

THE MEANING OF BRAIN DEATH

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CONTROVERSIES

Brain death (death by neurological criteria) has engendered controversy since the concept was invented. In recent years, what were largely intramural battles between philosophers, neurologists, and legal scholars have become public and pressing, as families dispute determinations of brain death on religious, spiritual, and social/cultural grounds. The meaning of death, and brain death, is contested.

METAPHYSICAL AND MORAL COMMITMENTS

Implicit metaphysical and moral commitments are implied by neurological criteria for death. When these commitments and worldview are not shared by patients and surrogates, they give rise to **distrust** in healthcare providers and systems, and to **injustice**, particularly when medico-legal definitions of death are coercively imposed on those who reject them. Ethical obligations to **respect persons** and patient **autonomy**, promote patient-centered care, foster and maintain trust, and respond to the demands of justice provide compelling ethical reasons for recognizing reasonable objections to the imposition of an unshared understanding of death.

THE IMPLICIT DUALISM OF BRAIN DEATH

Neurological criteria for death endorse metaphysical **dualism** in which the body and person (or consciousness, or soul) can come apart:

The idea that persons (in the metaphysical and moral sense) can die while their physical bodies remain alive makes intuitive sense and is acceptable to many people, for many cultural and spiritual traditions contain an implicit or explicit dualism in which body and soul can part ways. But the declaration that *this moral or metaphysical person has shuffled off this mortal coil* is not a medical diagnosis nor a matter for the law. [2]

IMPLICIT VIEWS OF PERSONHOOD

Neurological criteria imply “that persons are reducible to functioning brains.” [2] The metaphysical dualism baked into brain death can **transform persons into nonpersons**, and has ethical implications: it converts persons with rights, subjects of justice, into nonpersons who no longer have rights. The legal implications are similar: that former person’s surrogates no longer have the right to make decisions about how, or whether they are treated, and sometimes, about whether or not their organs are donated.

JAPANESE RESISTANCE

Japanese resistance to brain death is deeply rooted in their **cultural and spiritual beliefs**, consistent with both Buddhist and Confucian beliefs:

The significant proportion of the Japanese people who reject the idea of brain death usually say that a brain dead patient whose body is warm and moist cannot be seen as a corpse because **the essence of humans** exists not only in one’s mind, but also in one’s body. They reject the notion that the essence of humans lies in self-consciousness and rationality. They think that a warm, living body is an integral part of the person. [1]

The Japanese see the **mind and body as inseparable**. Therefore, “brain death,” or cessation of brain function independent of other body functions, is inconsistent with traditional Japanese values. [4]

References

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JAPAN: A BETTER WAY

Japan presents another possibility for resolving conflicts concerning the neurological determination of death. The cultural and spiritual influence of Buddhism and Shintoism in Japan resulted in a lengthy political and public policy debate that ended in a **compromise on brain death**. In 1983, the Japanese Ministry of Health established a committee to consider brain death and transplantation, which resulted in a decades-long debate, and numerous failed attempts to pass a national law by the Diet, Japan’s parliament. In 1999, the Diet finally passed a transplantation law that recognized **pluralism about death** by establishing “traditional death” (or circulatory-respiratory death) and “brain death.” The law requires that brain death must be explicitly chosen by an individual when they obtain an organ donor card, and their family must also consent to donation at the time of death. Brain death, in effect, only exists in Japan in the context of, and for purposes of, **organ donation**. A policy like Japan’s, requiring consent of the donor and their family for both a determination of neurological death and organ donation, could **avoid brain death disputes** in which a family neither accepts brain death, nor consents to organ donation. [3]

Japan is a far more homogeneous country, and not nearly as multi-ethnic, multicultural, or pluralistic as the US and many other societies. Yet its laws concerning brain death manage to be far more **protective of both majority and minority perspectives** on death while openly acknowledging why, as a matter of social policy, the concept of brain death has value. Japan’s policy recognizes that there are **important social, cultural, and spiritual objections to brain death** as human death, and openly and transparently links individual choice concerning brain death to choice concerning organ donation and transplantation.