



Chapter 8

Natural law and medical research

Natural law and its relevance

The subject of natural law is important for human society as it prescribes some general precepts that will enable people to distinguish sound from unsound thinking, separate those acts that are reasonable from those that are unreasonable. It provides a set of practical moral standards upon which everyone should operate. It helps people to decide ways of acting that are morally right or morally wrong. The principles of natural law apply to almost every aspect of human life including the drive for self-preservation, the pursuit of knowledge, aesthetic experience, practical reasonableness (defined as ability to use intelligence to bring about effective action), the pursuit of friendship and the practice of religion.¹ If the principles of natural law apply to all citizens, then how relevant is natural law to medical research in general and, more specifically, to the use of the human body for research, including the use of cells, tissues, for new medical developments?

The pursuit of knowledge is an important aspect of medical practice and research, as doctors and scientists are required to keep abreast of advancements in order to effect improvements in standards of care. Some are more concerned with the discovery of new theories and practice. The pursuit of knowledge and understanding is regarded as a basic human good so that one is able to make correct judgements. Of course, there is the question of whether one should seek to improve one's knowledge just for the sake of knowing. Doctors at Alder Hey have been criticised for the habit of collecting children's eyes for the sake of collecting as an end in itself. Was there a need for doctors to violate basic human values for the sake of research and at the expense of basic human values by inflicting pain on others?

Integrity is a form of practical intelligence, according to St Thomas Aquinas,² which needs to be cultivated. From Aquinas' point of view, no one can be morally upright if he/she has not grasped (a) the first principle of practical reasoning and (b) practical reasonableness which is not a speculative quality, but the ability to apply one's intelligence to particular commitments, projects or action, thus enriching human existence.

St Thomas Aquinas sees the practice of religion as a form of basic human good. However, he does not see religion purely from the theoretical perspective but also as a way to respond to specific problems in human society. The Catechism of the Catholic Church states that 'the divine and natural law [as opposed to civil law] shows man the way to follow so as to practise the good and attain his end. The natural law expresses the original moral sense which enables man to discern by reason the good and evil, the truth and the lie.'³ The emphasis of the Catholic Church is on man's ability to exercise reason; this allows us to distinguish between good and evil. It seems unlikely that other religious faiths would dissent from such a view.



Adopting the principles of natural law in medical research would mean that researchers must act reasonably in applying science in the laboratory and in clinical settings. Researchers are expected to exercise integrity when human subjects, both living and dead, are used for their studies. Scientists and researchers must pay due regard to individuals' religious beliefs, customs and practices. Respect for religious practice may not seem immediately relevant in the field of medical research, but if we re-examine some of the non-compliance issues discussed in Chapter 5, the significance of this basic rule would become apparent.

Violation of natural law and post-mortem

Natural law is not faith-specific. It is even more important therefore to observe such rules in a multi-cultural and not completely western orientated secular society. It would be difficult to find many people who would disagree with the principle that the human body must be treated with reverence. One might quibble with the word reverence, but it is defined in the dictionary as being deeply respectful. At the Chief Medical Officer's Summit following the publication of the Redfern Report, in which representatives from various faith groups attended and gave evidence, they seemed to share the commonly held value of paying respect to the dead.

The Summit was attended by a good number of the Jewish community whose relatives' organs had been taken without their knowledge and discarded. 'They are still suffering and their lives are blighted on a daily basis.'⁴ The Registrar of the London Beth Din (which is the Court of the Chief Rabbi) points out that 'post-mortem examinations are to be avoided whenever possible, not only because they cause a delay in burial but also because they constitute in Jewish law a violation of the dignity of the dead body.'⁴ On behalf of the Jewish community, the Registrar recommended that a non-invasive procedure, such as MRI (magnetic resonance imaging), would be more appropriate if post-mortem were required. He further considered it vital that proper time be given to relatives to reflect on whether or not to consent to post-mortem, and if in doubt, opportunity should be given to them to discuss their decision with their religious advisers.⁴

A retired cardiothoracic surgeon, representing the Muslim Council of Britain and the Muslim Doctors and Dentists Association, reiterated his dismay and serious concern at the treatment given to dead children at Alder Hey hospital. He regarded the practice up to 1999 as 'contrary to the law of common humanity and it is a careless disregard of the pains and suffering of families involved. Such practice must be challenged to ensure that further suffering will not fall upon other families in the future.'⁴ The Muslim Council of Britain and the Muslim Doctors and Dentists Association asserted that 'we have got great regard and respect for the dead body. In many ways our ideas are very similar to Christians, Hindus and even Sikhs from my limited knowledge on the subject. Any hurt or denigration of the dead body, however important in terms of scientific progress, is unacceptable.'⁴ Therefore, in his view, these attitudes towards the dead person are universally held, irrespective of faith.

