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Brain death as irreversible loss of a human's moral status

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Abstract

Singer claims that there are two ways of challenging the fact that brain-dead patients, from whom organs are usually retrieved, are in fact biologically alive. By means of the first, the so called dead donor rule may be abandoned, opening the way to lethal organ donation. In the second, it might be posited that terms such as "life" and "death" do not have any primary biological meaning and are applicable to persons instead of organisms. This second possibility permits one to acknowledge that brain-dead patients are deceased because they are irreversibly unconscious. In the commentary which follows, I will argue that Singer's second option is preferable since it (a) provides a higher amount of organs available for transplant, and (b) is better suited to the meaning of "death" which occurs in ordinary language. I will also defend such a concept of death against the objections raised by Michael Nair-Collins in the article *Can the brain-dead be harmed or wronged? On the moral status of brain death and its implications for organ transplantation.*

Keywords: bioethics, transplantation ethics, brain death, moral status, critical interests, ulterior interests

In the article *The challenge of brain death for the sanctity of life ethic,* published in the current issue of "*Ethics & Bioethics (in Central Europe)*", Peter Singer presents and updates his position on brain death. Evoking scientific evidence provided by Alan Shewmon, he points out that brain dead patients are biologically alive because they manifest some level of somatic integration and they are capable of engagement in commerce with the surrounding environment (Shewmon, 1998; Singer, 2018, pp. 156–157, 160; Singer, 1994, pp. 31–32). Nevertheless, in his opinion, the practice of organ retrieval from such patients shall not cease and he claims that such a position might be justified in two mutually exclusive, alternative ways. First, even if brain dead patients are alive, organ retrieval after valid consent is permissible because it does not inflict any harm on irreversibly unconscious patients (Singer, 2018, pp. 159–161, 163–164; Singer, 1994, pp. 52–56). Second, one might argue that the meaning of terms such as "life" or "death" in the context of human beings is not just biological – "[C]onscious beings die when they irreversibly lose consciousness" Singer states. Exactly this kind of "person's" death might make organ retrieval from the consenting donor morally permissible (Singer, 2018, p. 164; Singer, 1994, pp. 47–48). Finally, Singer seems to claim that each of the two alternative options which preserve organ transplantation are equally worthy of adoption (Singer, 2018, p. 164).

In contrast to Singer's last statement, I will point out that the view which admits organ donation associated with killing living humans has important drawbacks: first, it engenders a substantial drop in the number of donated organs and, second, it is associated with a misleading concept of death. I will argue that the right concept of death associates the end of human life with the irreversible loss of consciousness. I will also defend such a view against the latest criticism

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developed by Michael Nair-Collins (2017).

Consent for the organ retrieval of the biologically living

When Singer refers to the practice of organ retrieval without taking into account the dead donor rule, he writes that in such circumstances "[a]ll that is necessary is to rephrase the question potential donors are asked, so that they are asked to consent to organs being taken after irreversible total brain failure, with no hope of any recovery of consciousness" (Singer, 2018, p. 161). In the following sentences he adds:

> We could then see what proportion of those currently willing to be organ donors would continue to be willing to donate under the new conditions. My hope is that this change would not cause a significant drop in the number of donors, as long as they received information about the irreversible nature of the condition that they would have to be in before they could be considered as a donor (Singer, 2018, p. 161).

