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Brain Death and Transplantation in Japan : Some Remarks on the Proposals for the Revision of Japan's Organ Transplantation Law

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*This report was originally presented at Sixth International Tsukuba Bioethics Roundtable (TRT6) 27-29 October, 2000: Bioethics, Health and the Environment

*You should also visit [Reconsidering Brain Death: A Lesson from Japan's 15 years of experience](#) (2001)

1. Brief History

The first heart transplantation from a "brain dead" donor: 1968 at Sapporo Medical School. === accused of homicide, but the prosecution did not bring it to a court. This event caused a grave doubt on brain death among the public.

From 1969 to 1982 === nothing happened.

A debate occurred in 1983, when the Ministry of Health and Welfare aimed to create the *Japanese criteria of brain death*.

From 1983 to 1992 === A heated public debate on brain death and transplantation occurred. The issue of brain death was reported in the front pages of nation wide newspapers and TV programs many times. More than 100 books were published. Japan was a country where a great number of people with a variety of backgrounds, including lay persons, participated in this debate for more than 10 years.

In 1992, the Prime Minister's *Special Committee on Brain-death and Transplantation* concluded that brain death was equal to human death, and the donor's prior declaration of transplantation was necessary for organ removal. At the same time, a minority opinion saying that brain death should not be considered human death, was added to that report.

From 1992 to 1997=== A Public debate continued.

In 1997, *Japan's Organ Transplantation Law* was finally established.

In 1999, Japan's second heart transplantation was performed (after 31 years since 1968). 14 cases since then (Jul.2001).

The law was scheduled to be reconsidered in 2000.

2. Japan's Organ Transplantation Law

The characteristics of the law

- a) If you want to be an organ donor after brain death, you have to write it down on a donor card or label beforehand. Then you are considered to be dead when brain death is diagnosed. If you object to brain death and transplantation, you do not have to have a donor card. Then you are considered to be alive until your heart stops beating. **Pluralism on human death**
- b) Donor's prior declaration of permitting (i) legal diagnosis of brain death, and (ii) organ removal, both in the form of a written document (ie. donor card or label), is necessary for performing (i) and (ii). **The donor's prior declaration principle**
- c) Family consent is also necessary for both (i) performing legal diagnosis of brain death, and (ii) organ removal. (Strictly speaking, "family consent" in this law means that the family do not express objections to the procedure.) **Family consent**

Flowchart of the application of the law

A patient is "clinically" diagnosed as brain dead.

When the patient does not have a donor card

==> the patient is considered to be alive until the heart stops beating.

When the patient has a donor card, and he/she has agreed to brain death and transplantation (names of organs should be designated beforehand on the donor card),

==> A transplantation coordinator asks the family members if they also agree to "legal" brain death diagnosis and organ removal.

==> If they agree, the "legal" brain death diagnosis begins, and the organ removal follows.

**We distinguish a "clinical brain death diagnosis" from the "legal brain death diagnosis." The former does not require no-breathing (apnea) test.

The so-called "problems" of the 1997 Transplantation Law

1)"Pluralism on human death" is irrational.

Cf. Transplantation Law of District of New Jersey in the USA
(People are permitted to reject brain death diagnosis)

2)The "donor's prior declaration" principle is too strict for transplantation.

Cf. scarcity of organs

3)A person under 15 is not allowed to be a donor.

The will of a person under 15 is considered to be legally invalid in Japan's civil law. According to this, heart transplantation from a child donor under 15 is impossible in Japan.

3. Japanese Public Opinions

About "brain death": according to several public opinion polls during 1980s-90s

About 40%-50%= brain death is human death

About 20%-40%= brain death is not human death

Table 1 "Is brain death equivalent to human death?"

		Yes	No
1987	Yomiuri Shimbun Newspaper	46%	28%
1991	Mainichi Shimbun Newspaper	45%	23%
1992	Asahi Shimbun Newspaper	47%	41%
1997	Asahi Shimbun Newspaper	40%	48%
1999	Asahi Shimbun Newspaper	52%	30%

About "donor's prior declaration" and "family consent": according to the poll by the Prime Minister's Office in May, 2000.

If "donor's prior declaration" exists that is sufficient.

"Family consent" is not necessary. 20.6%

Both "donor's prior declaration" and "family consent" are necessary 69.9%

If "family consent" exists that is sufficient.

"Donor's prior declaration" is not necessary. 2.1%

Cf. In most countries, if family's consent exists that is sufficient unless the brain dead person previously refused to be a donor. This means that if you have not written down on a donor card an agreement to transplantation, your organs will be removed if the family says "yes." One of the reasons is that brain death is legally determined to be human death without exception in these countries.