During the period when complaints about organ retention were being investigated, a member of the public presented his personal experience at one of the

public meetings, which would serve to remind clinicians and researchers of the importance of having a good understanding of both religious beliefs and attitudes of different faiths, and the necessity of observing these practices.

'In 1991, my wife, at just turned 62, had what is called a minor operation to ease the pain in her right arm in a hospital here. Within weeks, she suffered a subclavian thrombosis and lost the use of her left side of her body, the left arm and leg. She was moved from hospital to a rehabilitation ward.

'After about four months, they told me I had to take her home as there was nothing they could do for her...

'I took her home and I had to give up work to look after her. I learned the ropes to keep her alive. Until the final 24 hours she was in full possession of her mental faculty though her body was paralysed...

'My wife was a devout Hindu. My daughter was brought up in England and she hardly knew anything about Hindu traditions and religious requirements, so somewhere two doctors prevailed upon her and got her to sign a consent form to carry out a post-mortem, without my knowledge because I was very distraught... Eventually the post mortem was carried out, all her organs from her body were removed without us being told...I cremated her by Hindu traditions, not the way it should have been as there was nothing inside her...I was in danger being [of being] excommunicated by my own society...

'I got a letter from the chair of the hospital trust expressing their sympathy and offering £750 for the distress I have suffered. My family, myself, my two grandchildren were devastated by this. £750 for our traditions.'⁵

Violation of religious law was the subject of the public inquiry that was briefly described in Chapter 5. Those who practise Judaism see post-mortem examination as an irreverent interference with the human body. In the Isaacs' situation, the cause of death was known and the investigating team was told by Mr Isaacs' widow that Jewish Law forbade post-mortem. However, a post-mortem was carried out on 27 February 1987, less than twenty-four hours after the death of Mr Isaacs. His family was unaware that his brain had been inappropriately retained for research at Manchester University.⁶ On 5 April 2000, Mr Isaacs' widow found that an undated letter from the Department of Psychiatry at Manchester University was sent to Mr Isaacs' GP, informing him that the 'university had collected samples of Mr Isaacs' brain....'⁶ Mrs Isaacs and her family felt that this was an affront to Mr Isaacs' religious beliefs and those of his family.

It is not at all certain how many people have been subject to the same treatment. To help future professionals and researchers avoid further alienation from respective faith groups, an attempt is made here to summarise faith issues, as a guide to good practice. It is hoped that readers will continue to acquire knowledge and understanding in this field so that people's rights are respected. I am making a general assumption here about Christianity; that the basic doctrinal principles are applicable to all denominations within the Christian church including Methodist, Wesleyan, Presbyterian, etc. which diversified from within the Church of England.

As shown in Table 8.1, those who practise traditional Jewish Laws (Halacha) would see post-mortem examination in most cases as a form of desecration, being disrespectful, irrelevant and an outrageous treatment of the dead. In 1737, Rabbi Jacob Emden rejected the notion of gaining benefit from the study of the dead. However, Rabbi Emden's view could now be set aside. Islam sees the body as sacred and belonging to God; it strongly opposes post-mortem. Some authoritative Jewish and Islamic writers would suggest that continuing dialogue on the subject of autopsy would lead to growth and diversity in the body of opinion.^{7,14}

Although Judaism and Islam oppose unnecessary interference with the body, there are no absolute rules about organ donation and organ transplantation. Most faith groups would see organ donation as a gift, and therefore a meritorious act. However, all faith groups emphasise the importance of respect and dignity, which are perceived as rules of natural law. Most humanists outside religious denominations would respect these views and practices, because tolerance is usually a principle of humanist ethics.

