

Scientific Contribution

## **Objections to blood transfusion by Jehovah's Witnesses in Japan and a reconsideration of self-determination in healthcare**

Yutaka, KATO

(Okayama University,

E-mail: utnapishtim@kib.biglobe.ne.jp)

Abstract :

Jehovah's Witnesses (JW) reject blood transfusion for religious reasons, which has posed serious challenges to the practice of medicine in Japan since around 1980. The only ruling by the Supreme Court of Japan on the religious refusal of blood transfusion stated that such refusal should be respected as a personal right. This case has often been considered a milestone in the development of patient self-determination in Japan. However, the ruling clearly rejected the High Court's rationale centered on the right to self-determination. Further discussion is necessary to determine whether the Supreme Court's protection of the refusal of blood transfusion extends to non-religious self-determination. Against this backdrop, this paper compares the significance and implications of religious refusal of blood transfusion in the United States and Japan. It then discusses the characteristics of religiously motivated decisions as well as the religious aspect of the JW rejection of blood transfusions, which cannot be captured by mere autonomy and self-determination. In doing so, the paper aims at shedding some light on the complicated relationship between non-religious (primarily scientific) self-determination and religiously grounded decisions in healthcare, which has not yet been examined in detail and appears to be a pertinent problem in the U.S. as well as in Japan.

Keywords: conscience, religion, self-determination, blood transfusion, Jehovah's Witnesses

## **Introduction**

In Japan, Jehovah's Witnesses (JW), or members of the Watchtower Society (WS), reject blood transfusion for religious reasons, which has posed serious challenges to the practice of medicine since around 1980.

Following several decisions issued by lower courts, in 2000 the Supreme Court of Japan issued a ruling on the religious refusal of blood transfusion in a case involving the Research Hospital at the Institute of Medical Science of the University of Tokyo. The Supreme Court of Japan found that such refusal should be respected as a personal right. Although the Supreme Court ruling explicitly rejected the High Court's rationale based on the right to self-determination, this case has often been considered foundational in the development of patient self-determination in Japan. Further discussion is necessary to determine whether the Supreme Court's protection of the refusal of blood transfusion extends to non-religious self-determination<sup>1</sup>.

Against this backdrop, it is necessary to compare the significance of the religious refusal of blood transfusion in the United States and Japan and examine the relationship between self-determination and religiously grounded preferences. Considering religious and non-religious (mainly scientific) rationales, it is also necessary to discuss the largely neglected religious dimension of the group's refusal of blood transfusion, which cannot be encompassed by mere autonomy and self-determination.

Naturally, due to the compound nature of religion, it is difficult to reach a conclusion that can apply universally to individual cases.

### **1. The role and status of religious refusal of blood transfusion**

#### **1.1. The case of the United States**

In *Principles of Biomedical Ethics*, which was intended for a pluralistic society<sup>2</sup>, the dimension of religiousness is invisible. Its authors

Beauchamp and Childress see the refusal of blood transfusion by JW as a textbook case of autonomy and self-determination<sup>3</sup>. The JW case has been regarded as an extension of the New York Court of Appeals' ruling in *Schloendorff v. Society of New York Hospital* (1914).

In the *Schloendorff* case, the New York Court of Appeals ruled that "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages (*Pratt v. Davis*, 224 Ill. 300; *Mohr v. Williams*, 95 Minn. 261.)<sup>4</sup>." Because this case, which dealt with self-determination in general, preceded other court decisions on the refusal of specific medical procedures for religious reasons, the court did not rely on religious belief but rather the right to self-determination, which is not necessarily religious. JW understand their refusal as based on the right to self-determination and do not always emphasize that it directly reflects religious conviction<sup>5</sup>. The JW position is also explainable as a consequence of the common understanding stemming from *Schloendorff* and possibly also as a strategy to elicit cooperation from groups and individuals outside the WS. While JW understandably wish to address this issue in Japan similarly to how they have approached it in the U.S., they have not paid due attention to relevant legal, cultural, and religious differences.