"Family's attitude" to the brain dead donor's prior declaration:

According to the poll by the Prime Minister's Office in July, 2002.

"Do you respect your brain dead family member's prior declaration and agree to organ donation?"

Yes 41.0%

Probably Yes 22.4%

I don't know until I am in the situation 26.2%

Probably No 4.6%

No 5.8%

4. Various proposals for the revision

a) **Machino proposal** (Feb. and Aug., 2000: a professor at Sophia University, and a sub-director of a research group funded by the Ministry of Health and Welfare. Several recipient groups support this proposal.)

Brain death is equal to human death without exception. If family consent exists that is sufficient for organ removal unless the brain dead person has previously refused to be a donor. In the case of a minor, if the consent of persons in parental authority exists, that is sufficient unless the minor brain dead person has previously refused to be a donor.

b) **Proposal by Japanese Council for Transplant Recipients** (December 20, 2000)

Brain death is equal to human death without exception.

Adult = donor's prior declaration+ family consent are necessary
 Child under 15 = consent of persons in parental authority is sufficient

c) **[Morioka & Sugimoto proposal](#)** (Feb.14,2001: Morioka = professor at Osaka Prefecture University, the director of this website; and Sugimoto = associate professor at Kansai Medical University)

Adult = donor's prior declaration + family consent are necessary
 Child under 15 = donor's prior declaration + prior consent of persons in parental authority are necessary

Proposal A:

In children between 6 and 12, in addition, ethics committee or the court must confirm that there was no sign of child abuse etc.

In children under 6, legal brain death diagnosis and organ removal are prohibited

Proposal B:

In children under 12, legal brain death diagnosis and organ removal are prohibited

*Maintains the framework of the present law concerning pluralism of human death.

d) **Proposal for legalization that enables organ removal from "living brain dead donors"** (originally proposed in 1980s, in 1991, and in 1997 by Seiichi Kaneda, A Member of Parliament, and maintained by several people since then.)

Human death should be the permanent cessation of respiration and circulation. A brain dead patient is still alive. If there are "donor's prior declaration" and "family consent", organs can be legally removed from a "living brain dead donor."

*(I am not sure their opinion about a child.)

Cf. Robert D. Truog published a paper, "Is It Time to Abandon Brain Death?", in *Hastings Center Report*, 1997. He said similar things there, but he went on to say that organ removal may be allowed from patients in permanent vegetative states and anencephalic newborns.

e) **Proposal for the abolishment of the law itself** (This has constantly been announced by citizen groups plus a Member of Parliament, Tomoko Abe. Plus a new religion sect, Oomoto-kyo.)

Brain death is not human death. Organ removal from brain dead patients is a homicide. It must be prohibited.

5. Revision of the Law in 2009

After a long and twisted political process from 2001-2008, the law was finally revised in July 13, 2009. The revised law is very similar to Machino Proposal cited above. Brain death is human death when it is diagnosed for the purpose of organ transplantation. In this newly revised law, only family consent is needed to establish the legal diagnosis of brain death and thus allow for organ removal. This is on the condition that the individual did not, beforehand, express his/her objection to organ donation. Organ donation from brain dead children becomes possible by family consent. A curious point is that in the law there is a clause for a priority donation to the brain dead donor's family

members. It was included to the law, although many scholars objected such clause, including prof. Machino himself.

4. References

English materials and discussions on this topic can be found in my papers, Masahiro Morioka,
[Reconsidering Brain Death: A Lesson from Japan's 15 years of experience](#) (2001)
[Bioethics and Japanese Culture](#)(1995)
[Brain Dead Person](#)(1989)

You can read Machino proposals, Morioka&Sugimoto proposal, and other related materials on my Japanese web page:
<http://www.lifestudies.org/jp/ishokuho.htm> (in Japanese)
European situation: Danish Council of Ethics, [Organ donation.- Informed or presumed consent?](#) (1999)
Report on [anaesthesia on brain dead persons](#)
Islamic situations: Ebrahim Moosa "[The Body in Muslim Ethics: The Dissonance of the Gaze\(s\)](#)" (2000)

The Nikkei Weekly newspaper reported this topic on Oct.23,2000.
Read their article, "[Organ-transplant Laws Draw Fire.](#)"

Foreign Press Center reported on my Japanese paper, "[Japan's Brain-Death Laws Are the Most Advanced in the World](#)" (*Chuo Koron* Feb.,2001).

[Ministry of Health, labour and Welfare's explanations of Organ Transplantation Law.](#)

Mona Newsome Wicks reported this topic on MedScape (2000).
"[Policy & Practice Brain Death and Transplantation: The Japanese](#)"

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