There is no clear statement from many of the Christian denominations on post-mortem examination as a scientific procedure and as a form of study. However, the Plymouth Brethren are deeply concerned about 'unnecessary and uncontrolled interference with our bodies. Since 1978 we have been consistently asking the government to recognise Christian conscience in providing protection for our bodies in these circumstances. We respect government as being of God for there is no power without God: the powers that be are ordained of God.'¹⁷

No previous research has been carried out to investigate the attitudes of Jewish, Islamic and Christian faiths towards the use of stem cells for treatment and research. According to the current state of knowledge, one can assume support for using embryonic stem cells in the manufacture of whole organs for transplantation, as the intention is to save life. Drug trials, particularly for those religions that proscribe the use of medication in any form, would not be permitted. Most Christian denominations would support any form of therapeutic programme, provided the integrity of the recipient is protected.

Respect for the dead

Members of the public have questions about the basic rights of users in a health service; the authority of the medical profession, the authority of the individual to consent or object to post-mortem examination, the right to object to the removal and retention of body organs at post-mortem examination, the consequences of misuse of authority by the medical profession. They also critically examine some basic human values such as openness and transparency in personal interaction and in communication, decency and respect for the living and the dead. They also emphasise respect for human rights within post-mortem examination and pathology practice, especially respect for particular religious beliefs and faith practices.

Not all families in Liverpool, Bristol and around the country expressed any fervent religious belief, but all members of the public believed that children and adults should be buried intact. Many families believed that organs were 'put back' into the bodies of their relatives after post-mortem examination before

Table 8.1 The table summarises some of the documentary evidence of three faith groups regarding autopsy, organ retention and organ donation.

<i>Religion</i>	<i>Funeral rite</i>	<i>Autopsy</i>	<i>Organ retention</i>	<i>Organ donation</i>
Christianity Roman Catholic and Church of England	*Burial or cremation; *The Roman Catholic church permits cremation provided that it does not demonstrate a denial of faith in the resurrection of the body ³	Papal ban on human dissection was lifted in 1556. Currently, post-mortem not proscribed. In fact, autopsies can be morally permitted for legal inquests or scientific research ³	No official pronouncement against using organs for teaching, education and research but the bodies of the dead must be treated with respect in faith and hope of the Resurrection ³	No official directives from all churches; subject to individual conscience. The free gift of organs after death is legitimate and meritorious ³
Judaism	Burial	*Traditional Jewish Laws (Halacha) opposes post-mortem; *Rabbi Jacob Emden in 1737 stated that no benefit should derive from dead bodies; ⁷ *Rabbi Jacob Emden's opinion could be overlooked; *Prohibition not found in Jewish Laws or regulations in the Bible or post Bible sources such as Talmud *Post-mortem as a desecration has no basis in Jewish legal sources; *some would support autopsy if it is done to increase medical knowledge ⁹ or to assist in relieving suffering ¹⁰	Organs used for research not permitted unless it is related to a rare specific condition ⁸	*Not against organ transplantation. *Organs used for transplant in Jewish Law must be taken while respiration and circulation is ongoing profused by external means when brain is certified dead. Pikuach Nefesh specifies the obligation is to save human life ⁸
Islam	The dead must be buried, never cremated	*Body is sacred and belongs to God, therefore, post-mortem not permitted ¹¹ *against dissection for learning and study of anatomy ^{12,13} *Neither Koran nor Hadith addresses the issue of autopsy ^{14,15} *disfigurement of the dead forbidden ⁷ * Fatawa supports the notion of learning if benefits of autopsies outweigh the drawbacks and if medical students and physicians can learn from them	* As removal of organs and brains involves breaking of bones – Muslims believe that breaking the bones of a dead person is like breaking the love of a living person ^{15,16} This rule could be relaxed in certain circumstances, e.g. suspect of murder	Prolongation of life by artificial means is strongly disapproved of unless there was evidence that a reasonable quality of life would result ¹²

102 Public trust in medical research?

burial and cremation. Their belief was unfounded, as events in Alder Hey, Bristol, and many other locations revealed. Those who were followers of Christianity also believed that bodily mutilation after death constituted an affront to humanity and Christian belief. Strong support and respect should be given to those whose religious beliefs lead to objection to the principle of post-mortem. Their campaign against unnecessary interference with the human body after death is also supported by Article 9 of the Human Rights Act, 1998, which calls upon government to recognise the right to freedom of thought, conscience and religion.