Contrary to what other authors often suggest (Magnus, Wilfond & Caplan, 2014, p. 3; Bernat, 2013, p. 1290; Miller & Truog, 2012, p. 151), these hopes are not so nebulous if we think of American society. The research conducted by Nair-Collins and his fellows indicates that as many as 67% of the surveyed Americans from the sample would be willing to donate their organs if they found themselves in the state termed "irreversible apneic coma", even if organ retrieval would be described as causing biological death (Nair-Collins, Green & Sutin, 2015). However, the same research results show that 19 to 30% of the participants who express a willingness to donate organs 'after death' are unsure or unwilling to donate if the circumstances of organ retrieval are depicted as above (Nair-Collins, Green & Sutin, 2015). It has to be admitted that such a decrease in the number of donors might be considered substantial. For the sake of comparison, let us note that it is almost as large as the expected increase in the number of donors which might be achieved in American and British society thanks to the replacement of an opt-in organ procurement system with an opt-out system.[2] Given the extensive debate concerning the possibility of such change held by bioethicists (see for example Veatch & Ross, 2015, pp. 131–163; Wilkinson, 2011, pp. 81–100), as well as the fact that many European countries have actually decided to apply an opt-out system, it is hard to consider such a change as unimportant, whether there is an increase or decrease in the number of donors. Even more doubts arise with the introduction of the change postulated by Singer outside the borders of the USA and the United Kingdom – for example, in countries located in Central Europe where a commitment to the traditional sanctity of human life ethics and the deontological prohibition of killing seems stronger than in the USA or the UK. From this point of view, the other option mentioned by Singer, which preserves the possibility for organ retrieval, seems more promising; that is the acknowledgement that terms such as "death" and "life" do not have a mainly biological meaning, and that conscious beings die in the proper sense when they irreversibly lose consciousness. Adopting such a concept of death, one might defend the thesis that brain death is really the death of a human. This kind of strategy is related only to the change within the justification currently used for procedures, and does not require any modifications in the process of the authorization of organ retrieval, regardless whether it is based on an opt-in or opt-out system. In

[2] One might come to such a conclusion by taking into account the systematic review authored by Rithalia et al. (2009). The authors of the study estimate that the introduction of an opt-out system in the USA and the United Kingdom might trigger a 25–30% increase in the number of donors. More recent research conducted by Li, Hawley and Schiner (2013, p. 1123), is much more optimistic and indicates that even a 100% increase is obtainable in the number of donated organs.

the next part of the discussion of Singer, I shall prove that the postulated change which presupposes abandoning the biological concept of death for the sake of an "ethical" one is not only more useful but, first and foremost, more appropriate since it takes into account the fundamental sense of words such as "life" and "death".

Death as an irreversible loss of a human's moral status

"Death" in its biological meaning might be defined as follows

> (…) [it] is the irreversible cessation of the organismic capacity to maintain homeostasis of the extracellular fluid and thereby resist entropy. Extending the homeostenosis concept of aging, death is the limit beyond which homeostasis cannot be restored, when physiologic reserves are spent (...). It is a thermodynamic point of no return, a state-discontinuous point beyond which entropy and disintegration take over" (Nair-Collins, 2018, p. 33).

If we compare such a scientific concept with the meaning of "death" which occurs in ordinary language, we quickly realize that they are not congruent. This might be easily discernible in the case of the sentence "Adam's death was a great tragedy" which would be incomprehensible if we meant a biological meaning of "death" in this case. Death is commonly seen as bad for the person whose life ends (particularly if someone young dies who would otherwise have had many years of healthy life left, see for example McMahan, 2012, pp. 95–145; Nagel, 1970). Yet it is rather unclear why for any kind of being that *the mere fact* that it ceases to be a system which is capable of resisting entropy might be bad. The definition proposed by Nair-Collins also does not explain why death might provide the loved ones with the reason to start mourning, although it widely believed that it really does.

In everyday life, determining whether someone is alive or not is of great importance for us. The attitudes and behaviors which we present towards the living differ radically from those which are manifested towards the deceased (Veatch & Ross, 2015, pp. 45–49). As I think one of the main reasons is the widespread belief that only the living might be helped or harmed. However, it is clear that the word "life" appears in this context in an ethical sense, not in a biological one, because biological life itself may have nothing to do with experiencing harms or benefits. The case of an artificially supported amputated arm is the best opportunity to see this (Lizza, 2018, p. 13; Veatch, 2015, p. 19). Such an arm constitutes a system capable of maintaining homeostasis and resisting entropy and thus, in accordance with Nair-Collins' definition of death, it is undoubtedly biologically alive. However, it is not alive in the fundamental sense of its word, that is, in the ethical sense. The sustained arm is not the patient to whom it belonged and the nursing care it enjoys is not to the benefit of the patient. If medical professionals would really provide care for such arms, we would consider it a waste of time and resources which should be utilized to help living people in the ethical sense. The physicians in an intensive care unit are not biologists or scientists engaged solely in describing natural phenomena or constructing scientific theories which might investigate whether they are witnessing biological life or death. Physicians are first and foremost therapists, and their main task is to promote the wellbeing of a patient in accordance with medical knowledge.[3] For this reason, physicians should be interested in whether the patient is alive or has died in the fundamental meaning of this world – that is in the ethical sense. From such a perspective it is best to define death as an irreversible

