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# Should the Newly Dead be Used to Help the Living? An Issue in Our Time

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Every culture's attitude and treatment of the bodies of those who have died manifests its understanding of the meaning of life and death. The late medieval period faced the question of the use of cadavers for education and research. Today society is struggling with the issue of determining the criterion of death especially in relation to organ donation. Within this context a new question is emerging. What is the ethical response to the newly dead who could be sustained on support systems for the promotion of social goods?

It is possible, or projected to be possible, to keep the bodies of persons functioning indefinitely through artificial means after they have been pronounced dead. This practice could benefit others through organ and tissue donation, research, and education. Should this activity be promoted or should it be halted before it becomes common practice? Would such a practice enhance or detract from humane consideration of others? In order to contribute to the ethical response to these questions, this paper will discuss who fits in the category of neomorts, how they could contribute to the well being of others, what values are at risk and what conditions ought

to be met if the practice of using neomorts is to be humane and protect fundamental values.

### **Statement of the Issue**

Willard Gaylin, writing in *Harpers*, September, 1974, coined the term "neomorts" for those persons who were pronounced dead, but whose vital systems were maintained by artificial means. After describing the possible benefits from the use of neomorts, Gaylin did not encourage the practice for it seems a violation of human sensibilities.<sup>2</sup> However, Harold B. Shane and Walter J. Daly, writing in *The Futurist* in 1986 seem to favor the practice, as it has so many possibilities for helping the living.<sup>3</sup> It is important that the moral dimension of the issue be considered in order to guide practice and research as well as human sensibilities.<sup>4</sup>

### **The Attractiveness of Neomorts**

Each year in the United States over 200,000 persons die from such causes as accident, suicide, and homicide. Since the bodies of these persons are frequently intact and relatively disease free, they could be used for experimentation, research, education, organ and tissue donation. The risks to the living from the use of experimental drugs or procedures could be minimized or eliminated if neomorts were used. Better controls for research could be maintained. New surgical procedures could be developed without fear of harming patients. Medical and nursing students could be taught practices on the dead rather than on the living. The supply of blood, bone marrow, and hormones could be augmented through the maintenance of vital systems. Solid organs such as hearts, lungs, livers and kidneys could be kept suitable for transplantation. Neomortoria (storage places for neomorts) could be established to centralize and foster the activities that the practice of neomorts would make possible. Tragic deaths might seem to be redeemed through the medical good achieved.

The benefits from neomorts could be attained at minimal human maintenance involvement because of the continuing advances of technology. On the basis of the care needed, it would be attractive to broaden the definition of death. If brain death is used as the criterion of death for neomorts, ventilators would be required to maintain cardiac and respiratory functions. If the cessation of the cortical function is used as the criterion of death, then neomorts could be maintained without the complication and expense of respirators.<sup>5</sup> Artificial nutrition and hydration would still be required as well as excretion and cleanliness procedures. All of these maintenance processes could be mechanized to improve efficiency, a value dominant in our culture.<sup>6</sup>

In addition to the value of efficiency, our culture promotes medical progress. The achievements of medicine in the 20th century are prized and further advances are expected. Once a technology has been developed which accomplishes good, it is difficult to prohibit its use. The technological

imperative is further enhanced by the reluctance to waste what could be used for the lives of others. Hence, it would seem a waste if bodies could be used for the advancement of medicine and are not. However, beneficence, progress and efficiency are not sufficient to resolve the moral issue. If these values are obtained through the violation of human beings or create conditions which jeopardize necessary human sensibilities, the practice of neomorts ought to be discontinued. There is a need for neomorts, but is the practice "morally irreproachable"?<sup>7</sup> Are there conditions morally required? Do these conditions vary for different categories of persons, e.g., aborted fetuses, anencephalic newborns, and persons in a persistent vegetative state?