One of the questions often asked by families concerns the disposal of their relatives' organs. How was my child's brain disposed of? Were the organs incinerated? Parents often said 'we thought we had buried them whole. It is not possible to imagine that our children were buried without their hearts or brains.' Brains and hearts are major organs of the human body, and they appear to have a special meaning attached to them. For example, one of the parents at the CMO Summit was asked how organ retention had affected her. She said: 'I believe that they [children] went to heaven but at the same time the heart is where you love from, the bit that makes you your sole [soul]. Your soul is supposed to go to heaven with you. My child was robbed and we were robbed, too. We tried to do our best for her and I feel we let her down.'⁴

Some people may have the mythic notion that the heart represents love and passion, and that the brain, as the centre of imagination, the mind or the psyche, controls being. For some religious people, the brain represents the soul. Those readers who can remember the infancy of heart transplantation surgery will recall how potential recipients of a new heart wondered whether their psychological and emotional profiles would change, if the donor heart were from a person of the opposite sex. I think one lesson that has been learnt from Alder Hey and similar events, is that there is widespread unease about burial of bodies without major organs. For the religious, faith may influence their reaction to post-mortem procedures in a variety of ways, although there is not necessarily unanimity of interpretation within each faith or church.

Burial or cremation is regarded by most, if not all, as the final goodbye – it's the last respect due to the dead. Exhumation, perceived as a threat to this final act of respect, has always been a practice only allowed in law in exceptional circumstances. Equally, most of us could not contemplate the possibility of having to bury our dead more than once. The very name of the family support group in Liverpool – PITY II (Parents who have Interred their Young Twice) – draws attention to the pain and grief caused by the actions of the medical profession.

In the debate over the new Human Tissue Bill 2003, some MPs spoke of the additional grief and suffering faced by families who had to bury their relatives' remains again and again. Martyn Jones, MP for Clwyd South, told of a particular case in his constituency: '...a family in my constituency whose daughter Kayleigh was subject to the problem of Alder Hey. They had three lots of organs returned to them, which has made them distraught over 11 years.'¹⁸ Another MP representing Belfast South recounted another situation where the family was subjected to similar treatment by the medical profession. He said: 'People gave permission on certain organs, but no more. However, that was not accepted and later on they were horrified to discover not only that things had

been done against their wishes, but that the residue was sent back to them separately, leading to three separate interments.¹⁸

On another occasion, the MP representing Liverpool West Derby, said: 'Following inquiries into the events at Alder Hey, however, it became apparent, as my Right Hon. Friend, the Member for Holborn and St Pancras (Mr Dobson) said, that the storage of human organs and tissue without consent was widespread. Both the hospital and university authorities – they have not been mentioned specifically in the debate so far – were culpable. ... Parents were told at the time of bereavement that all organs had been returned to the bodies. That was untrue. The situation was horrendous, and as has been said, in some cases the bereaved parents had to endure multiple funerals. Even where consent was given, the parents had no idea that it meant the extraction of all organs and that what they were burying were the mere shells of their loved ones.'¹⁹

The MP for South Cambridgeshire's contribution was: 'It was not due only to the events at Alder Hey and Bristol that the retention of organs gave rise to considerable distress. Many Members from all parts of the country will share my experience in my constituency, and will have met families of those whose relatives' organs or tissue were retained without consent or, in some instances, directly contrary to their expressed wishes. One of my constituents told me of the loss of their son in a road traffic accident in 1984. At the time, they did not wish any of his organs to be retained after the coroner's post-mortem and were assured by the undertaker that that was not the case and their son had been buried intact. Members will thus appreciate the distress when they made inquiries at the time of the press reports on the Alder Hey findings and found that Addenbrooke's Hospital, in my constituency, had in fact retained their son's appendix. After systematic collection and examination of the hospital records...the family found that not only had their son's appendix been retained, but also his thymus. On successive occasions, many years later, they had to arrange further interment of their son's remains.'¹⁸

The MP for Sutton and Cheam further raised the issue of respect for the dead when the Human Tissue Bill 2003 was being debated in January 2004. The part of the transcript of the CMO Summit he cited sums up the feelings of the parents who spoke on that day, and, generally the feelings of those of the public who were not present at the Summit. The transcription states: 'It almost was – I mean, if I could just use an analogy, it was almost like scrap cars being taken to a scrapyards. The cars were dismantled, the alternators were taken out, the batteries were taken out, put on a shelf, then when somebody comes along and wants one of those parts they pay for it. In the case of our children, they were disassembled completely. The organs were stored, never used.'²⁰