## **1.2. The role of JW refusal in bioethics in Japan compared with the United States**

While in the U.S., the JW refusal has been understood as an issue of self-determination due to *Schloendorff's* emphasis on general self-determination, the Japanese approach to the issue was framed by a particular case, the implications of which cannot be readily generalized. On February 29, 2000, the Third Petty Bench (which adjudicates cases when there is no potential for alteration of precedent) of the Supreme Court of Japan held that when a patient refuses a medical procedure

involving blood transfusion because of religious beliefs, such volition must be respected as “a content” (literal translation from Japanese) of personal rights<sup>6</sup>. Based on the facts of the case, the court found that the doctors, in this instance, should have explained to the patient that their policy was to perform blood transfusion “when they judged that the possibility of a situation arising in surgery cannot be denied where there would be no other life-saving means than blood transfusion,” (relative non-transfusion) and that “they should have left to [the patient] herself the decision on whether to undergo this surgery by the doctors.” The court held that, by failing to explain the treatment policy of relative non-transfusion (absolute non-transfusion refers to non-transfusion even in case of death of a patient), the doctors “deprived the patient of the right to decide whether to undergo a surgery that might involve blood transfusion.” It had already been established by judicial precedent that a doctor’s violation of the duty of explanation constitutes a tort, and this case confirmed that cases involving refusal of blood transfusion are no exception.

This ruling was issued against a historical backdrop in which healthcare professionals were given broad discretion in performing the procedures they regarded as best for patients, including blood transfusion. Robert B. Leflar, a professor in medical law (2002), describes the ruling as a milestone for the establishment of individual human rights in the Japanese legal system and associates it with the promulgation of informed consent and patients’ right to self-determination<sup>7</sup>. This historical significance, however, does not justify expansive interpretations of the decision. While the High Court based its decision on the notion of self-determination, the Supreme Court clearly disregarded this reasoning and judged the contested (religious refusal) issue exclusively.

The question remains, in Japan and the U.S., whether religiously grounded refusals have more force than non-religious self-determination.

### **1.3 A second look at the U.S. case**

### **1.3.1. The Free Exercise Clause**

Despite its absence in Beauchamp and Childress, religiousness plays an important role in the U.S. due to the First Amendment. Religiously motivated decisions are protected not only as a type of self-determination, but by the U.S. Constitution through the right to privacy and the Free Exercise Clause. For instance, the Selective Service System (the military conscription system) allows for conscientious objection to military service only when it is based on “grounds of moral or religious principles<sup>8</sup>.” The Selective Service board judges “how [a draftee] arrived at his beliefs” and “the influence his beliefs have had on how he lives his life<sup>9</sup>.” In the healthcare arena, some American states have supported objections to mass vaccination requirements for religious reasons. Fewer states have endorsed objections for philosophical reasons.<sup>10</sup> In New York and New Jersey, for example, objections to brain death determination based on religious reasons (and moral reasons in New York State) have been accommodated by law and guidelines, respectively<sup>11</sup>. This exemption from brain-death determination was made possible by the First Amendment’s Free Exercise Clause<sup>12</sup>. Healthcare professionals in the U.S. also sometimes resort to conscientious objection. They do not, however, assert that they object to certain medical procedures based on mere self-determination, as this rationale would likely be regarded insufficient. In the U.S., religious convictions apparently often invoke stronger protection for refusal of medical care, but this phenomenon does not seem to be widely discussed, at least within bioethics.

### **1.3.2. Complications in self-determination**

As mentioned above, for Beauchamp and Childress, the refusal of blood transfusion by JW is a textbook case for autonomy and self-determination, not religious exemption. Meanwhile, an amputation case based on a biblical description (Matthew 18:8–9) is regarded by the authors as an instance in which paternalism should override self-determination<sup>13</sup>. However, these two cases are similar in that they are

both based on direct interpretations of the Bible and make little sense to nonbelievers. One can argue that the absolute refusal of blood transfusion can be more harmful than the amputation case. Beauchamp and Childress's "principlism," which considers principles "the common morality"<sup>14</sup>, does not adequately consider religiosity, which does play an important role in healthcare. Thus, it is necessary to reconsider religiousness based on their argument concerning the balance between competence and consequence<sup>15</sup>. Even in the case of conscientious objection to brain-death determination, it is often argued (for example, by Robert Olick, a law professor and former student of Childress), based on judicial precedent, that religious exemptions can be extended to non-religious decisions if the objectors demonstrate sincerity<sup>16</sup>. There remains the question of how a society treats religiously grounded decisions (and conscience as a superordinate concept) in healthcare as distinguished from non-religious decisions in general, and what characteristics of religiously motivated decisions can be used for demarcating the two categories.