### **Present State of the Practice**

Prior to such techniques as intravenous hydration, nasogastric feeding, bladder catheterization, and artificial ventilation, few persons survived any length of time in a state of deep coma.<sup>8</sup> Today there are many persons in a persistent vegetative state who are being maintained through artificial means, most because it is considered morally offensive to withdraw artificial hydration and nutrition.<sup>9</sup> Some who are brain-dead are kept on support systems for a short time in order to use their solid organs for transplantation. The continued viability of an organ requires that it be supplied with blood, either naturally or artificially. If organs are to be used for transplantation, they must be kept viable, for within 45 minutes after circulation to the brain ceases, there is enough ischemic damage that organs cannot be transplanted.<sup>10</sup> At the present time, brain death is not deemed a static condition of the tissues, therefore solid organs cannot be maintained indefinitely. Solid organs are usually harvested within 48 hours of brain-death declarations.<sup>11</sup> Today most organs for transplantation come from victims of automobile, plane, and motorcycle accidents. Since the need for such solid organs as lung, heart, kidney and liver far exceeds the supply/demand, there is no need for banking organs.

However neomorts could be used for education, research, hormones and replenishing body parts such as bone marrow, blood, bone, and body tissue. In teaching hospitals, the immediately dead are often examined by residents and interns for educational purposes. Although there is no literature on the topic of the use of neomorts for research, it is known that at Temple University Jarvik hearts were tested in brain-dead people after animal experimentation. The consent of the families of the dead was supposedly obtained for this research.

Cadavers have been used in nonmedical research. The California Department of Transportation in 1978 used cadavers for vehicle safety research, but the practice was discontinued because of serious public protest.<sup>12</sup> Joel Feinberg suggests the aversion to using neomorts for transportation research versus the lack of protest for medical research may be more an indication of the esteem with which we treat medicine, rather

than a moral evaluation of the practice.<sup>13</sup> Since the practice of neomorts is an extension of the use of cadavers, research and organ donation, it will be helpful to summarize why and under what conditions these practices are considered moral and how the practice of neomorts differs from previous practices.

### **Relation to Previous Practice**

Today it is considered moral to use cadavers for education and research, to involve persons in education and research and to foster organ donation. These practices are praised because they contribute to the well-being of others. In some instances, autopsies, procedures which mutilate dead bodies, are seen as morally required to determine the cause of death. Cadavers are stored for future use. There is a consensus that it is moral for persons to participate in experimentation if it involves minimal risk and informed consent has been given. Patients in teaching hospitals know they are going to participate in the education of doctors and nurses, but also that they will be at minimal risk.

Organ donations are encouraged as the need greatly exceeds the supply. In some states, it is now routine to be asked if one wishes to be an organ donor at the time of obtaining or renewing a driver's license. Arguments have been made that consent to organ donation be presumed unless an explicit contrary position has been taken. These arguments have not been persuasive in the United States, but Belgium now presumes consent.<sup>14</sup> The present practice in the United States stresses education to foster organ donation. Recently, however, a national law was passed which requires hospitals to have written protocol for the identification of potential organ donors. Hospitals without such a policy will not receive Medicare or Medicaid reimbursement. Although these are unresolved justice questions regarding organ transplantation, it is considered moral and praiseworthy to donate blood, tissue, bone marrow and organs if consent has been obtained and there is minimal risk to the donor. When an organ is to be donated following the person's death, conflict of interest requires that the person declaring death not be the same person involved in the transplant surgery. This assures that the organs are not retrieved before the death, or that removing the organ is not the cause of death.

All of the above conditions would apply to neomorts. In addition, the neomorts would be "respiring cadavers."<sup>15</sup> They resemble the living more than the dead for they would be "warm, respiring, pulsating, evacuating and excreting bodies requiring nursing, dietary and general grooming".<sup>16</sup> However, the cause of these activities would be extrinsic rather than intrinsic. They would be maintained by artificial support systems such as intravenous and nasogastric tubes, ventilators and mechanisms for temperature control, not by the patient, but by those responsible for the mechanical and pharmacological support systems. This new element raises the question, what values are at risk if the bodies of dead persons are

to be maintained so that they appear as if in a coma rather than dead?

