

Are Political Philosophies Driving the Persistence of Debates about Brain Death?

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The social psychologist Jonathan Haidt has found that political philosophies diverge sharply on the sacredness of human life and the scope of human liberties [1]. I cannot help but feel that neurological criteria for determining death (NCDD) are often challenged due to these broader commitments or core values rather than due to genuine problems with the criteria themselves. This feeling requires some explaining.

Reasons for Rejecting Neurological Criteria

There are good reasons to object to the use of neurological criteria for death – or at least reasons that are difficult to contest within a pluralistic society. For example, if you believe your religion is good and true, and it teaches that you are alive along as your heart beats, then you will object to the use of neurological criteria, and others will have difficulty refuting your reasons. In general, such individuals opt out of organ donation, and this is completely acceptable even in societies that use NCDD [2].

But most of the reasons offered for rejecting NCDD are less compelling. In general, they take one of three forms.

1. Contesting the Definition

Concerns that challenge the definition of death generally take the following form: «Death is defined as *X* (e.g., the loss of the integrated functioning of the organism as a whole) [3]; so-called brain-dead bodies still have some vital signs that appear to contradict *X*; therefore they are not dead.»

This kind of argument is reasonable in its structure, but it is only compelling if we can in fact define death. If death is an ultimate datum – not reducible to parts – or if it can only be defined with reference to life, which is an ultimate datum, then this entire approach to debating brain death is inappropriate. To the extent that debates about NCDD appear to be novel, they usually involve a novel tweaking of the definition or a slightly longer list of «signs» that may contradict the newly tweaked definition. However, some of the most important things in life cannot be defined, such as *goodness* and *beauty*, and I think *life* and *death* are among these. A more promising approach to death is descriptive [4]. So-called «brain-dead» bodies have lost all brain functions, are permanently in a state of deep coma, and are incapable of spontaneous breathing. They would man-

ifest no signs of life (such as circulation) except for machines. Further, the most impressive sign of life – a beating heart – can be sustained outside of the body in a bucket of ice. This is precisely why transplantation is possible.

What do your intuitions say about such a body? Is it still alive? If you have qualms about saying the body is dead, ask yourself: If, after meeting NCDD, the heart were to stop beating, how long would it need to remain stopped before you would feel comfortable considering the body dead? No time at all, perhaps, because circulation was just an artifact of machinery and the brain has already died?

If your intuitions contradict such conclusions, then that is a stronger reason to reject NCDD than failure to meet an arbitrary definition. But few people advance such a view.

2. Contesting the Need for NCDD

Arguments that contest the need for NCDD for deceased organ donation typically take the following form: «If we just abandoned the dead donor rule, then there would be no need for NCDD. We could use very conservative criteria for determining death (think cold, gray, and stiff), because it would be permissible to cause death through organ donation. After donation, patients will certainly be dead.»

This position is naive. We cannot avoid the hard work of trying to determine death quickly, that is, as soon as the human being has died but before some transplantable organs have died. Why? Because this shift would require us to abandon presumed consent laws in many nations and first-person authorisation registries in other nations. All organ donors would need to undergo a rigorous informed consent process because a medical procedure would be performed on them that will cause death. It is true that some individuals would consent to donating vital organs prior to death, but not the majority of people. The majority of people seem to want to finish using their vital organs prior to donating them. These people will require the use of criteria such as NCDD.

3. Contesting the Compatibility of NCDD with Early-Stage Human Life

Arguments that contest NCDD on grounds that they are incompatible with early-stage human life commonly take the following form: «If a human being is dead just

because its brain has stopped working, then the implanted embryo and young fetus are not really living human beings because they do not yet have fully functioning brains, that is, brains that are conscious and stimulate breathing. But such critters are clearly alive, so NCDD must be mistaken.»

This view ignores the fact that we are developmental organisms. At one point in our development we do not require a brain or lungs to respire naturally; at another point we do. It is true that NCDD are not useful in determining the death of embryos and early-stage fetuses; but no one proposes to do this.

NCDD and the Values that Separate Liberals, Libertarians, and Conservatives

So what really is driving persistent efforts to undermine NCDD? Ironically, those who call into question NCDD typically occupy polar opposite positions on the protection of all human life – the poles represented by positions 2 and 3 above – and the scope of liberty (in this case, the liberty to cause the death of oneself, of patients, or fetuses under special circumstances). Position 2 essentially defends euthanasia insofar as it allows physicians to intentionally cause the death of some patients to benefit other patients – on the presumption that donors have made autonomous choices and will not suffer. In contrast, those who embrace position 3 typically aim to guarantee full moral and legal standing of embryos and fetuses, and object to abortions and euthanasia. Both positions attempt to think consistently through the implications of their positions on the protection of human life, which is fine per se. *But death criteria should be evaluated on their own merits.*

Any criterion for determining death in the context of organ donation will be controversial in some circles. However, this generally does not pose a significant social problem as long as individuals are allowed to opt out of organ donation. That is to say, debates about

NCDD are not addressing a significant social problem that is causing harm to members of our society. Moreover, as I have argued elsewhere, creating doubts about criteria for determining death creates new problems for organ donation and donor families, and should not be undertaken lightly [2]. This may sound like I am reintroducing precisely that which I find problematic, namely, consideration of «political» factors into the establishment of death criteria. That, however, is not what is intended. Rather, such considerations – just like considerations about protecting potential organ donors and preserving public trust – add moral weight to the enterprise, even while death criteria are established by considering the nature of death itself as revealed through medical sciences and lived experience.

In this brief Viewpoint article I have not done justice to the variety and sophistication of the arguments against NCDD. I have, however, explained why I feel that political philosophies have (consciously or unconsciously) contributed to debates about NCDD that are redundant, stagnant, and persistent.

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