#### **1.4. Preliminary conclusion and an issue to be addressed**

Japan has not seen a case comparable to *Schloendorff*; this absence has given the only Supreme Court ruling on the religious refusal of blood transfusion undue significance and led to expansive interpretation of this ruling. In the U.S., in contrast, the WS has not found it necessary to invoke the protection of the Free Exercise Clause. Although its refusal of blood transfusion is often described as "religious," the WS argues that its refusal should be respected as "self-determination." Meanwhile, in cases where individuals refused to accept brain-death determination and vaccination, explicit reference was made to the Free Exercise Clause, which provided stronger protection. Religiously grounded refusal of blood transfusion may be endowed with comparable special protection. In the U.S., religious refusals have sometimes been conferred higher protection than non-religious preferences, though inconsistently across geography

and type of medical procedure. It seems this issue has not been sufficiently examined in the U.S. In Japan, it has neither been practiced nor considered.

The relationship between (non-religious) self-determination in general and religiously grounded preference in the American healthcare system is neither consistent nor clear. A reconsideration of religiousness in healthcare is critical to elucidating the complicated relationship between religious belief and self-determination, as well as the significance of religiously grounded decisions. The following section discusses the rationales, conditions, and factors (or lack thereof) for distinguishing between religious motivation and general non-religious self-determination; whether these are present in JW refusals; and whether or how adequately such distinctions (or lack thereof) have been evaluated and manifested in Japanese medical practice.

## **2. The nature of religious beliefs and their role in healthcare**

### **2.1. Reasons presented by JW for refusal of blood transfusion**

This group's refusal of blood transfusion is usually said to be "religious" and in this article their refusal has been described as such. Their website refers to the biblical instructions to avoid blood or exsanguinations<sup>17</sup>, which were presumably aimed at better preserving meat in ancient times. However, they do not present religious reasons exclusively. The official website offers scientific, rather than religious, reasons for the refusal of blood transfusion, quoting medical doctors: "Overuse of medical technology is a major factor in the increase of current healthcare expenditures...Blood transfusion is of particular importance because of its cost and high risk potential," and "Blood has never been safer. But it must be considered unavoidably non-safe. It is the most dangerous substance we use in medicine<sup>18</sup>." Another website provides an example of the JW reasons for rejecting blood transfusions: "As parents, we are keenly interested in the welfare of (the name of the child), our

child. We are JW and hold steadfast religious beliefs. Therefore, we do not accept blood transfusions. It is widely known that homologous blood transfusion can cause health hazards such as hepatitis and HIV. We have made this decision to avoid these risks, fully aware of the facts. We, however, will accept a bloodless-type expander or medicines that staunch bleeding or increase the production of red blood cells<sup>19</sup>.” Clearly, JW offer a mix of religious and scientific reasons, with scientific reasons apparently dominant<sup>20</sup>.

Advances in the technology of relative non-transfusion treatment make absolute non-transfusion treatment technologically easier in some respects. However, while a scientific rationale such as risk of infection can justify relative non-transfusion treatment, it cannot justify absolute non-transfusion treatment. It is irrational for a person to base his/her refusal on the possible occurrence of adverse events associated with the relatively low risk of transfusion in circumstances where he/she will almost certainly die without a blood transfusion<sup>21</sup>. There have been several cases of HIV infections and other pathogens transmitted through blood transfusion or the use of coagulation factor. However, in Japan, which employs the highest level of hemosurveillance (surveillance of blood supplies) in the world, it is irrational to emphasize the risks of blood transfusion when making a decision about transfusion in a critical clinical situation. There has only been one confirmed case of HIV infection by blood transfusion in the 2000s<sup>22</sup>. The doctors’ comments on the JW website can also be interpreted to support relative non-transfusion treatment. When JW appear to request absolute non-transfusion treatment for scientific or medico-economic reasons, their reasoning may seem odd to healthcare professionals and undermine their persuasiveness. Among the jumble of reasons presented, only religious reasons can justify absolute non-transfusion treatment. The JW stance on blood transfusion appears to blur the religious justification with the other justifications.

The above two categories of reasons for refusal of blood transfusion differ in that the scientific issues can be substantially addressed by

hemosurveillance. In some cases, the patient can receive his/her own blood (autologous blood transfusion). Nevertheless, for JW, who emphasize God as Creator, the religious and scientific reasons are intertwined. This group, in fact, has a pronounced tendency to interpret passages in the Bible as scientific explanation. Their publications for laypeople and general readers repeatedly stress that the universe and life forms are masterfully designed by the Creator<sup>23</sup>.

## **2.2. Nature of religious beliefs in healthcare**

The following text describes that a person's decision of conscience, especially when based on religious beliefs, has distinct qualities rarely present in non-religious general self-determination, and examines whether such qualities are recognizable in JW refusals.