[3] See, for example, section 2 of the Polish Medical Code of Ethics or principle no. VIII in Code of Medical Ethics of the American Medical Association, and the article about the ends of medicine by David Silver (2003, pp. 209–211).

loss of the human's moral status. Humans die when they irreversibly lose the properties which meant that they had morally relevant interests.[4] The end of life in that sense occurs simultaneously with the total irreversible loss of all capacities which different philosophical concepts recognize as determinants for moral status i.e.: the capacity to be sentient, to have desires, be rational, self-conscious, conscious, to communicate, and enter into social relations.[5] Such a view on death, which I call the Moderately Liberal Concept of Death (Nowak, 2016) adopts a potentially wide range of properties (and the presence of each of them might be sufficient to admit that we are dealing with a being with a particular moral status, that is with the "living" being in ethical sense of this phrase) to avoid getting too involved in the controversy concerning the grounding of moral status.[6] It is precisely on the basis of such a position that we can understand why death can be considered as bad for humans (because when humans lose their moral status, at the same time they lose the prospect of further good which might be available for them if they did not died, see McMahan, 2012, pp. 95–145 and Nagel, 1970), and why death gives reasons for mourning.

The tenets of this kind of concept of death, as Singer rightly points out (Singer, 2018, p. 161; Singer, 1994, pp. 48–50), in theory justifies the determination of death not only in case of brain death but also in the case of injuries to the structures of the higher brain on which the mentioned capacities are based. However, the results of research conducted on patients with the clinical diagnosis of a permanent vegetative state (that is, of total and irreversible unawareness and insentience, despite the preservation of the vegetative functions of the organism such as self-driven breathing, see Posner et al., 2007, p. 357), suggest caution during the selection of neurological tests applied to determine death, and remaining conservative regarding this issue by using the same technical criteria which are currently applied to determine brain death. As it transpires, some of these patients are able to maintain cognitive and communicational activity despite this diagnosis, and are able to answer "yes" or "no" to simple questions solely through the activity of their brains as detected on fMRI scans (Fernández-Espejo & Owen, 2013; Monti et al., 2010; Owen et al., 2006, Żuradzki, 2011), while others are pain sensitive (de Tomaso et al., 2013; Yu et al., 2013). Given these findings, brain death should be adopted as a criterion of death on the basis of the Moderately Liberal Concept of Death instead of higher brain death.

Do brain dead patients lose their moral status?

The strategy which aims at preserving the possibility of organ retrieval from brain-dead patients by means of an appeal to the concept of identifying death with the irreversible loss of the patient's moral status has recently been criticized by Nair-Collins (2017). In his recent article

[4] For the concept of moral status see Galewicz (2013, pp. 15–172), Jaworska and Tannenbaum (2018), Warren (1997).

[5] A similar view concerning the issue of defining death is presented among others by McMahan (2002, pp. 423–455), Lizza (2006) and Veatch (2003, pp. 10–11; 2015).

[6] From the list of properties that are recognized by different philosophical concepts as moral status determinants, only features such as species membership, being an object which preserves its identity thorough space and time, and being a biologically alive entity were removed. The first of the aforementioned properties constitutes an arbitrary criterion leading to speciesism (McMahan, 2002, pp. 212–214; Singer, 1994, pp. 172–183; Warren, 1973, pp. 53–55). The latter two, despite perhaps being sufficient for the objects possessing them to have their own interests, are no longer the interests of a patient and certainly do not provide any agent-neutral reasons (or the agent-neutral reasons which they provide are negligible). The patient is not identical with a body deprived of any mental capacities. If we agree that insentient organisms have their own interests, then we should realize that such interests provide such small agent-neutral reasons that in everyday life we can destroy these kinds of organisms for absolutely trivial reasons. For more about this issue see Galewicz (2013, pp. 22–51; pp. 125–127) and Nowak (2018).

