



A letter to the article “Whole Body Gestational Donation” published by Anna Smajdor in *Theoretical Medicine and Bioethics*

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To the Editor

In her paper “Whole Body Gestational Donation,” Anna Smajdor [1] proposes a novel mental experiment in which, along the lines already proposed by the philosopher Rosalie Ber [2], women — and perhaps men — who have died according to brain death criteria, may be used to gestate babies. Hence, Whole Body Gestational Donation (WBGD) could perhaps alleviate the birth crisis of many Western countries or even satisfy the aspirations of those who want to have genetically-related children but cannot or do not want to go through pregnancy. This approach has generated a great deal of controversy not only in the academic world but also in public opinion. Certainly, the proposal is very striking and provocative. However, it is worth asking whether from a bioethical perspective, the proposal makes sense and which of its points are controversial and which are inaccurate.

To carry out this task, we will try to analyze Smajdor’s article from different perspectives. We will explore the medical viability and ethical justification of using deceased persons as “gestational cadavers,” or in the author’s terminology “foetal containers.” Is it correct to use cadavers for gestation? Are these people dead?

One of the most problematic issues associated with brain death is the assumption that brain death is a valid criterion for determining human death. While true that the author mentions in the article that this criterion is in question, she accepts it as a valid premise since it is a widely extended practice and fundamentally accepted by the medical and scientific community. Smajdor writes:

Secondly, although there are those who dispute their validity, the use of brain stem death criteria for determining when a patient’s life is effectively at an end is widespread in the context of organ donation. In contrast, it is not so clear

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that PVS patients' living interests are at an end; they may recover fully or partially. Patients who are brain stem dead cannot recover. Irreversibility is written into the definition of brain death. Accordingly, a patient who recovers was never really brain-dead in the first place. It is this that makes brain stem death the preferred route to organ donation. [1, p. 115].

Two points should now be made: on the one hand, it is necessary to further develop the controversial context surrounding the brain death criterion for determining human death. On the other hand, it is necessary to comment on whether, beyond the controversies, there are medical reasons to advise against the effective implementation of the practice of WBGD.

Controversies regarding the determination of brain death can be broadly grouped into two main groups: scientific discrepancies and moral discrepancies. Regarding the scientific discrepancies, the incongruities that the criterion of brain death offers — for example, the concept of irreversible cessation of vital functions, the concept of the function itself, the idea that total destruction of the brain and brainstem is equivalent to death, or the manifest uncertainty of diagnostic tests [3–7] — have usually been criticized. Several authors have suggested rethinking the criteria for brain death from different angles, making it less inclusive [8] (i.e., returning to the single definition of circulatory death) or, on the contrary, more inclusive [9] (further lengthening the parameters for considering someone as dead, e.g., cortical death).

The moral discrepancies are fundamentally justified by the idea that whether or not there is consensus on the scientific evidence, there are also moral reasons — religious, cultural or social — that should be sufficient to consider a person as alive despite being in a state of brain death. Examples of such discrepancies include the refusal of Orthodox Jews to accept the criterion of brain death for biblical reasons [10] or the refusal of some fundamentalist Christians for the same reason. Furthermore, in Japan and in some states of the United States, an objection to the determination of death based on religious reasons is allowed. Accordingly, a person can decide whether to be legally considered as dead or alive when clinically declared brain dead [11–13].

The second point to be made in relation to the problems associated with the concept of brain death arises from the author's claim that there are no medical problems associated with the idea of artificially maintaining a deceased person in order to become pregnant. One criticism of this idea is based on the principle of justice in the distribution of scarce health resources. Although it is technically possible to maintain the “vital” functions of a deceased person by the brain death criterion for a long period of time, it is not clear that this practice has an obvious social interest. The cost of maintaining someone with artificial respiration and circulation is extremely high, as is the cost of occupying a hospital bed — usually an ICU bed — for proper care. In the case of maintenance for organ donation, the period of time that the body is “maintained” is very short, from hours to days, and the benefit is very high — usually saving or improving several lives. In the case of WBGD, it is not clear that the cost–benefit balance is positively tilted in its favour.¹

¹ Even assuming that there are infinite resources to develop this technique, it is still questionable whether this practice is necessary. However, this possibility is an interesting thought experiment to question and rethink the definition of brain death, which is the basis for determining legal death in many

Discussing brain death and organ donation can be uncomfortable for many people, as the thought of what happens after one’s passing is often unpleasant. However, to discern between ethical and unethical practices, it is necessary to delve beyond surface-level discomfort and repulsion. Smajdor’s work is based on the principle that no one should shy away from challenging or unsettling questions. Therefore, discomfort alone cannot be used as evidence of ethical wrongdoing, as this would halt many medical advancements. Failing to address unethical actions does not deter them; instead, it enables them to happen without detection. As a result, it is crucial to keep the public well-informed and empowered to make their own choices about organ donation.

Time after the publication of this article on WBGD, it was picked up by various media outlets, some with political motivations or commercial interests in generating sensationalism. Most of the reports were probably intentionally misrepresenting the thought experiment as a policy proposal or an ongoing research project that ignored key issues such as consent. Accordingly, without taking the time to read or comprehend the publication, some social media platforms were inundated with abusive comments directed towards this particular work and its author. However, the philosophical discussion should be open, free from red lines that bias one’s thinking. This is precisely the basis of philosophy.

It is important to keep in mind that death is not a scientific certainty. Although death is an observable biological event, its definition is largely a social and cultural construction. For example, the definition of brain death is based on clinical and technological criteria that have been accepted by the medical and part of the bioethics community. But what if there were a different way to define death? What if the current definition is not sufficient to address all aspects of death? Exploring these questions can lead to a deeper understanding of death and its significance in our lives. This is exactly the focus of the article published in *Theoretical Medicine and Bioethics* by Anna Smajdor. We think she employed a proper thought experiment to challenge these uncomfortable questions, which is one of the more fundamental tasks of bioethics. However, some issues were left unaddressed. This letter aims to complement those issues and offer a different perspective on the problem. In principle, we are not opposed to Smajdor’s thought experiment from an ethical perspective, but we do believe that it raises objections regarding the determination of brain death and the distribution of scarce resources.

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Footnote 1 (continued)

countries. This type of ethical questioning can help to examine the current laws and regulations and to consider whether they need to be updated and adapted in light of technological advances.

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