### **2.2.1. Special status granted by constitutions**

Religiously grounded preferences in healthcare can be protected by constitutions. The U.S. Constitution contains a Free Exercise Clause in the First Amendment. One might argue that Japan has no precedent to justify ascribing a special status to decisions patients make based on religious beliefs. However, Japan also has a constitutional clause on freedom of religion (Article 20), independent from freedom of thought and conscience (Article 19). Considering the particular status conferred to religion in Japanese society, the Japanese socio-legal landscape is actually analogous to that of the U.S., despite some differences, which require further discussion even in Japanese society.

### **2.2.2. Lower negotiability**

Another factor is that religious beliefs often do not allow for the "negotiation" of one's beliefs (and they are perceived as powerful in that they defy negotiation). Religiously motivated decisions apparently have a unique nature irrespective of time and place. They have distinct qualities like consistency, sincerity, and intensity that can elicit special

consideration, can influence others especially powerfully, and are less likely to be affected by persuasion or negotiation<sup>24</sup>. Religious beliefs are often strong and robust, and in turn pressure surrounding individuals to allow believers to adhere to their own convictions. Religious beliefs are often unfalsifiable and decisions based on such beliefs are irrefutable. They are also tenaciously embraced by believers, whose religious beliefs comprise the core of their lives. Another example of the unique nature of religiously motivated preference in healthcare is that believers expect to experience suffering and remorse if they infringe the doctrines of their faith, something that rarely occurs with general, non-religious self-determination.

Specific characteristics of a religion (here, WS) may lower the level of negotiability even further. Religious beliefs sometimes transcend national boundaries. Under the powerful authority of its headquarters (the Governing Body), based in the U.S., the WS offers no teachings that are unique to Japan. According to the group's instruction, the rule of Christ on Earth started in 1914<sup>25</sup>. The Governing Body is regarded as the organization that acts for God's rule. The doctrine of the WS is what the Governing Body teaches. Its opinions are announced as "truth" in *The Watchtower* magazine <sup>26</sup>. The JW documents published on the organization's Japanese website appear to be translated from the original English documents, as mentioned above. Particularly in the case of the WS, the strict authority of the U.S.-based Governing Body makes it more difficult for healthcare professionals in Japan to influence the entire religious JW community.

### **2.2.3. Powerful but vulnerable**

The strength of religious beliefs and convictions underlies the social conventions that confer special protection for exercise of religion. Such conventions already exist and are regarded as a basis for the special status of religiously grounded decisions. The fact that quite a few JW

have died because they refused blood transfusions clearly demonstrates the strength of their religious views. JW rejection of blood transfusion embodies many features typical of religious conviction, which differ from the non-religious personal decisions of an individual.

At the same time, religious beliefs can be said to be fragile in their own way. Both aspects should be taken into consideration simultaneously. The fragility of religious beliefs is classified into two categories for analytical purposes: fragility of actualization (a religious studies term referring to application of the past to the present) and that of adherence.

#### **2.2.3.1. Fragility of actualization**

Religions often establish codes of conduct based on their interpretations of holy texts. JW refer to the Bible. The biblical texts were written in a time dramatically different from the contemporary world. Thus, the text requires interpretation and actualization. The scope of the use of blood derivatives, for instance, is a subject that is currently undergoing interpretation and actualization<sup>27</sup>. The Bible does not directly refer to blood transfusion. JW refusal of blood transfusion is based on biblical descriptions to the effect that one must avoid and refrain from eating blood (Genesis 9:3–4; Leviticus 17:13–14; Acts 15: 28–29). In contrast to conscientious objection to military service, which has its literal basis in a Bible passage (Matthew 26:52)<sup>28</sup>, these biblical statements are susceptible to various interpretations, hence the significance of actualization.

Religious doctrine, even WS doctrine, can change, especially when there is a shift in the membership of the Governing Body (which consists of approximately ten members<sup>29</sup>, most of whom are elderly<sup>30</sup>). It is apparently difficult to reapprove something that has once been disapproved by the Governing Body because approval requires a two-thirds vote of all the Governing Body members<sup>31</sup>. Vaccination, however, was approved after having been disapproved until the 1930s<sup>32</sup>. There has also been a change in the teachings about the coagulation

factor for hemophiliacs (Before this 1978 change, a single administration of the coagulation factor had been considered medication and was approved, but multiple administrations had been considered “eating” and were disapproved. This suggests that the word “eat” in the Bible was interpreted narrowly as “eat regularly.”)<sup>33</sup>. Although refusal of blood transfusion has been too high profile to be secretly retracted, there is a possibility that the Governing Body will eventually institute a change on this issue.

