

Problems concerning to the Revision of the Organ Transplant Act of Japan

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ABSTRACT

Japanese organ transplant act itself has a defect because it was not fully examined in the process of legislating. Treating a brain-dead person's body as "a dead body or corpse", it legitimized to extract an organ from a body, which it recognized legal death based on double standards. Under these standards, people feel something wrong with it against Japanese view of life and death and legal culture. There are few organ transplants after the enforcement. Therefore, a sense of discredit cannot totally be wiped out against medical cares. They are processing to revise the act three years after the enforcement. However, revision work cannot be processed easily because there lay difficult problems in opinion to try revising the act. Here, we would like to discuss their opinions for revision and fundamental problem points. Especially, from the viewpoint of the act, we criticize opinions to revise the act to make organ transplant from 15 year-old infants or under feasible. The only way that medical cares take some kind of action toward patients' physical bodies is based on legally justification only to save their lives by medical cares. To legally justify extraction of an organ just for determination of brain death and organ transplant, well-grounded logic is required beyond this. Moreover, fully discussion is required to justify organ transplants from infants who cannot express their will fully enough.



The Japanese Internal Organ Transplant Act was established in 1997. Fourteen organ transplants were performed by now. Please pay attention to the number of actual organ transplants in these three and a half years. The establishment of the law itself was delayed because of oppositions stemming from Japanese people's notion of life and death toward brain death, which is a prerequisite condition for organ transplant. There are several fundamental problems like appropriateness of regulating brain death and organ transplant by law. Especially modern Japanese Legal System, which is influenced by Western Legal System.

In the process of establishing the act, there was no deliberation term to unite national consensus. It just adopted a double standard such as brain death and complete death. It was just a compromised plan. At the time of establishment, this Act had a supplementary vote to revise the act three years after its enforcement.

1. The characteristics of the Organ Transplant Act.

1) The characteristics of the regulation.

The retention of the revision of the act 3 years after the enforcement intends to revise the regulation, considering the present situation of actual organ transplants. Since the concept of brain death does not fit to Japanese people's concept of death, there was no other way but to compromise to consider brain death as death. Therefore, the government deliberately established the standard for judgment of brain death and regulated to strictly put it into effect.

First of all, judgment of brain death should be performed only for organ plant occasions.

Secondly, extraction of an organ is only permitted based on donor's will and only when donor was judged brain-dead. Donor him/herself admitted to be judged brain-dead for extraction of organs.

Third, it also requires that a donor does not have any family or his family does not refuse donation of his/her organ. These deliberate procedures are to consider donor's and his/her family's will and feeling and to prevent from buying and selling organs.

2) Problem points

At first, brain death is required to extract organs only for organ transplant. It is questionable whether brain death is authorized as human death or not. Death other than for organ transplant is judged by ordinary standards of death. It is something wrong with double standards.

Secondly, treating brain-dead body as dead body, extraction of organ was legalized.

The ground for this is not clear. It is difficult to say that social consensus is already established. People's consciousness about this matter is not well determined even a donor's self-decision exists.

Third. It does not define how to treat a dead body for donation and dissection of a body for medical research other than organ transplant.

Fourth. Can a donor's will be interpreted as a donor accepts death after being decided brain-dead? There is a question that a donor can make such a self-decision.

Fifth. There are some questions how we deal with legal or clinical brain death. How do we treat a remaining who is determined clinically brain dead?

Sixth. Placing too much importance on organ transplant, the current act tends to close a way for brain resuscitation and development of artificial internal organs. The current act is a just transitional and compromising legislation for organ transplant. Therefore, there are many questions in its interpretation and enforcement.

3) Problem points.

There are procedural problems in fourteen cases. First, Procedural mistakes occurred in determining brain death. Because of operational mistake of an electroencephalograph, there was a difference in results of clinical judgment and legal judgment to measure flat brain waves. Therefore, anaerobiosis tests were carelessly repeated. We understand that too much deliberate judgmental criteria caused this kind of trouble.

Secondly, highly-interested mass communication and people, and over-heated reporting disturbed donors and their family's privacy. Ethical codes of reporting were questioned. Therefore, reporting of information was regulated about organ transplants, which resulted in keeping organ transplants in secret. However, after the sixth transplant, mass-communication's concern toward transplant calmed down. Less reporting and information about transplants could not wipe out distrust against medical cares.