Can the brain-dead be harmed or wronged?: On the moral status of brain death and its implications for organ transplantation, Nair-Collins argues that there are some obligations that we have towards brain dead patients which are grounded in their "incompetence-surviving investment interests." In his terms, the existence of such commitments indicates that these patients have not completely lost their moral status and thus they cannot be considered dead according to the concept which is defended here. In the subsequent part of the article I will focus on this argument and try to defend the Moderately Liberal Concept of Death.

The distinction between investment interests and experimental interests is the first step in Nair-Collins' reasoning (2017, pp. 529–531, see also Davies, 2007; Dworkin, 1994, p. 201; Feinberg, 1986, p. 37; Regan, 1983/2004, p. 87). Investment interests include all the things that the person is "invested in". Such interests are connected with a person's striving for some things or events to actually occur or take place, whereas experimental interests are conditioned by the subject's ability to be sentient. Among the interests of the second kind are all sorts of pleasure and the avoidance of pain. Investment interests, on the other hand, include interests based on simple desires concerning, for example, what to eat for dinner on a given day, Feinberg's ulterior interests (1986, p. 37) or the critical interests described by Dworkin (1994, p. 201). The latter are associated with final life goals, with all the things that are perceived as giving meaning to human existence. The next step in this argument is to point out that the status of three hypothetical patients (Daniel, Veronica and Christine) is identical if investment interests are considered and different only from the point of view of their experimental interests (Nair-Collins, 2017, pp. 534–540). Daniel is in end stage dementia, Veronica is reliably diagnosed as being in a permanent vegetative state, whereas Christine is brain-dead, that is to say in a state of irreversible apneic coma.

As Nair-Collins points out, each of these patients might have some investment interests regarding what happens to their bodies after the point when competence is irreversibly lost He calls such interests "incompetence-surviving investment interests" (Nair-Collins, 2017, p. 535). To move the discussion on a little bit further, let it be noted that such interests are not "created" in a state of irreversible incompetence but rather raised before such a state developed. As an example, we might suppose that each of the patients formulated desires such as "I want my organs to be donated *after the biological death of mine*," and "I do not want my biological life to be actively ended, although I do accept withholding or withdrawing futile life sustaining treatment." According to Nair-Collins, interests which are based on such desires might be violated to the same extent in each of the three aforementioned cases, because in each of them organ retrieval is conducted before biological death and biological life is actively ended (Nair-Collins, 2017, pp. 534–540). Experimental interests are the only difference between Daniel, Veronica, and Christine – only Daniel is capable of experiencing pain and pleasure while Veronica and Christine are both irreversibly unconscious. Yet, as Nair-Collins stresses, Daniel's right to bodily integrity, which he undoubtedly has, is based not on his experimental interests, but on his incompetence-surviving interests (Nair-Collins, 2017, pp. 537–538). Daniel does not differ in this respect from Veronica and Christine and therefore if Daniel has the right to bodily integrity and his incompetence-surviving interests count, the same should be said about Veronica and Christine. Finally, the analysis conducted by Nair-Collins is supposed to result in the conclusion that it is impossible for braindead patients to have lost their moral status, because they might be harmed or wronged if one compromises their interests (Nair-Collins, 2017, pp. 540–542).

Nair-Collins' argument is the most serious attack on the concept that equates death with the irreversible loss of a patient's moral status which has taken place in recent years and, therefore,

advocates of this concept such as myself are obliged to discuss it. In the next part of the text, I shall show the reasons why I believe that the concept which identifies death with the irreversible loss of the moral status of human beings, nevertheless allows us to admit that brain-dead patients are truly dead. I will also show how such a view of death coheres with the existence of incompetence-surviving investment interests.