#### **2.2.3.2. Fragility of adherence**

When a person holds a religious belief, there is always the possibility that he/she might renounce that belief and/or convert to another religion. Statistics on the WS from the 1970s suggest that four out of ten baptized believers left the group for reasons other than death<sup>34</sup>. One might argue that this may not hold for JW in Japan, but the Japanese are not necessarily persistent adherents to religion. Statistics show that ordinary Japanese Christians remain with a religion for only 2.8 years on average<sup>35</sup>.

Furthermore, religions generally have a dual nature: they are practiced not only privately but also collectively, for example through collective activities entailing long and systematic involvement that cannot be carried out independently by individuals. Due to this collective nature, a believer’s religious preference is not necessarily a true expression of personal belief. Even if a person is motivated by something other than faith, he/she must at least formally accept the principles of the religion to remain in the community. In the case of JW, a member is likely to be expelled and thus separated from his/her family and community for going against the religion’s principles<sup>36</sup>. The strong control by the Governing Body does not nullify this concern. In case of the WS, even if a member’s original intention on an issue like blood transfusion is good, unless he/she obeys the instructions of the Governing Body and related organizations, he/she will be “disfellowshipped” (although possibly not if

the blood transfusion is performed against his/her will). If the member is disfellowshipped, he/she will be separated from family and friends, as mentioned above.

### **3. Attempts to accommodate religious beliefs in healthcare in Japan**

#### **3.1. Cases of religious refusal of blood transfusion by JW**

It is less complicated when parents object to a blood transfusion for a child who has not expressed his/her own will or has expressed the will to undergo blood transfusion<sup>37</sup>. Especially difficult cases involve underage patients who express their desire to refuse a blood transfusion.

Literature indicates that the actual forms of treatment for minor JW patients differ among medical institutions in Japan. In deciding whether to accommodate patients' religiously motivated wishes, patients are classified by age, such as 15, 16, 18, and 20<sup>38</sup>, which is the primary consideration; little attention is paid to the religiousness of the patient's decision. This focus on age is consistent with the current phenomenon of treating religiously grounded decisions under the rubric of self-determination. In current practice in healthcare, age is also used as the most common indicator of competence for non-religious self-determination in general. Although this is also consistent with the current situation in Japan, where healthcare professionals are not expected to judge whether a decision is based on religious belief, the implications of a decision being religious should be considered. Examples from Japan are presented below.

#### **3.2. "The Guidelines on Religious Refusal of Blood Transfusion"**

In Japan, there has been an attempt to consider the implications of a patient's religious beliefs. The Joint Committee Report on Refusal of Blood Transfusion on Religious Reasons, entitled "the Guidelines on Religious Refusal of Blood Transfusion," issued in February 2008, notes that "It is necessary to consider the difference in psychological

characteristics between the first-generation believers, who spontaneously chose to join the group, and the second-generation believers, who grow up under the strong influence of the religious community since childhood. The second-generation believers inherited their parents' beliefs in a form combined with home discipline, and it has been pointed out that they have stronger fear and guilt for betraying the belief and experience a stronger feeling of self-denial from failing to be a right believer than the first-generation members<sup>39</sup>.”

The reference to religiousness in the guidelines did not prompt a discussion on this matter, presumably because the guidelines did not prescribe any specific actions<sup>40</sup>. It is true that, historically, religious beliefs in many societies have been passed down from parents to children. However, there is no evidence that the above understanding of the psychological characteristics of religious beliefs applies to second-generation JW. The passage was presumably added to the guidelines at the request of JW, but does not necessarily reflect the opinion of the majority of second-generation followers themselves. This evaluation is not necessarily fair, objective, or neutral.

A person might abandon his/her religious beliefs or convert to another religion, as mentioned earlier. JW followers, especially those of the second generation, who know only the world within their religious community, may be more likely to yield to external persuasion<sup>41</sup>. For example, the son of Junzo Akashi, who founded Todaisha, the precursor of the WS in Japan, later apostatized from the WS. First-generation followers who spontaneously joined the WS may be more zealous than their children. Alternatively, their children may simply be unwilling to conform to the religion, or unaware of other worldviews, while the first generation chose the worldview of WS over others. Second-generation JW's limitations of or lack of knowledge on other worldviews can make their religious-motivated decision making fragile. According to this understanding of second-generation followers' beliefs, patients may be

denied their competence to refuse blood transfusion<sup>42</sup>. Moreover, for second-generation children the fear of being deserted by their elders may be greater than that of the abstract possibility of death due to refusal of blood transfusion. Thus, their stated wishes may belie their internal convictions. Because some second-generation members eventually leave the religious community, and are then voiceless, being less organized than those who remain within the community, it is impossible to uniformly evaluate them.

