

Brain Death: Changing the Conversation, or Eschewing a Moral Responsibility?

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Brain death, or the complete and irreversible cessation of brain function, is a legally recognized definition of death in the United States because, it was argued, “the functioning of the brain is necessary for the integrated functioning of the organism as a whole” (9). However, shortly after the establishment of brain death as a definition of death, it was called into question whether this position was irrefutable. If and when we accept brain death has important implications, from financing care for these patients to organ donation to the limits of decision-making by healthcare proxies. In their article, “Changing the Conversation About Brain Death”, Robert D. Truog and Franklin G. Miller write about the national conversation regarding brain death, how we define death, and the ethics of organ donation. Considering Truog and Miller’s article is helpful for me personally in thinking about this issue because they call into question some widely accepted assumptions and arguments made in support of brain death; however, the utilitarian argument they offer in support of brain death in their paper highlights further issues that come with the acceptance of this definition of death.

Truog and Miller begin by, somewhat surprisingly, pushing back against the commonly held perception that brain death is a sort of biological death; instead, they argue that brain death “is legal death, [which] can best be described as a ‘legal fiction,’” and that brain dead individuals have experienced such severe neurological impairment that “for all legal purposes, can be treated as if they are dead” (10). They continue by questioning why so many have clung to the assertion that brain death is biological death when basic medicine proves otherwise, arguing that many medical professionals believe “brain death dogma is necessary to sustain the lifesaving practice of vital organ transplantation” due to the “dead donor rule”, or the principle that it is only ethical to harvest organs from a dead donor (10). They claim that by separating the legal and biological

definitions of death, not only would medical professionals be able to navigate complicated cases, such as those of Marlise Munoz or Jahi McMath, with more ease, but also that despite this separation, the issue of organ donation would be largely unaffected. They “are doubtful that public support for transplantation depends on a belief that brain dead donors are biologically dead” (13). Truog and Miller conclude by stating that “the time has come to change the conversation about brain death, and live up to the obligations we have to both the medical profession and society at large” (13).

Issues of brain death ask not only about who and what we are, (i.e., are we simply the sum of our parts, a working body controlled by a working brain, or is there more to us?), but also what of ourselves we value as essential, and how much you can take away before we cease to exist in a meaningful way. Truog and Miller’s article is important because it argues that “‘brain death’ does not signify biological death but is merely the extreme end of the spectrum of neurological injury,” and further claims that the legal and biological definitions of death should be separated in cases of brain death (12). This article forces us to question whether brain function is a requirement for life, and further, that if we agree that brain death is life, how to handle the dead donor rule.

I don’t necessarily disagree with Truog and Miller’s reasoning. I agree that brain dead patients are still biologically alive. I also agree that it is a good thing that organs harvested from brain dead patients can be used to save the lives of others. However, I cannot willingly accept this contradiction or support the act of declaring someone who is alive “legally dead,” thereby disenfranchising them to the point in which they do not even have the right to their own body, simply because they have a profound injury and cannot express what they want. In this case, two wrongs (i.e., the injury itself and the violation of rights) do not make a right, even if it does save

the lives of those who could make use of these organs. To force altruism on another individual in this way would (and does) strip us of our humanity; this is evident in the discomfort expressed by many ethicists that have taken a moment to seriously consider this reality. Therefore, the default should not be to terminate life support in cases of brain death, even if it saves many other patients. Medical professionals must always serve the needs of their patient first, not some utilitarian goal of “bettering society”. The medical profession exists to serve patients and their needs, and if what a care provider does is not in pursuit of these goals, then they threaten the very fabric of the medical institution as a whole.

Regarding whether patients should be given the option to elect for brain death as their definition of their own death, I have mixed feelings. Ultimately, I believe that people of sound mind should have control over their own bodies, however whether that control should extend to future versions of themselves, as is the case with brain death, is less clear. Take the case of a woman in the Netherlands who indicated through end-of-life plans that if her Alzheimer’s Disease was to further deteriorate, that she would like to be euthanized. This request was recorded and signed by her. However, as her disease did progress, the woman began to push back against her previous plans; she did not want to die. Doctors, meanwhile, chose to honor her original request, and the woman was euthanized, and the doctors faced no criminal charges. Cases like this make it clear that, while you may believe that the doctors did the right thing, when determining end-of-life care, the situation is rarely unambiguous. Very few lay people have a thorough understanding of brain death and what it truly means, and yet millions of Americans are registered organ donors; this oversight is unacceptable, and if we are to allow people to choose brain death as their definition of death, we owe it to them to make sure they understand what they are agreeing to.

I am particularly concerned about what I see as the natural extension of Truog and Miller's argument. If we are able to declare someone who has experienced "the extreme end of the spectrum of neurological injury" as legally dead, because we believe they are "as good as dead", and therefore can strip them of their legal rights and organs because we believe they are "not harmed or wronged by doing so," what is to keep the definition of "extreme" from shifting (11)? To many outside the medical profession, individuals in a persistent vegetative state are functionally indistinguishable from those who are brain dead; why not lump them together? The severely cognitively disabled often cannot advocate for themselves, and also present a drain on resources that may better serve others who could recover to 'normal' functioning, so why not include them as well? This line of thinking seems at complete odds with the activism of those within the disability rights movement, and also should cause issues for anyone who agrees that human life maintains its value, even if one doesn't provide a direct "benefit" to society. To make the moral argument explicit, how we treat the most marginalized of our society, those who cannot advocate for themselves, speaks volumes about our own integrity and values.

Overall, I believe that Truog and Miller present many strong arguments in their article. Some of their views, like that brain dead individuals are alive, and that people should be provided an understanding of brain death when they indicate if they would like to be an organ donor, I agree with. Others, like that the biological and legal definitions of death should be separated, or that the prospect of harvesting organs from a living individual doesn't pose any pertinent concerns, I do not agree with. Truog and Miller have highlighted the urgency of the brain death issue today and emphasized the need for continuing debate regarding how we define death; it is morally imperative that we treat this issue with caution and care.

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#### References

- O'Grady, Siobhán. "Dutch Doctor Who Euthanized Alzheimer's Patient Cleared of Criminal Charges." *The Washington Post*, WP Company, 11 Sept. 2019, [www.washingtonpost.com/world/2019/09/11/dutch-doctor-who-euthanized-alzheimers-patient-cleared-criminal-charges/](http://www.washingtonpost.com/world/2019/09/11/dutch-doctor-who-euthanized-alzheimers-patient-cleared-criminal-charges/).
- Truog, Robert D. & Miller, Franklin G. (2014). Changing the Conversation About Brain Death. *American Journal of Bioethics* 14 (8):9-14.