### **Values at Risk**

A practice is immoral if it violates fundamental human values or places these values at risk without adequate justification. The practice of neomorts entails the values of life and death, respect for the dead, self-determination and community. Why are these values at risk and what conditions would be required to protect these fundamental values?

### **Life and Death**

If a person is killed by the removal of an organ, the person is deprived of life; if the person is kept on support systems for experimentations and education, the person could be deprived of death. Since neomorts are by definition dead, the practice involves the determination that death has occurred so that the person is not deprived of either life or death. It is therefore necessary to understand what the determination of death means. Because this is a controversial topic and not the major focus of the study of neomorts, a summary of the extensive recent thinking on the determination of death is given and applied to neomorts.

Although death is a philosophical concept, biological criteria are necessary to determine when death has occurred. Death is the absence of life. Since life is a unity of integrating parts and functions, death is the irreversible loss of the integrating functions of the organism as a whole.<sup>17</sup> Lamb argues that irreversibility is the essential aspect of any concept of death. He points out that both medicine and religion, although offering differing concepts of death, agree that "death is an irreversible interruption of physical continuity".<sup>18</sup> What is irreversible is the capacity to integrate.

A living being is characterized by the capacity to organize and regulate different systems and activities. Such a capacity is irreversibly lost in death. Some physiological activity, such as twitching or growing hair may continue for a time in a dead being, but there is no longer interrelation of activities for the good of the whole. Death occurs when the body's physiological systems cease to work together and become disorganized into a mere collection of chemicals. Biology reveals when this has taken place.

The search for biological criteria of death is the search for the critical system for fulfilling the integrating function of at least nine organ systems.<sup>19</sup> The biological criteria change as new understanding evolves. Previously, circulation and respiration were the critical systems in a human being, but due to advances in physiology, there is a growing consensus which places this function in the brain, specifically in the brainstem. In its upper part, the brainstem contains the crucial center responsible for generating the capacity for consciousness; in its lower parts is the center for respiration.<sup>20</sup> The President's Commission for defining



death recognized the primacy of the brain among organs as the body's regulator.<sup>21</sup>

The Commission, however, proposed that the following be adopted as the Uniform Determination of Death Act:

An individual who has sustained either (1) irreversible cessation of circulatory and respiratory function, or (2) irreversible cessation of all function of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted standards.<sup>22</sup>

The Commission was sensitive to the traditional signs for the determination of death and also recognized the importance of the advances in physiology.

David Lamb in his extensive study, *Death, Brain Death and Ethics*, argues that the two criteria are not necessary and, moreover, cause confusion. He uses physiological evidence to show that the brain is a necessary and sufficient condition for the death of the human being. The brain generates, integrates and controls the complex bodily activities. The cessation of heart and lungs signals death if the function of the heart and lungs cannot be resuscitated. The heart and lungs supply the necessary oxygen to the blood. Since lack of oxygen destroys the brain cells, the brain cannot be resuscitated. As the President's Commission pointed out:

The brain cannot regenerate neural cells to replace ones that have permanently stopped metabolizing. Hence, longer periods without blood flow (ischemia) or oxygen (anoxia) may cause complete and irreversible loss of all brain functions. When the entire brain has been so severely damaged, spontaneous respiration can never return even though breathing may be maintained by artificial means for some time.<sup>23</sup>

Death, then, is not death of the heart or lungs. Cessation of cardio-respiratory function is a cause, not a determination of death.<sup>24</sup> Therefore the cessation of the function of the brain is the relevant criterion for determining death of the person.

This in no way reduces a person to a brain, but recognizes the critical organ for physiological functioning.