The provision for second-generation JW in the above guidelines is of little use, as it contemplates only the powerful aspect of religiously motivated decisions, disregarding their fragility and dismissing the possibility of negotiation in individual cases. An examination of religious belief cannot be complete without taking into account the compound nature of religion. A particular individual's religiousness must be considered. For the WS, necessary information may be available in the reports on individual activities of followers that are said to be submitted to the WS for future use in selecting individuals for higher positions in the church hierarchy (one factor may be the duration of a person's formal membership in the WS)<sup>43</sup>.

### **3.3. Analysis of a concrete case**

In one well-known Japanese case, which was made into a film in 1993<sup>44</sup>, a then-10-year-old boy was injured in an accident in Kawasaki in 1985. The findings upon his arrival were "open fracture of both legs, which requires 60-day hospitalization." However, his parents adamantly rejected blood transfusion for their son, against the recommendations of the doctors, and submitted a written statement saying, "Even if this might lead to the death of our son, we strongly ask you to provide the best possible treatment for him without blood transfusion. We cannot accept blood transfusion, based on the teachings of the Bible." While the medical professionals were attempting to persuade the parents to accept blood transfusion for their son, he fell into an untreatable state (in which even

blood transfusion could not have saved his life) and died, five hours after the accident. Reportedly, while in a diminished state of consciousness, the boy left his fate in the hands of his father.

In this case, contrary to the prevalent understanding at that time, though the mother of the boy was a baptized formal member of the WS<sup>45</sup>, the father was not then a formal member<sup>46</sup>. It was not a situation where parents with unwavering convictions had brought up their son in WS teachings. The father could have seemed to him to have a distant attitude toward the WS. As the WS offers no infant baptism<sup>47</sup>, children go through steps based on their own will (i.e., children of formal members do not automatically become formal members of the group). He had only recently entered a church school<sup>48</sup>, and was in the middle of a long path to being baptized as a formal member. Such details should be taken into consideration in these decisions, but were scarcely discussed following the case.

Many people join the WS later in life, without regard to whether they have received a blood transfusion in the past. One could argue that a patient's absolute refusal to undergo blood transfusion can be accommodated only when his/her faith has been sufficiently cultivated to make him/her a formal believer, and that until then he/she is not qualified to express his/her religious will in a way that overrides the value of life.

### **3.4. Non-religious refusal and related potentially problematic cases**

It is sometimes necessary to balance religiously motivated or non-religious decisions with various values and obligations. Such counterbalancing values might include the burdens on healthcare professionals (who have the duty to rescue under Article 19 of the Medical Practitioners Act of Japan), or more importantly, the value of life, especially in the case of underage JW patients. In service of the former, more careful preoperative planning, more sophisticated surgical techniques, and crucial judgments during surgery are required to keep the amount of bleeding within an acceptable range. Healthcare

professionals may also experience stress from stricter standards of accountability in hospitals and the difficulty of providing life-saving treatment<sup>49</sup>. They must not only attempt to persuade patients about treatments but also make judgments about relative/absolute non-transfusion treatments and in some cases deny patients hospital admission, potentially exacerbating stress.

Cases of adult JW requiring the above balancing include those in which the patient is not a formal member (but may be in any of various phases) and those in which the will of the patient is unknown but others from the same community insist that as a JW the patient cannot have wanted transfusion. Although the WS is reluctant to disclose information about itself, information about an individual's membership is important. Religious convictions can belie formality (membership), which remains a problem to be discussed. However, information on membership can provide a clue.

Other problematic cases include those of underage JW in different stages with relation to formal membership and with different durations in the community. There may also be non-JW patients who refuse to undergo treatment, such as blood transfusion, and there may be medical procedures in which medical benefits can hardly be expected, such as non-standard surgical procedures. Because relative non-transfusion is scientifically justified (2.1.), it can also be requested by non-JW. Although it is unlikely that people would request absolute non-transfusion treatment for non-religious reasons, possibly as a form of suicide, some might request absolute non-transfusion treatment or refuse surgery with transfusion. Some might believe they can cure themselves through prayer or superstitious practices. Others may simply have "divergent risk perception" (Asveld). An example of a non-standard procedure with dubious medical outcome is surgical amputation for Body Integrity Identity Disorder (BIID) patients, who feel their leg or arm extrinsically and wish it to be amputated.