To do good in all circumstances

As discussed earlier in this chapter, one of the purposes of natural law is to guide individual actions in ordinary circumstances. Knowledge, understanding, the curiosity to find out more together with personal integrity, enhance intelligent actions that will uphold basic human values such as honesty, decency, respect. There is a tendency for those in authority in the health service, to disparage those whom they serve. We have heard it said a few years ago by a group of scientists in Cambridge referring to their latest innovation, that the public need not

104 Public trust in medical research?

know what was being done and in any case, would not understand it. We have also seen examples where some professions chose to apply the technique of coercion when seeking consent for post-mortem examinations. According to Aristotle 'coercion is for the recalcitrance of the selfish, the brutish whose unprincipled egocentricity can be moderated by a direct threat to self-interest.'²¹

Medical research is governed by ethical and civil rules. The purpose of these rules is to provide authority in directing individual behaviour and to give legal validity to all those who work within that community. Therefore, everyone must comply with these laws. Thus for the common good of the community, sanctions or penalties as appropriate, must be applied to those who flout the rules. According to natural law, punishments and legal sanctions serve to avoid injustice and bring about fairness in the system. Having a system in place encourages professionals and researchers to avoid the type of recklessness and negligence seen in many instances in recent years.

Other natural law principles such as duty, respect for others' rights, (e.g. the right to object, the upholding of truth), are also relevant to medical research. These principles should apply both to the living and the dead. There are many examples in previous chapters of people who, in the name of medical research, have been denied the right to information necessary for making informed choices, and the right to object to disrespectful treatment to the dead. Natural law serves to remind all those who engage in medical research to follow their basic human instinct to do good in all circumstances.

References

- 1 Finnis J. *Natural Law And Natural Rights*. Oxford: Clarendon Press; 1980.
- 2 Aquinas T, Kenny A, editors. *A Collection Of Critical Essays*. London: Macmillan; 1969.
- 3 Catechism of the Catholic Church. London: Geoffrey Chapman; 1998: 426–7. Reproduced by kind permission of Continuum of International Publishing Group.
- 4 Department of Health. The Chief Medical Officer's Summit – proceedings. Held at Queen Elizabeth II Conference Centre; 2001 January 11- computer-aided transcription by Harry Counsell and Co. London. 2001 London: Department of Health: 11–13.
- 5 NHS Retained Organs Commission. Minutes of 12th meeting 2002; Newcastle-upon-Tyne.
- 6 The Isaacs Inquiry. The Isaacs Report – the investigation of events that followed the death of Cyril Mark Isaacs. London: The Stationery Office; 2003.
- 7 Geller SA. Religious attitudes and the autopsy. *Arch Pathol Lab Med* 1984; **108**: 494–6.
- 8 Beth Israel Congregation. Organ donation in Jewish Law – summary of discussion at Beth Israel; 22 June 1996. Beth Israel Men's Club.
- 9 Maslin SJ, editor. *Gates of Mitzvah: a guide to the Jewish life cycle*. New York: CCAR Press; 1987: 140–2.
- 10 Stern C, editor. *On the doorposts of your house*. New York: CCAR Press; 1994: 33.
- 11 Darsh SM. *Islamic health rules*. London: TAHA; 1986.
- 12 Radman F. *Health and medicine in the Islamic tradition*. New York: Crossroad; 1987.
- 13 Al-Sijistani, Sulayman AD. Cited in AR Gartrad. Muslim customs surrounding death, bereavement, postmortem examinations and organ transplants. *BMJ* 1994; **309**: 521–3.
- 14 Rispler-Chaim V. The ethics of postmortem examination in contemporary Islam. *J Med Ethics* 1993; **19**:164–8.
- 15 Gatrad AR. Muslim customs surrounding death, bereavement, postmortem examinations, and organ transplant. *BMJ* 1994; **309**: 521–3.

- 16 Ghanem I. Permission for performing an autopsy: the pitfalls under Islamic law. *Med Sci Law* 1988; **28**: 241–2.
- 17 Taylor S, Robertson B. *Post-mortem examinations and Christian conscience* (campaign leaflet). Andover and Oxford: Taylor & Robertson; 2002.
- 18 Great Britain. House of Commons. Hansard. Official Report. 2004; **416(22)**: 985.
- 19 Great Britain. House of Commons. Hansard. Official Report. 2004; **416(22)**: 1019–1020.
- 20 Ibid. **416(22)**:1006.
- 21 Radice B, Baldick R, editors. *Aristotle – Ethics*. London: Penguin Books; 1951.