First of all, it should be noted that, if the presence of incompetence-surviving investment interest indicates that the particular being has moral standing, then it must be admitted that not only brain-dead patients have moral status but bodies in a stage of rigor mortis or bodies which have been buried in graves for many years, such as Kant's remains, have moral status as well. To prove this, let me provide the following reasoning: suppose that Kant had a desire "*never* to be slandered" during his life which became the basis for his incompetence-surviving investment interest. Following the examples given by Nair-Collins, it should be stated that Kant, from the point of view of such interests, might be equally harmed or wronged when he is slandered when, let us assume, he is in end-stage dementia, when he loses consciousness and becomes permanently vegetative, or when he lapses into an apneic coma in a state of brain death, although he is still biologically alive. Since Kant might be harmed or wronged at each of these stages, it seems to imply that some things might be good or bad for him at each of these stages, and his interests should be cared for. Therefore, he has moral status, that is to say he is alive in the ethical sense. Yet, we should note that nothing about the nature of incompetence-surviving investment interests suggests that such interests cannot persist after the biological death of a human. Taking this into account, it should be acknowledged that if someone slanders Kant at this moment, he harms or wrongs him to the same extent as he would do at the time when Kant was biologically alive, even though he has become irreversibly incompetent. Thus it seems that Kant might be harmed or wronged at this moment and therefore he has moral status. Consequently if "death" in its fundamental sense means "irreversible loss of moral status," it follows that Kant is still alive, even though he has been biologically dead since 12 February, 1804. This is clearly absurd.

At first glance, such bizarre consequences argue for the immediate rejection of a concept which identifies death with the irreversible loss of a patient's moral standing. Nevertheless, I believe that in fact they stem from some kind of misconception. Before anyone can dismiss such a concept of death, they should consider first the implications for the very concept of moral status which are brought about by Nair-Collins' cases. How should we understand that the possibility of violating Kant's incompetence-surviving investment interests at this moment proves that he has moral status? Does it mean that *at the moment* Kant has moral status? If we answer "yes" to that question then how would we settle our doubts concerning the location of the subject to whom we assign this moral status? Is he identical to the remains of Kant which are buried in Königsberg Cathedral? And what if someone slanders Kant a million years from now, when there will be no remains but only the molecules which once constituted his body dispersed around the world? In such circumstances, would slandering Kant be harmful for these molecules? If one admits that incompetence-surviving investment interests are sufficient grounds to assign moral status to brain-dead bodies, as Nair-Collins does, then the same perfectly moral status should be assigned to Kant's remains at the moment, as well as to the dispersed molecules million years later.

Such consequences are troublesome, especially if we bear in mind the particular kind of incompetence-surviving interests on which Nair-Collins focuses most of his attention. Along the lines of one of his cases (Nair-Collins, 2017, p. 538) one might imagine that Consuela, a woman who highly values her autonomy and right to self-determination, has an interest in *having a say* about what happens to her at the end of her life as well as after her biological death. For such a person, any interference with her body, either at the end of her life or after her biological death,

would constitute harm as long as she had not consented for it personally or through a representative making decisions on her behalf. Without Consuela's valid consent (either prospective or surrogate) it would be equally harmful to cremate her body the week after her biological death, as well as erecting a building a million years later in the place occupied by the molecules that once were a part of her body. Thus, it seems that all dead people who valued their autonomy in the same way as Consuela should have eternal representatives deciding forever on their behalf in accordance with the substituted judgement standard.[7] While making these kinds of decisions might make sense when it comes to issues associated with end-of-life care or even alternative forms of burial, the very notion of the institution of an eternal surrogate decision maker is utopian in the extreme.

The concept of moral status that is implicit in Nair-Collins' article evidently has absurd consequences and involves unlimited moral obligations towards the dead. Its author understands it well and tries to defend it by assuming that incompetence-surviving interests do not count in utilitarian calculus in the same manner as other preferences do, such as "to have a life-threatening disease cured which is easy to treat." The proper way to account for incompetence-surviving investment interests is grounded in respect for persons, which as Nair-Collins states is "largely (though not entirely) a negative obligation, an obligation to avoid interfering, insofar as otherwise morally permitted, in the important choices of other people's lives" (Nair-Collins, 2017, p. 550). Acknowledging that obligations derived from incompetence-surviving investment interests have such a character is supposed to protect the living against the absurd claims of the dead. It seems, however, that this does not work as intended, given that in my version of Consuela's case we are dealing only with a negative duty of non-interference, and yet we still have to struggle with the absurd claims of the dead.