#### 4. Conclusion

This paper has discussed the various implications of the religious refusal of blood transfusion in the U.S., where the JW headquarters are located, and in Japan. In the U.S., due to a court ruling on a general case, the WS did not need to claim protection based on the First Amendment. In Japan, in contrast, a court decision on a particular (i.e., JW) case has often been regarded as a foundational decision that can be extended to self-determination in general. In the U.S. healthcare system, religious beliefs are often granted greater protection than non-religious self-determination. Nevertheless, the relationship between a religiously grounded decision and self-determination remains ambiguous. Religiousness in healthcare needs to be examined further in both the U.S. and Japan. I have presented religious and non-religious (primarily scientific) reasons asserted by JW, and discussed the religious aspects of their refusal of this medical treatment, which cannot be subsumed by non-religious self-determination in general. In Japan, the patient's age is generally the primary and often exclusive consideration. The guidelines considering the nature of the religious beliefs of second-generation JW followers clearly reflect a biased and one-sided understanding of the religious aspects. Despite insurmountable difficulties in evaluating the intensity of someone's religious convictions, the compound nature of religiously grounded preferences of patients should be taken into consideration for better healthcare.

#### Acknowledgement

This work was supported by Grant-in-Aid for JSPS Fellows (249815)

#### Notes

<sup>1</sup> Kato, Y. "Appreciating the refusal of blood transfusion by Jehovah's Witnesses for religious reasons." *Annals of the Japanese Association for Philosophical and Ethical Researches in Medicine*. 30, 2012, pp.63–67 [in Japanese].

<sup>2</sup> Beauchamp, T.L., Childress, J.F. *Principles of Biomedical Ethics*. Oxford

University Press; Fifth edition. 2001. pp.3ff.

<sup>3</sup> Ibid. pp.68,187.

<sup>4</sup> <http://wings.buffalo.edu/faculty/research/bioethics/schloen1.html> Accessed August 2012.

<sup>5</sup> E.g., Hayasaki, S., Miura, M., Ariga, T. “Bloodless Medicine and Surgery for Jehovah’s Witnesses—Ethical, Medical, and Legal Considerations.” *The Journal of Japan Society for Clinical Anesthesia*. 28(3), 2008, p.438 [in Japanese]. The authors are JW.

<sup>6</sup> Supreme Court Reports (civil cases) Vol.54, No.2, p.582 [in Japanese].

<sup>7</sup> Leflar, R.B. *Law and Medicine in Japan: Informed Consent Renaissance. Informed Consent and Patients’ Rights in Japan*, trans. Nagasawa, M. Keiso Shobo. 2002, p.146 [in Japanese].

<sup>8</sup> <http://www.sss.gov/fsconsobj.htm> Accessed August 2012.

<sup>9</sup> Ibid.

<sup>10</sup> <http://www.unhinderedliving.com/statevaccexemp.html> Accessed August 2012.

<sup>11</sup> Kato, Y. “On Conscientious Objection to Brain Death—The Cases of the State of New Jersey and the New York State.” *Annals of the Japanese Association for Philosophical and Ethical Researches in Medicine*. 28, 2010, pp.29–37 [in Japanese].

<sup>12</sup> Ibid.

<sup>13</sup> Beauchamp and Childress, pp.183ff.

<sup>14</sup> Ibid. pp.2f. 401ff.

<sup>15</sup> Ibid. pp.70ff.

<sup>16</sup> Olick, R.S. “Brain Death, Religious Freedom, and Public Policy: New Jersey’s Landmark Legislative Initiative,” *Kennedy Institute of Ethics Journal*. 1(4), 1991, pp.275–288.

<sup>17</sup> [http://www.watchtower.org/j/rq/article\\_12.htm](http://www.watchtower.org/j/rq/article_12.htm) Accessed August 2012 [in Japanese].

<sup>18</sup> “You Have the Right to Choose” [http://www.watchtower.org/j/hb/article\\_04.htm](http://www.watchtower.org/j/hb/article_04.htm), [http://www.watchtower.org/j/20000108/article\\_02.htm](http://www.watchtower.org/j/20000108/article_02.htm) Accessed August 2012 [in Japanese].

<sup>19</sup> This document was not found on the official website. Cf.

<http://jwpc.milkcafe.to/blood03.html>, <http://jwpc.milkcafe.to/blood05.html> Accessed August 2012.

