

## Debate

# Reply to J M Stanley: fiddling and clarity

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Professor Stanley has offered a strident and thoughtful criticism of my paper 'Why Let People Die' and I thank him for the careful attention he has paid to it. My present concern is not the stridency of his response but rather its substance.

One clear issue of substance is the fact that we do not at present have any reliable criterion by which to detect the presence of widespread and irreversible neocortical damage. However, this is a pragmatic matter and may well yield to imaging techniques at present under development. In that my paper was an attempt to ground certain clinical decisions other than on considerations of a purely social or pragmatic nature I shall now turn to those other grounds.

What I claimed was that our ethically significant concept of a person was so because we imputed those objects which instantiated it with personal identity (and thus an interest in their life as an integrated whole involving past and future), consciousness or quality of life (which involved a sensitivity to and the awareness of human experiences and their significance), and agency (which involves acting for one's own reasons). It is these 'marks' of the concept person which the patients we are discussing no longer demonstrate and thus they have lost that which gives them the special place that a person has in our complex of ethical attitudes.

In his first paragraph Professor Stanley imputes to me the intention of revising our 'working definition of death' by talking about ethically significant life. My remarks were indeed suggestive rather than transparently clear. There are in fact several important distinctions to be drawn. There is on the one hand a living and fully functioning human person who enjoys the unique ethical status we confer on such. There are also living and fully functioning non-human and non-personal beings. These would include healthy animals whom we do not wantonly destroy or torment but to whom we do not ascribe the rights and interests of human beings. There are pieces of living human tissue which, though human, do not get treated as persons, for example ovaries, legs, temporal lobes and gall-

bladders. There are living but non-sentient human bodies who cannot, as Professor Stanley concedes, be considered to be persons but are not cadavers. Finally there are dead human bodies – which we cannot treat as and how we feel inclined for moral reasons which go beyond the scope of this paper. To each of these categories of being we take a certain ethical stance and only in the last case does that involve the ethical status of a dead person.

For our present purposes we must decide what ethical stance we should adopt to the living but impersonal human body distinguishable, as Stanley insists, both from a human person and from a human cadaver. The body is not, of course, 'stubborn' nor is it 'helpless' in the same sense as a sentient being is these things and it could well be that we play rhetorical tricks on our moral sense by the liberal use of such words. In relation to this living body we must sort out whether it has interests and what significance can be attached to its being alive in terms of its place among the various categories that I have outlined.

A being can have intentional or non-intentional interests. The latter are attributable to, for instance, a garden slug or a plant on the basis of consonance between the end or goal concerned and the normal activity of individuals of that type. Intentional interests are only present where the individual can make them his or her own or have a conception of the ends concerned and attitudes toward them. We have a strong and justified (on the basis of universalisability or some other principle regulating moral judgement) resistance to overriding intentional interests but are more cavalier when we have conceptually created the interests concerned and see reason for disregarding them. A living human body with no conception of the world or its own place within it (which in other cases might be indicated by a certain responsiveness and coherence in activity over time so as to enable at least some well grounded intentional ascriptions) obviously does not have intentional interests. The complication to this suspiciously neat conceptual divide arises when we credit a person with pro-active or default intentional interests which their present circumstances do not permit them to avow (for example when under anaesthesia). If I have you promise to wake me at 7 am then, at 6.59 am I am properly credited with an interest

### Key words

Definition of death; concept of person.

in being woken in one minute although I am not then aware of it. A person may express pro-active intentional interests in what happens to him after his death and in the treatment he is to be given should certain states of life ensue for him and we feel some compulsion but do not feel bound to respect these. I think that the force of these wishes, where we are in no doubt as to their force, is in part a function of the fact that the person who expresses them is identical with the one who emerges from these states and thus has interests which are a property of the temporally integrated being that he is (1). Doubt arises when there is no person going to emerge from the state concerned so as to provide the point of attachment for the pro-active interests.