To sum up my discussion of Nair-Collins' argument, I would like to emphasize that his conception is associated with two difficulties. First, on its basis, human remains and even the molecules which once constituted part of the human body are the direct "bearers" of moral status, and *they* might be harmed if one's conduct does not cohere with the incompetence-surviving investment interests. Second, incompetence-surviving investment interests might be a source of unlimited and absurd obligations on the part of the living, even if such interests determine mainly negative obligations forbidding interference without consent.

The problems faced by Nair-Collins might perhaps be solved in several different ways. The path leading to the solution which I prefer can be found, for example, in Kant's writings. He considers the case of posthumous slander as follows:

> Someone who, a hundred years from now, falsely repeats something evil about me injures me right now; for in a relation purely of rights, which is entirely intellectual, abstraction is made from any physical conditions (of time), and whoever robs me of my honor (a slanderer) is just as punishable as if he had done it during my lifetime - punishable, however, not by a criminal court but only by public opinion, which, in accordance with the right of retribution, inflicts on him the same loss of the honor he diminished in another (Kant, 1991, p. 296).

In the aforementioned quotation, several things are worthy of our attention. At first glance it is striking that harm in Kant's account is atemporal in character. Yet, the other issue is more important: posthumous harm is bad *for particular persons* in an atemporal sense, or it is bad for them retrospectively, that is, despite the fact that it happened after death, it is bad at the time when the persons were still alive (speaking otherwise, the future has an influence on the past, contrary to the

[7] For more about substituted judgment standard see Beauchamp and Childress (2001, pp. 99–100).

usual understanding of causal links). Harms of this kind are not bad for the remains, which are not persons in the Kantian sense. Even if Kant's interest in not being ever slandered is capable of persisting through his irreversible loss of competence, and therefore slander at the moment is bad for *him*, it does not mean that Kant's *remains* have a moral status. Moral status, I repeat, is held by entities which possess the properties which cause them to have morally relevant interests. Kant's remains cannot have either the capability of being sentient or the ability to desire, they are neither rational nor conscious, nor do they have the ability to communicate or enter into social relationships. In short, they do not have any property that can be considered to be the determinant of moral status. The last one, however, is possessed by Kant himself who had the ability, among others, to desire certain things. It is precisely on these desires that his investment interests might be grounded, including those which are able to persist through incompetence. If Kant, when he was competent, had a desire to have a say on what happens to him at the end of his life, as well as after his biological death, and then the desire became the basis for his incompetence-surviving investment interest, in such circumstances we really have some sort of obligation towards his remains. Still, it is not derived from the properties of these remains, but is based on the desires formulated by Kant in the past. In other words, our duties towards remains are only indirect, and in this respect are similar to the duties that we have towards the things which are owned by other living people. The mere fact that I have a duty not to repaint your car without your permission does not mean that your car has a moral status. I would not have such a duty if this car did not belong to you or to anyone else, or if you allowed me to repaint it. However, if this car is yours and I repaint it without your permission, then there is something wrong with what I do, although I do not violate the direct duties towards you.

Let me briefly summarize what I am trying to say here: our obligations might bind us directly or indirectly; direct obligations are those which we have towards subjects of moral status, whereas indirect obligations are towards things which themselves are deprived of morally relevant interests. Nevertheless, some behavior which affects these things might still be good or bad for beings which have moral status (Galewicz, 2013, p. 13; Warren, 1997, p. 439).

We shall now return to the problem of brain-dead patients. These patients, just as is the case with Kant's remains, do not have any properties which could constitute criteria for moral status. The only thing that distinguishes them from the remains is the fact that they are biologically alive, and this on its own, as Nair-Collins realizes, does not make a morally sound difference (Nair-Collins, 2017, p. 550). The concept of death, which identifies the end of human life with the irreversible loss of moral status, provides sufficient reasons for considering them dead in the fundamental sense. We have no direct obligations towards brain-dead human bodies, yet it obviously does not mean that we can completely ignore our indirect obligations. The latter are derived precisely from the incompetence-surviving investment interests which are based on the desires of once living (in the ethical sense) people. Analogically, the fact that we have no direct obligations towards our neighbor's car does not mean that we can treat it as we please, for example by breaking in to it when we want to go on a summer ride. Nonetheless, I believe that the obligations which we have directly towards beings of moral standing are usually stronger than these which have only an indirect character.[8] For example, if I break into my neighbor's car to bring my dying son to the hospital, my action is more justified

