

Making Progress on Death: Towards an Updated Normative Framework

March 24 – 25, 2021

Neubauer Collegium for Culture and Society

University of Chicago

Via Zoom

Over 50 years after its inception, the Neurological Standard for Declaration of Death (NSDD) remains a subject of criticisms and challenges. Despite being widely established within medical practice and the law, there remains considerable public confusion about the meaning of the term “brain dead” and its relation to the death of a human being. There is also dissent by some clinicians, philosophers, and other critical observers in claiming that “brain death” is, indeed, the death of the human being. Some of these critics have published evidence of ongoing integrated bodily activities in some patients meeting the criteria of “whole brain death” and who have claimed that this evidence invalidates the rationale for today’s consensus position, and makes the NSDD akin to a medical/legal/social construct. At the other extreme, there are pressures against insisting that declaring death, or at least “organ donation eligibility,” requires the irreversible loss of function in the whole brain. These challenges necessitate a re-examination of the neurological standard. In this conference, we intend to undertake such a re-examination. We have invited a diverse multidisciplinary group of experts who will critically discuss and engage with the philosophical, medical, and legal aspects of current debates surrounding the declaration of death based on neurologic criteria. The goal is to investigate points of controversy in depth with an eye towards lessening disagreements, exploring alternatives, and considering how to engage with the public.

March 24, 2021

10:00 Opening Remarks

By 10:15 Keynote Address by John Lizza: “A Prescriptive Metaphysics of Death”

11:00 **Session 1: What Is Human Death?**

Moderator: Christos Lazaridis

This session will explore philosophical aspects in terms of both ontology and methods of inquiry on how to conceptualize human death. The philosophical issues concerning the correct definition and standard for human death are closely connected to other questions. How does the death of human beings relate to the death of other living things? Is human death simply an instance of organismic death, ultimately a matter of biology, or we should consider death as a social and legal construct? If the latter, how do we accommodate reasonable pluralism? Should we allow individual choice in defining death?

11:00 David DeGrazia: Ontology of Human Death

11:25 Lainie Ross: Plurality and Choice in Defining Death

11:50 Panel Discussion

12:20 Coffee Break

12:50 **Session 2: Death of the Brain and Death of the Organism**

Moderator: Ariane Lewis

A fundamental controversy relates to whether brain death is equivalent to the biological phenomenon of human death. The permanent cessation of functioning of *the organism as a whole* is the phenomenon that best corresponds to its death. This century-old concept of the organism as a whole has provided the fundamental justification for the equivalency of brain death and human death, under the premise that the brain is necessary for the functioning of the organism as a whole. This claim is being contested both in theoretical and empirical grounds with examples of patients diagnosed as brain-dead who “survived” not just for days or weeks but for years. This session aims to examine the cogency of the two justifications for the whole brain death standard, the *central integrator* and *fundamental capacities* theories.

- 12:50 James Bernat: Brain Death Is the Irreversible Cessation of the Functioning of the Organism as a Whole
- 1:15 Robert Truog: Brain Death Is Not the Irreversible Cessation of the Functioning of the Organism as a Whole
- 1:40 Panel Discussion

2:20 **Session 3: Diagnosis of Death by Neurologic Criteria**

Moderator: Christos Lazaridis

Here we will critically examine the adequacy and limitations (and how they could be addressed) of the currently proposed diagnostic criteria and tests for the determination of death by neurologic criteria. Is the whole brain death standard met when current clinical criteria are satisfied? Should we require a confirmatory study to document the cessation of cerebral blood flow? The American Academy of Neurology endorses the belief that preserved neuroendocrine function may be present despite irreversible injury of the cerebral hemispheres and brainstem, without this being inconsistent with the whole brain standard of death. Is this a valid position?

- 2:20 Ariane Lewis: Clinical Assessment Is the Gold Standard
- 2:45 Ari Joffe: What Is Wrong With Current Diagnostic Criteria?
- 3:10 Alan Shewmon: The Case of Jahi McMath
- 3:35 Fernando Goldenberg: Clinical Testing Is Insufficient
- 4:00 Panel Discussion and Closing Remarks (Christos Lazaridis)

March 25, 2021

10:00 **Session 4: Legal Constructs and Complications**

Moderator: Kathy Cerminara

Determination of death by neurological criteria has been described as a legal fiction. Legal fictions are devices by which the law treats two analogous things (in this case, biological death and brain death) in the same way, so that the law developed for one can also cover the other. Some scholars argue that brain death should be understood as a fiction for two reasons: a) the way brain death is determined does not actually satisfy legal criteria (the Uniform Determination of Death Act; UDDA) requiring the permanent cessation of all brain function; b) brain death is not consistent with the biological conception of death as involving the irreversible cessation of the functioning of an organism as a whole. This session will investigate the legal and ethical implications of death as a legal construct. How should brain death be described, and justified, to patients, families, and the public? Building on existing empirical research to understand confusion about brain death and ways to dispel it, further research should be conducted to establish clearer and more transparent way(s) to describe brain death as a legal status, a social construct, or in some alternative way. Importantly, and in the political liberalism tradition, the law based on the neurological standard should be publicly justifiable and justified. With such grounding in hand, the field of organ transplantation will have both a policy solution and a communication strategy for transparently and justifiably continuing to conduct vital organ transplantation from brain-dead donors.

10:10 Seema Shah: The Current Definition of Death Is a Legal Fiction

10:35 Thaddeus Pope: Should the UDDA be Modified? How?

11:00 Kimberly Mutcherson: Law, Defining Death, and Conscientious Objection

11:25 Break

11:35 L. Syd Johnson: Ethical Implications of a Legal/Social Construct

12:00 Sean Aas: What Is Required to Publicly Justify the Law on Death

12:25 Erin Paquette: How Do We Engage the Public?

12:50 Panel Discussion

1:30 Break

2:00 **Session 5: Is Death Necessary for Donation?**

Moderator: Lainie Ross

The ethics of organ transplantation have been premised on “the dead-donor rule” (DDR), which states that organ donation must not kill the donor; thus, the donor must first be declared dead. The DDR is not a law but an informal, succinct standard highlighting the relationship between the two most relevant laws governing organ donation from deceased donors: the Uniform Anatomical Gift Act and state homicide law. Yet it is not obvious why certain living patients, such as those who are near death but on life support, should not be allowed to donate their organs, if doing so would benefit others and be consistent with their own interests.

2:00 Michael Nair-Collins: Abandon the DDR

2:25 David Magnus: The DDR Is Fundamental

2:50 Panel Discussion and Closing Remarks (Lainie Ross)

3:20 Adjourn

3:30 Plan Products and Follow-Up Steps (*panelists only*)