We would definitely not feel bound to enact impossible pro-active interests where the state of a person at the relevant time precluded the envisaged activity, for instance if a patient in coma at time *t* had expressed a wish to deliver a lecture at time *t* we could not respect that wish. A person cannot expect to participate in an activity which essentially requires properties which that person no longer has. Personal life requires both sentience and a degree of sapience but a being which can blink, swallow and produce cycles of subcortical electrical activity solely because of persistent brain stem function has neither at the required level to include him in the ethical domain of persons. At this point I can usefully remark on the Sorites problem. One might wish to ask what degree of sentience and sapience one needs to have to qualify as a person and then begin to chip away at the stated requirement with borderline and conjectural changes which tend to blur the putative boundary to the point where one comes to doubt its existence. An entirely comparable attack can be made on colour concepts where, for instance one can ask whether there is any real distinction between red and orange given that an indefinite number of intermediate hues effect a smooth transition from one to the other. There is however a conceptual divide to be spanned and most of us make perfectly good use of it most of the time. In the same way there is a level at which not only do we begin to interact and be able to interact with a brain-damaged human being but which also gives a basis for some reconstruction of that function which constitutes what it is to be a person. As I have indicated, the function will be graspable under the interconnected ideas we have of personal identity, consciousness and action. The fact that we cannot spell out a specification of a sharp conceptual divide does nothing to undermine the perfectly workable and real distinction operative. We are able to recognise persons without spelling out necessary and sufficient conditions for the application of the concept in an analogous way to that in which we recognise the faces and voices of our friends. As Wittgenstein remarks, 'Consciousness is as clear in his face and his behaviour as it is in myself' (2). To return to pro-active interests, persons will have them with the full ethical weight we attach to the interests of persons

when they have a place in the domain of persons. If they will re-enter that domain then, of course, they have pro-active interests, but if they will not then they do not.

The idea of a capacity for 'consciousness without content' (that Stanley borrows from Pallis) is just woolly non-thinking and cuts no ethical ice whatever. No principled distinction between such a state and the state of a mollusc is provided by such a vacuous conception (3). Consciousness can usefully be characterised as being transitive (ie being of something) or intransitive. One can be (intransitively) conscious as distinct from being in a diminished state of awareness or (transitively) conscious of objects for thought. It is not merely a clinical truth that consciousness is revealed by examining sensitivity and responsiveness and their levels of organisation as these things form its criterial bases for ascription and therefore self-ascription. It is the capacity to apply concepts to objects which one encounters that we refer to when we talk of being conscious, and the objects and how we respond to them become a conceptual element in our ascription when we ascribe transitive conscious states by the use of expressions such as 'He saw the ball', 'He feels the pain', 'He is aware that we are with him' and so on. We extend our ascriptions of consciousness to borderline cases in virtue of their resemblance to paradigm cases of personal and interpersonal engagement with the world. If we do not mean by 'conscious' being able to have this kind of engagement with the world then we do not give it the meaning which is crucial for its ethical importance. That is why the idea of consciousness without formed content (which is what distinguishes the thought of a person) could equally well apply to a garden slug as to a person and thus has minimal ethical weight. One could say, as indeed I did, that any person who suffers such a permanent state as an organism with a 'thought life' consisting merely in such states is no longer a person at all.

It would seem that the human organisms we are discussing therefore have two sets of ethical properties. There are those that they have in virtue of being damaged biological organisms of indeterminate but sub-personal sentience, and there are those that they have in virtue of being the bodies of human persons. The law is reasonably explicit about both categories. We must emphasise that we no longer have a being who is or ever will be engaged in any personal way with this world of ours. We do not and cannot require that we prolong the life of a dimly sentient being at immense private expense and indeterminate public cost. We require that such a life be decently terminated. We also require that human remains be treated with respect.

I can now turn to Professor Stanley's specific questions. There is something morally abhorrent about the protracted farming of organs from the body of a living human non-person in that we do not consider human beings, in whatever state of sentience, as materials for convenient use. No doubt this is as

irrational and as important as our respect for the dead and our horror of cannibalism.

Once a human being no longer participates in the world of persons it would seem that his legal interests are as void as his intentional and ethical engagement and that his affairs should be settled in the prescribed ways.

I would therefore stick by my contention that a human organism that has been irrevocably stripped of personal being is no longer 'in any ethically interesting sense, alive'. The former person's body is however alive and has a definite but distinct ethical status.

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## References

- (1) On this point see my Reasoning about persons. In: Peacocke A R, Gillett G R, eds. *Persons and personality*. Oxford: Blackwell, 1987.
- (2) Wittgenstein L. In: Anscombe G E M, Von Wright G H, eds. *Zettel 221*. Oxford: Blackwell, 1967.
- (3) For the relation between content and consciousness see my paper, The generality constraint and conscious thought. *Analysis* 1987; 46: 20-24.

## News and notes

### Second International Congress on Ethics in Medicine

The Second International Congress on Ethics in Medicine will be held from June 9-12, 1987 in New York. The congress is sponsored by Beth Israel Medical Center, New York City, Ben-Gurion University of the Negev, Beersheva, Israel and the Karolinska Institute, Stockholm, Sweden.

There will be sessions on The boundaries of life; Political and social pressures and the doctor-patient relationship – physician responsibility to whom?;

Genetic manipulation; Ethics in research; Making a profit from illness, and Allocation of health resources and delivery of health care.

Fees are \$350.00 per person (scientific sessions and social functions) and \$100.00 per accompanying person (social functions only).

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