<sup>20</sup> Through JW’s emphasis on scientific reasons and self-determination, refusal becomes available to those outside the WS. If a medical situation requires blood transfusion, it means that a patient is experiencing significant bleeding, which places the patient at risk. Efforts to minimize bleeding during surgery are critical.

<sup>21</sup> Asveld, L. “Mass-Vaccination Programmes and the Value of Respect for Autonomy.” *Bioethics*. 22(5), 2008, pp.245–257, PMID 18447860.

<sup>22</sup> Satake, M. “Reporting System of Blood Center for Transfusion—Related Adverse Effects.” *Igaku no ayumi*. Ishiyaku Publishers. 235(1), 2010, pp.19,22 [in Japanese].

<sup>23</sup> <http://www.watchtower.org/j/archives/index.htm> Accessed August 2012.

<sup>24</sup> Kato, Y. “Conscience in health care and the definitions of death.” *Croatian Medical Journal*. 54(1), 2013, pp.75–77.

- <sup>25</sup> Franz, R. *Crisis of Conscience*, trans. Higuchi, H. Commentary Press. 2000, pp. 37,189,274f. [in Japanese].
- <sup>26</sup> Ibid. p.131.
- <sup>27</sup> According to their current teaching, each member is allowed to decide on the use of blood plasma protein fraction preparations. Hayasaki et al. p.481.
- <sup>28</sup> Franz, p.138.
- <sup>29</sup> Ibid. p.374.
- <sup>30</sup> Ibid. pp.56,427,432,478.
- <sup>31</sup> Ibid. p.136.
- <sup>32</sup> <http://www.religioustolerance.org/witness6.htm> Accessed August 2012.
- <sup>33</sup> Franz, pp.140–142,454,458.
- <sup>34</sup> Ibid. p.54.
- <sup>35</sup> Furuya, Y. *Future of Japan and Christianity*. Seigakuin University Press. 2001, p.262 [in Japanese].
- <sup>36</sup> Franz, pp.5,6,46.
- <sup>37</sup> Beauchamp and Childress, p.102. Awaya, T. “Bioethics of the Refusal of Blood Transfusion: When a Parent Refuses a Blood Transfusion for His Child, Should the Doctor Respect the Parent’s Will?” *Journal of Clinical Anesthesia (Japan)*. 31, 2007, pp.175–180 [in Japanese].
- <sup>38</sup> Kagawa, T. “The Results of a Survey on Pediatric Jehovah’s Witness Patients.” *The Journal of Japan Society for Clinical Anesthesia*. 28(3), 2008, pp.490–497 [in Japanese].
- <sup>39</sup> “Guidelines on religious refusal to blood transfusion,” <http://www.anesth.or.jp/guide/pdf/guideline.pdf> Accessed August 2012 [in Japanese].
- <sup>40</sup> Awaya, T. “Who Approves Blood Transfusion?: On the Momentum of the ‘Guideline for Refusal of Blood Transfusion on Religious Grounds’” *The Journal of Japan Society for Clinical Anesthesia*. 28(3), 2008, pp.513–519 [in Japanese].
- <sup>41</sup> Oizumi, M. *Persuasion*. Gendai Shokan. 1988, pp.49f. [in Japanese].
- <sup>42</sup> Chiba, K. “Refusal of Blood Transfusion on Religious Ground: Case Law in England.” *Yokohama Journal of Social Sciences*. 6(5), 2002, pp.561–581. See pp.568–573.
- <sup>43</sup> Franz, p.322.
- <sup>44</sup> Refusal of a specific medical procedure (involving an omission) is different from a request for a specific procedure (involving an action). Also, the latter is accommodated not only by the right to self-determination (or the right to free exercise of religion) but also by the inviolability/integrity of the body. While the refusal of blood transfusion is usually considered to be the former, the parents here requested an operation without blood transfusion, which is regarded to be the latter.
- <sup>45</sup> Oizumi, pp.134,240ff.
- <sup>46</sup> Ibid. p.82.
- <sup>47</sup> Ibid. p.65.
- <sup>48</sup> Ibid. p.245.
- <sup>49</sup> Seo, N. “Refusal to blood transfusion in pediatric anesthesia - conscience and belief of healthcare professionals.” *Clinical Pediatric Anesthesia*. 12(1), 2006, p.46.

Tsukamoto, Y. "The validity of the waiver form for refusal to blood transfusion by Jehovah's Witnesses" *Journal of Medical Law*. 22, 2007, pp.128f. [in Japanese].