional fireman with an interest in the medical field. Had Byrne acted according to the criteria of brain-death-diagnosis, this life would, for sure, have been destroyed. Already in 1975, this clinical experience gave him the certainty that brain death cannot imply the death of a human being. <90>

What made the 2005 congress’ results possible, were the insights that were gained over so many years by so many highly qualified specialists. Nevertheless, the Pontifical Academy of Sciences dared to accuse them of ignorance for not accepting the Harvard-Dogma. This is, in a manner of speaking, an incomprehensible monstrosity. It becomes

even more incomprehensible in view of the circumstance that Pope John Paul II, due to the concerns that were voiced to him, realized that in 2000, he had been misled by the Pontifical Academy of Life into making a statement that was inaccurate and ambiguous. In view of this realization, he requested a renewed clarification of this issue. This took place through the congress in February, 2005, in such a way that any further research would be incapable of altering the results. The brain death criterion shows how the human right to life of the “organ donors” is undermined through a definitional trick of reputable Harvard Medical School. However, the right to life of the organ recipients is given the highest priority. John Paul’s II admonitory statements, such as that from December 14, 1989, and *Evangelium Vitae* (nr. 15), are blatantly ignored by the Pontifical Academies. The pope rightfully stated:

“There is a real possibility that the life whose continuation is made unsustainable by the removal of a vital organ may be that of a living person, whereas the respect due to human life absolutely prohibits the direct and positive sacrifice of that life, even though it may be for the benefit of another human being who might be felt to be entitled to preference.”

It is particularly grievous that the intent of the former President of the Pontifical Academy for Life, whom the congress had invited in November 2008, was to promote a willingness to donate, without addressing the issue of the price to be paid for it. The price to be paid for this is, undoubtedly, that through the use of <91> the brain death criteria, the life of the donor is, in many cases, prematurely terminated. For this reason, Pope Benedict XVI., in his November 7, 2008 address, rightly reminded to exercise caution and explained:

“In these cases the principal criteria of respect for the life of the donor must always prevail so that the extraction of organs be performed only in the case of his/her true death.”¹⁸⁶

The fact that brain death is not the actual death is evident based on the fact that the brain-death-definition was introduced for exactly the purpose of being able to remove organs before the person is actually dead. For after the death of a person, the organs are no longer useful for transplantation. This is precisely the “dilemma” Pope John Paul II was referring to in 1989. As a result of the statements quoted earlier, Pope Benedict XVI had already objectively excluded the brain-death-definition. For at least since the congress in 2005, no one can still claim that brain death is the “actual” death of a human being. The pope states:

“In these years science has accomplished further progress in certifying the death of the patient. It is good, therefore, that the results attained receive the consent of the entire scientific community in order to further research for solutions that give certainty to all.”

The results from the 2005 congress are, undeniably, a part of this continual progress. However, as it turns out, it has become apparent that the “scientific community” is, for the most part, unwilling to agree with these results. And even the Pontifical Academy

¹⁸⁶ <6> L’Osservatore Romano, Wochenausg. in deutscher Sprache vom 28. November 2008, p. 7.

of Sciences, so far, has refused to do so, against their potential better judgment. Even so, it is now clear that the brain-death-definition will never be able to “receive the consent of the entire scientific community”. This opposes the previously quoted results of the 2005 congress:

“There is overwhelming medical and scientific evidence that the complete and irreversible cessation of <92> all brain activity (in the cerebrum, cerebellum and brain stem) is not proof of death”.

In this situation, the pope’s statement is of vital importance:

“In an area such as this, in fact, there cannot be the slightest suspicion of arbitration and where certainty has not been attained the principle of precaution must prevail”.

The pope also stated:

“It is helpful to remember, however, that the individual vital organs cannot be extracted except *ex cadavere*”.

This criterion in itself would not have caused any difficulties for the supporters of brain death, for the “brain dead person” is understood as precisely that: “a cadaver with a beating heart”. That is why Pope Benedict’s XVI clarifications are so important. However, because the important statements made by John Paul II, which are undoubtedly doctrinal statements, were not taken seriously, the concern is that Pope Benedict’s XVI statements, will also not be understood as a rejection of the brain death criterion. As long as the Magisterium has not clearly rejected the brain death criterion as such, Catholic doctors and hospitals will feel justified in killing patients through organ harvesting. They obviously feel an indifference towards the fact that, regardless of the Magisterium, the acceptance of brain death contradicts meticulous and irrefutable scientific evidence, which make it impossible to practice the brain death criterion in good conscience.

The silence on the part of the Magisterium, however, still gives this doubtlessly murderous practice a “good conscience”. In addition to this, this “good conscience” was officially supported by the opinions of the Pontifical Academy of Sciences, the president of the Pontifical Council for the Pastoral Care of Health Care Workers, as well as the Pontifical Academy for Life – at least under its former presidents. One former president of the Pontifical Academy for Life assured me <93> that, as long as the Magisterium says nothing to the contrary, the acceptance of the brain death criterion is justified. For the same reason, though, I am justified in not sharing this opinion. In light of the enormous consequences of this silence on the part of the Magisterium, what must be borne in mind is the “nor can we remain silent” in *Evangelium Vitae* (15). The Church is obligated to proclaim the truth, even if the world does not wish to hear it. Of course it is to be expected that, in this case, an even greater outcry will probably arise as was the case with *Humanae Vitae*. For here it is not just a moral issue, but also a huge business. Nevertheless, the Church, through its silence, cannot convey a false “good conscience”. The guidance – the recent clarification of the “signs of death” at the 2005 congress –

which Pope John Paul II gave the Church so shortly before his death, cannot be simply ignored. Therefore, we can only hope that, through a clear explanation of the brain death criteria, this guidance will be accepted by the Congregation for the Doctrine of the Faith.

In addition to all these arguments, those, who had invented the brain death criterion in 1968, have in the meantime abandoned it. At first Prof. Robert Truog dared to make a step toward truth in an article with the title: "Is It Time To Abandon Brain Death" (*Hastings Center Report* 1997). He said there: "The most difficult challenge for this proposal would be to gain acceptance of the view that killing may sometimes be a justifiable necessity for procuring transplantable organs." In the *Hastings Center Report* 38, Nr. 6, 2008, had Prof. Truog with Prof. Franklin Miller, National Institutes of Health, published an article with the title: "Rethinking the Ethics of Vital Organ Donation". They admit that "the practice of brain death in fact involves killing the donor". Therefore the "dead donor rule" should be abandoned. Killing by removing vital organs should be regarded as "justified killing". This is the truth about organ transplantation, which Pope John Paul II. Had seen already 1989, as mentioned above.