Tests are continually being refined which are reliable for determining when the brain, including the brainstem, has ceased to function. Certain drugs and hypothermia create symptoms similar to brain death by placing the neurons in suspended animation rather than destroying the neurons. Brain activity is restored when the effects of drugs or hypothermia disappear. Therefore, once reversible causes such as intoxication, shock, hypoxia, and hypothermia have been ruled out, clinical criteria can be used.<sup>25</sup> At the present time, both clinical and diagnostic tests are available. Clinical tests include inability to move, inability to breathe spontaneously, unresponsiveness to light or pain. Diagnostic tests include an isoelectric EEG, or cerebral angiogram or radioisotope brain scan which documents the absence of blood flow to the brain.

Rather than using whole brain death as the criterion for determining the death of human being, two other criteria have been offered:

1. The cessation of the activity of the cortex, the center of conscious activity.<sup>26</sup>

2. The destruction of the brain rather than the cessation of functioning of the whole brain.<sup>27</sup>

The President's Commission rejected using the criteria of the cortex for two reasons;

First, . . . it is not known which portions of the brain are responsible for cognition and consciousness; what little is known points to substantial interconnection. Thus, the 'higher' brain may well exist only as a metaphorical concept, not in reality. Second, even when the sites of certain aspects of consciousness can be found, cessation often cannot be assessed with the certainty that would be required in applying a statutory definition.<sup>28</sup>

Since the cessation of the higher function of the mind is difficult to determine and since it is not confirmed that these functions reside only in the cortex, the center for conscious activity is not the relevant criterion for determining death. Moreover, as Lamb and Frost point out, death is too serious a matter for scepticism to obtain a foothold<sup>29</sup> or for arguing for different definitions of death for different social functions. The President's Commission rightly held that "the social and legal as well as medical consequences attached to a determination of death make it imperative that the diagnosis be incontrovertible."<sup>30</sup> To protect individuals and society, the definition of death should be consistent in all areas, i.e., "criminal law (murder), tort law (wrongful death), family law (status of spouse and children), property and estate law, insurance law (payment of life insurance benefits), and tax law."<sup>31</sup>

David Lamb rejects the criterion of destruction of the brain. He distinguishes between death of the organism as a whole and death of the whole organism. The cessation of the function of the whole brain is the irreversible loss of the integrating function of the organism as a whole. Groups of cells may continue to function but the integrating function of the organism has ceased. Lamb rightly argues that our concern is with the death of a human being, not with the life of cells.<sup>32</sup> Moreover, he disputes the cases offered to support the criteria of destruction of the brain because the cases of persons declared to be brain-dead and then revived, were not brain-dead according to the definition of whole brain-death, that is, loss of function of the brainstem. Rather the examples given by those arguing for the destruction of the brain were cases of cerebral hemisphere dysfunction, not dysfunction of the whole brain.<sup>33</sup> Lamb argues that many studies support the position that,

Once tests have diagnosed a loss of brainstem function, and have eliminated hypothermia and drug intoxication, no patient has ever shown signs of reversal, with or without a respirator.<sup>34</sup>

The neomort, then, must meet the criteria of whole brain death and be pronounced dead by someone authorized to do so. Biologically, this means



the brainstem has ceased to function. Philosophically this means the systemic integrative function which specifies life is irreversibly lost.

According to this definition, persons in a persistent vegetative state are excluded from the category of neomorts. Likewise an anencephalic infant and an aborted fetus are in the category of neomort only if the brain, including the brainstem, has ceased to function. Due to the complexity of the issues, a separate argument for each of the categories of the above non-neomorts is necessary in order to consider the morality of their use for research, education or organ donation.

Once death has been determined, recognition of this must take place by celebrating the individual's life as well as recognizing the individual's departure from the community. Otherwise the neomort, his or her family, and society are deprived of the individual's death. The symbols and ritual by which a family and a culture recognize the passing from life to death of an individual are necessary to affirm the death of the neomort. Something new would be added to the symbolism and ritual to speak the fact that the bodily presence will be retained for a time for the well-being of others.