[8] This belief might be justified by an appeal to Korsgaard's (1983) distinction of conditional and unconditional value. Taking into account her idea, it might be said that only the subjects of moral status have an intrinsic value, which means that only they are valuable unconditionally as "objective value conferrers". They have a capability of conferring value to the things which are external to them, making them objectively good and worthy of promotion or protection by other moral agents. The fact that subjects of moral status are the source of objective values might explain why we should usually care more about them. However, I will not pursue this issue further here.

than if I force the neighbor to "donate" his blood which I use for a life-saving transfusion. My obligations towards other people's property might be easier to overcome than the direct obligations towards them, especially when rescuing someone's life or health is at stake. From such a perspective, the practice of organ retrieval from brain-dead donors that is based on an opt-out system seems legitimate. Such a policy might be perceived as a compromise based on the appropriate weighting of indirect obligations towards brain-dead bodies and direct commitments towards people awaiting a transplant. The obligations towards brain-dead bodies due to their indirect character are of lesser importance than the interests of the living to be rescued from death.

Conclusion

For the sake of all the practical decisions that are made in everyday life, it is of great importance whether they concern the living or the dead. Facing someone's premature death, we are overwhelmed with grief, and death is seen as bad for the person who has died. When we think of our death, it frightens us a lot or, on the contrary, we look forward to it, believing that it will let us escape a misery foreseen. Almost never is death something which is indifferent for us. The dead are not cared for by physicians, unlike the living. We believe that the dead cannot be helped anyhow (only humans in an atemporal sense might be helped if we pursue their will, but we cannot help the dead, that is we cannot help the body which presently constitutes the remains of a once living person). Death is also traditionally a moment which is appropriate to begin mourning. In all these contexts it is clearly visible that "death" has value-laden meaning which completely does not fit the biological understanding of this notion. Let me recall here that through "biological death" Nair-Collins understands "irreversible cessation of the organismic capacity to maintain homeostasis of the extracellular fluid and thereby resist entropy" (Nair-Collins, 2018, p. 33). This scientific notion of death is, I think, totally incomprehensible for the average language user, who has no basic knowledge of statistical mechanics or knows what entropy is. Bearing in mind that the fundamental meaning of "death" is ethical, it is seems quite appropriate to retrieve the organs from brain-dead donors on the basis of their consent (or lack of objection) for "the deceased organ donation" instead of the consent (or lack of objection) for "organ donation causing the biological death". The second policy might trigger conceptual confusion, not only because of the fact that in this case the meaning associated with the attribute "biological" is incomprehensible, but also because the combination of the words "biological" and "death" creates a peculiar kind of oxymoron. The word "death" carries a strong ethical load, while the term "biological" eliminates this charge, pointing attention to the fact that we are supposed to deal here with a concept from the natural sciences, and natural sciences are not interested in morals.

In closing, I would like to point out that I limited myself in this article to presenting an argument advancing the thesis that organ retrieval after brain death really occurs after the donor's death, therefore people who consent or do not object to deceased organ donation are not exploited if the retrieval actually takes place. I was not concerned here, however, with the issue of the legitimacy of the dead donor rule or with answering the question of whether organs for transplantation should be retrieved only after the natural death of the patient. The only thing which I stated was that natural death (accompanied by consent or lack of objection) is a sufficient condition for the permissibility of organ retrieval. Notwithstanding, it might be right to retrieve organs from dying patients if it is done at their request and if the organ retrieval does not inflict any harm on them. The experience of DCD protocols seems to support such a policy. DCD protocols were intended to utilize additional sources of organs for transplantation while simultaneously respecting the dead donor rule. However, organ retrieval under such circumstances is associated with the risk of harming the dying patient and does not guarantee that the dead donor rule will not be infringed on (Marquis, 2010; Miller & Truog,

2012, pp. 97–112; Nowak, 2018a; Nowak, 2018b; Truog, 2016; Wilkinson & Savulescu, 2012, pp. 45–46).

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