2. Issues about revision.

It took about one and a half years until the first organ transplant in Japan. Thinking of the diffusion rate of donor cards, more organ transplants should be performed at the earlier stage. Organ transplants did not become popular against expectation. Therefore, supporters of Organ Transplant Act try revising the current act toward

moderate one for more organ transplants. Here, we summarize most important issues as follows:

They are trying to revise to make puerile brain death and organ transplant possible, eliminating the limit of 15 years old or under in the existing act. As the existing act requires a donor's agreement in writing for brain death judgment and organ transplant, it excludes children 15 years old or under because they cannot express their will. The Ministry of Health, Labor and Welfare organized a research group to examine possibility for transplanting children's organs.

- a) Donation of an organ under 15 years old is feasible under parental accord.
- b) In regardless of age, in a case that a person's intention for donation is not clear; donation can be feasible under his/her family's accord, so-called presumable agreement. In other words, to presume that a person has an intention for donation of organ.

3. Problem points.

I point out several problems about this revision.

First of all, the fifth organ transplant was to transplant an adult's heart to an eight-year old infant. When an adult's organ is transplanted to an infant, there is a question about its suitability. To realize organ transplant from infant, it requires judgement of infant's brain death. Japanese Ministry of Health, Labor, and Welfare usually excluded infants under six years old from brain death because of infants' high recovering potentiality. The research team of Japanese Ministry of Health, Labor, and Welfare strengthens its policy to extend a period of brain death from the present 6 hours to 24 hours. In Japan, there was an infant's case, which was needed 312 days from diagnosis of brain death to heart failure. It is criticized that it is too much urgent to judge potentiality of resuscitation within 24 hours.

Secondly, the second one as the main point of revision, in regardless of age of donors, when a donor's intention is not clear, a plan of revision tries to make it possible to donate donor's organ only with his/her family's accord. It contains a lot of problems. The plan intends just to increase opportunities of organ transplants, which ignores donors' right of self-determination. The ground of organ transplant is based on donor's will. In other words, by esteeming donor's self decision, the act was legalized. It means that the basis of legalizing the act itself was denied. According to this plan, a person who refuses to donate organ always has to carry a statement of refusal. It reverses the original object of this system. As long as a person does not express his/her intention of refusal, he/she is regarded that he/ she has an intention of

organ donation. This is incoherent presumption against human nature, which denies human nature's intrinsic right toward their physics. Therefore, it may lead to ideology to think an individual's organ as social property and resources.

Third. We must discuss a fundamental problem in those revisions. On the basis to admit brain death and organ transplant, revisionists emphasize on the importance of saving lives of patients and recipients who are waiting for organ transplants. However, do they put stress on saving lives of brain-dead patients and donors equally?

(1) The asymmetrical recognition between potential recipients and potential donors can be read in the discourse to define brain death irreversible. Not only donors but also all human beings have a fate to face irreversible death from the birth. Recognizing all the people as donors are not possible.

(2) What is the basis to decide which one can be a donor? Someone who is irresuscitable or at the terminal stage? If organ transplant from cancer patients and AIDS patients at the terminal stage are possible, can we think those patients as donors?

(3) It can be said that determining donors can be based that patients' consciousness and sense are irresuscitable. As it may be seen in the discussion in the United States, vegetable-state patients, severe mentally handicapped persons, intellectually handicapped persons, and dementia elders can be donors. How do we divide irresuscitability in consciousness and sense from brain-dead patients? To solve this difficult question, there is no other way but to treat a brain dead as "a dead."

(4) If so, how do we define that a person is going to irreversibly die. How do we distinguish "ultra coma" or "nonreversible coma" before cardiac transplant from brain death? Comatose was not referred as death before. Treating irresuscitable consciousness and sense as mentally death or dementia, it would broad the potentiality to treat them as dead persons.

Revisionists are insisting the right of self-decision as the basis. If we make it as the basis for a person to hope to be judged as brain-dead or to transplant his organ, would suicide or human clone production be affirmed? If it is denied, how do we ground brain death and organ transplant? If not, right of self-determination cannot be universal and absolute basis. The freedom for the self-decision about his death and cares to his body afterwards. The protection of a person who cannot have his own judgment: Those rights are important ones to be legally secured. By the development of artificial internal organ and refrigeration of brain-dead persons, it will be cleared that the current brain death and organ transplant are just provisional. It is legally difficult to find out the clear ground to extract organ from a brain dead as a dead. Originally, the only thing for doctors and medical cares to be legally admitted

to do with patients' body is just to save their lives, in which there lies legal justification. Extracting organ from a patient's body just for organ transplant is not totally to save a patient. It hastens patients' death and causes them to die. The laws for maintaining orders cannot be easily synchronized with the idea to value human bodies as social resources.

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