The language used to designate the neomort would need to be sensitive to the ontological reality of the neomort. For example, the mechanical system used to maintain cardiopulmonary functioning is not a life-support system but a physical maintenance mechanism of the body of a dead person. This recognition in both symbol and language is important because the neomort appears as if sleeping, that is, more alive than dead.

Symbolisms, ritual and language need to be developed to convey this reality. This is extremely important to avoid a rationalistic concept of the person. It is not enough to know conceptually that a person is dead. Persons are more than minds. In order to meet the other human dimensions such as memories, emotions and affections, the recognition of death must be conveyed and acknowledged through more than concepts. This could entail ritual burial of something of the neomort.<sup>35</sup>

### **Respect for the Dead**

Not only must death be recognized but the dead must be respected, for violation of the dead violates the living. But the task of respecting the ventilating cadaver is difficult and prolonged.

Although the neomort is dead, the deterioration of the body is being delayed. The bodily identity of the person is therefore maintained. William E. May reminds us that,

... while the body retains a recognizable form, even in death, it commands the respect of identity. No longer a human presence, it still reminds us of the presence that once was utterly inseparable from it.<sup>36</sup>

For the neomort this identity of presence remains and is much more vivid than in the presence of a cadaver. Those working with a cadaver find it extremely difficult to maintain respect for the cadaver.<sup>37</sup> Consequently it will be much more difficult when the cadaver is being ventilated. Gaylin's

concern that the practice of neomorts could be a violation of human sensibilities and, hence, dehumanizing, is well taken. If our sensibilities are to be educated as Feinberg argues,<sup>38</sup> then reflection is necessary on what presently is needed to respect cadavers and whether or not these practices of respect would be adequate for dealing with neomorts. One requirement is to minimize as much as possible the identity of the neomort. Since our identity is most expressed facially, a procedure ought to be devised to "deface" the neomort.<sup>39</sup> An extreme procedure would be decapitation; the traditional covering of the face may not be adequate. Those involved in working with neomorts would be in the best position to devise the procedure.

Individuals and cultures are harmed if actions are taken contrary to life-giving sentimentalities. This is of particular concern today in a society in which it is most difficult to find ways to limit technology so that it is serving human values and not becoming an end in itself. Consequently the respect for the dead as well as protection of the sensibilities of the living is a major issue for the practice of neomorts. The suspected aversion of society to the practice will require public discussion, if consent to the practice is to be obtained.

### **Self-determination**

Individuals and society have an investment in what happens to their bodies in death. Therefore the consent of the individual or the individual's representative is necessary if the person, when dead, is to be used as a neomort. Technically this consent is given today when a person signs an organ donation card. According to the Uniform Anatomical Gift Act, the donation allows for the gift of "all or part of the body for research or therapeutic purposes".<sup>40</sup> The language on the form states that the person consents to donate his or her whole body for organ donation, research or education unless the donation has been restricted.<sup>41</sup> An informed decision, however, requires that knowledge of the risks and benefits be implied in the decision. Since the practice of the use of neomorts has not been publicly discussed, it cannot be inferred that today, one in donating his or her body for research, education, or organ donation has consented to be used as a neomort.

Supplied with the information about neomorts, a person could willingly consent to be used for the practice. The new element would be the specifics to which one is consenting and specifying the length of time during which the body would be used for research or education or leaving the time to the discretion of the researchers. Regulation would be required to ensure that directions were being honored.

The function of review could be carried out by Institutional Review Boards which presently evaluate research and consent processes. The laws governing research on human subjects would need to be adjusted to recognize the reality of the neomort. This would entail identifying what is

to be prohibited.

Consent is a necessary but not sufficient criterion for the proper use of neomort. What one consents to is limited by the legitimate interests of society. A person is prohibited from willing that his or her body be desecrated for, as Frost points out, "desecration of a human body, even though clearly dead, threatens respect for the living".<sup>42</sup> Since selling of persons entails a desecration, it seems to follow that neomorts not be reduced to consumer products. The arguments against the sale of organs or the sale of cadavers ought to apply to neomorts. Furthermore, it would be a denial of death to donate womb, ova, or sperm from neomorts, for it would appear that the dead were still living and generating new life with the responsibilities this brings. Both the community and the dead would be offended by the contradiction implied in the donation of ova or sperm.

### Community

Although community bonds would be weakened if the practice of neomorts were not limited to those who are brain-dead and who have consented to the practice, community could be strengthened if humane practices were implemented. It is through our body that we communicate with others and help others. In fact, as William E. May argues, there are strong religious and communitarian justifications for donating body parts.<sup>43</sup> Pope Pius XII, in the early days of organ donation, 1956, expressed a similar position when he stated:

A person may will to dispose of his body and to destine it to ends that are useful, morally irreproachable and even noble, among them the desire to aid the sick and suffering. One may make a decision of this nature with respect to his own body with full realization of the reverence which is due it . . . this decision should not be condemned but positively justified.<sup>44</sup>

Community is built through the recognition of interdependence and action consistent with this recognition. People who participate in research and education acknowledge this interdependence as well as recognize that they are the beneficiaries of the research and education to which others have contributed. The symbolism and ritual required to recognize the death of the neomort entails acknowledging the consent of the person to contribute to the well-being of others and to the building of community.

In donating one's body for use as a neomort, a person is contributing to the well-being of others and thus testifying that "self-interest" is not the only significant human motivation".<sup>45</sup> Moreover, as Murray points out, "Gifts to strangers affirm the solidarity of the community over and above the depersonalizing and alienating forces of mass society and market relations."<sup>46</sup>

In organ, bone, and tissue donation, a person is fulfilling the Christian command to love and share what one possesses. The donation is not giving one's life for another, but recognizing that strangers can be served through the donation of one's body.<sup>47</sup> The fact that this sharing continues after

death does not change the act of sharing.

The values of community and justice require that it is not merely the vulnerable in society who are used for the practice of neomorts. It also requires that the benefits attained by the practice be shared by all of society. The justice of the present practices of organ donation would apply to the practice of neomorts.

## **Conclusion**

The value analysis of this paper reveals that the practice of neomorts is an extension of present practices which are considered moral. Furthermore, conditions can be provided, at least in theory, which protect fundamental human values, while enabling persons to choose to donate their physical remains for the help of others. This donation is a recognition of death, as well as recognition of the responsibility to relate to future nameless individuals who can be assisted.

The analysis also reveals that the values most at risk in the practice of neomorts are of death and the value of humane sensibilities. The practice could promote the tendency to deny the reality of death because the donor, family and society know the practice will delay bodily deterioration. This, rather than concern for others, could be the reason for consent. If this is so, the practice would contribute to the fallacy that death is the enemy and provide another means for the "frightened flight from death".<sup>48</sup>

Humane sensibilities are in danger. Those who must interface with the neomorts, i.e., researchers, doctors, nurses, and maintenance personnel, are involved in the delicate task of respecting the individuality of the neomort and, at the same time, recognizing that the neomort is dead. These persons will be called to educate their perceptions, sentiments and behavior so that they are not dehumanized through the process. This requires sensitive reflection and discussion by those involved.

It does not follow that, because fundamental human values can be protected in theory, it is wise to promote the practice of neomorts. Wisdom requires that the need for neomorts be justified in relation to competing alternatives. The answer to this issue involves another study to reflect on the values and beliefs of society which shape the direction of health care. The decision regarding neomorts is not isolated, but fits into a web of practices promoted by fundamental assumptions. The practice of neomorts is consistent with high technology medicine seeking a cure for disease. Is this the direction society ought to reinforce? There are other competing directions such as providing minimal care for all, promoting preventive medicine, minimizing the depersonalization of health care. Further reflection on these issues is necessary in order to respond wisely to the question of whether the newly dead should be maintained on support systems to help the living.

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