

WHAT DOES A DEFINITION OF DEATH *DO*?

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Abstract. In his article, “Defining Death: Beyond Biology,” John Lizza argues in favor of a civil definition of death, according to which the potential for consciousness and social interaction marks us as the “kind of being that we are.” In this commentary, I critically discuss this approach to the bioethical debate on the definition of death. I question whether Lizza’s account is based on a full recognition of the “practical, moral, religious, philosophical, and cultural considerations” at play in this debate. I further propose that a truly ethical debate on definitions of death ought to concentrate on how different definitions of death are used in diverse contexts – what definitions of death *do* – and focus less on who has the *right* definition of death for all situations.

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Questions about the definition of death are widely assumed to be metaphysical questions: What kinds of beings are humans and when does our existence end?¹ It is subsequently thought that the answers to these questions have ethical implications. If human beings are distinguished as beings that possess the capacities for consciousness and social interaction, and it is these capacities that mark human moral status, then when we lose these capacities – when we die – we no longer possess the moral status we once did. In Jeff McMahan’s words, we are a “living but unoccupied human organism,” the treatment of which is “governed morally by principles similar to those that govern the treatment of a corpse.”²

In his article “Defining Death: Beyond Biology,” John Lizza follows this same line of argumentation when he proposes that “without any potential for consciousness and social interaction we no longer exist as the kind of being that we are.”³ Indeed, he shares McMahan’s perspective that “from an ethical point of view, what matters is not whether an organism remains alive, but whether one of us continues to exist.”⁴ Throughout his article, Lizza repeatedly emphasizes that this approach – based on an “understanding of what it means for someone to no

¹ McMahan (2006).

² Ibidem: 48.

³ Lizza (2018): 17.

⁴ McMahan (2006): 48.

longer count as a living member of the community"⁵ – is derived from the practical and cultural context in which the definition of death is debated.

In this discussion note, I critically discuss this approach to the definition of death. The broad lines of this discussion are not necessarily new,⁶ but the argument advanced by Lizza presents a fresh opportunity to consider this discussion.

Lizza argues that the definition of death based on the integration of the organism as a whole is vague and differs depending on the organism in question. Further, defining death solely in terms of biological mechanisms misses the point that the definition of death is not merely tied to our biological natures but is also a complex intermixing of our psychological, moral, and cultural natures. For human beings, he proposes that we are an entity whose kind is marked by the potentiality of consciousness and social interaction. Thus, even if our bodies remain integrated, if we lose our capacities for consciousness and social interaction, then we have died. Lizza suggests that this definition of death, which he describes as a "civil" definition, is not necessarily the same as the "deanimation" definition conceptualized in biology, in part due to advances in medical technology. He concludes that in order for death to be a meaningful concept in human life, it must draw from all aspects of our nature, not just our biology.

I agree with Lizza that death is not merely a biological phenomenon, and that any definition of death will need to address the multifaceted nature of human life. Yet I wonder whether Lizza's own definition meets this standard. Take, for example, his criticism of Winston Chiong that "there is no reason to exclude practical, moral, religious, philosophical, and cultural considerations from bearing on how we sharpen the term [death]." ⁷ Lizza repeatedly emphasizes the need to take these various considerations into account in defining death. However, he does not provide evidence that his own proposal accomplishes this task. Rather, his definition seems to rest on his own intuition about death and those of others, and on a number of landmark court cases, rather than on a survey of the practical, moral, religious, philosophical, and cultural approaches to defining death. Evidence is needed to validate the equation of "an understanding of what it means for someone to no longer count as a living member of the community" with "destruction of the individual's psychophysical integration."⁸

⁵ Lizza (2018): 9.

⁶ Elliott (1999).

⁷ Lizza (2018): 11.

⁸ *Ibidem*: 9.

This is a problem for Lizza's account, because there are many religious, moral, and cultural communities (even within the United States) who do *not* equate life with psychophysical integration, or with the capacities for consciousness and social interaction.⁹ People very often "count" as members of their human communities without the capacities of consciousness or of social interaction, and that is part of what makes their situations so tragic – they still count, but the way in which they do so may be painful if some of their capacities are impaired. Consciousness is not all or none, but is a matter of degrees. Medical technology has introduced even more possible states – unconscious but able to breathe on one's own, unconscious and requiring artificial respiration, etc. Patients might also retain different types of consciousness, some of them clinically identifiable and some of them not. And further, there are many animals which engage in social interaction and which we suspect may be conscious, yet surely Lizza does not intend to include them in his account of what it means to be human. Indeed, the question of how different communities define human life and death is ultimately an empirical question, and it is likely that these communities will not converge on one single definition. As Lizza himself recognizes, this is not relativism but contextualism – a recognition that the definition of death will shift and change with the circumstances and the people involved. This does not mean that given the same situation, the definition could differ; the definition is fixed by the context.

While both Lizza and Winston Chiong (in Lizza's reconstruction) invoke the Wittgensteinian idea of family resemblance or "fuzzy concepts" to defend their view, the late Wittgenstein would likely have bristled at the proposal that death is an "ontologically specific" concept, even one with indistinct edges.¹⁰ In other words, there is no one state called "death" that can be universally understood. Rather, when we declare someone dead we use the word "death" for a precise reason relative to the context. A person might be declared dead to facilitate organ transplantation, to mark the end of life-sustaining measures, or to encourage the beginning of the grieving process. Therefore, Lizza's proposal that death marks the loss of the capacities for consciousness and social interaction would be suspect from a Wittgensteinian account without an explanation of *why* death must be defined, in *what* context, and by *whom*.

This leads me to my final point. Lizza wishes to define death in terms of the capacities for consciousness and social interaction, a definition which he believes avoids the drawbacks of the biological definition of deanimation. He proposes that

⁹ For one detailed description of the cultural complexity of definitions of death, see Lock (2002).

¹⁰ Lizza (2018): 12.

his definition of death is the *right* one, because it encompasses religious, cultural, moral, and practical considerations in addition to biological ones. Yet in addition to the concerns I have raised above about whether there is evidence that Lizza's definition is based on these multifaceted considerations, and whether there is actually one definition of death, I would like to raise an additional concern that pertains to the overall discussion on the definition of death of which Lizza's essay is a part. The focus of this discussion has been on which definition of death is the right one – which definition correctly captures the metaphysical state called “death.” Yet, to use a common distinction, this emphasis on finding the *right* definition of death may not just be misguided for the reasons I describe above; it may overlook the ethical question of which definition of death is a *good* one. That is, what benefits do different definitions of death provide, to whom do these benefits flow, and in which contexts? For example, a universal biological or neurological definition may provide beneficial consequences by settling disputes among family members who cannot agree on what a person would have wanted or what is best for them. But, similarly, an alternative definition may cruelly sustain families' hopes in the face of futility and may burden an already overwhelmed healthcare system with the maintenance of many patients with no chance of recovery.

As Lizza recognizes, there are indeed two different discussions that might be had about the definition of death. One discussion concerns the correct biological definition of death. Another discussion is how this biological definition is and ought to be used, especially when it can conflict with other cultural, religious, and moral definitions and when its implementation can lead to undesirable (and desirable) consequences. The first discussion is scientific or clinical; those who enter this debate aim to provide convincing evidence that their definition of death is coherent. The second discussion is ethical, and those involved in this latter debate analyze how different definitions are or will be used and assess their likely consequences. Arguments that highlight the use of the definition of death for the means of organ transplantation (and question whether it ought to be used for this purpose) draw attention to this second discussion.¹¹ Of course, these two discussions are easily intertwined – some arguments for a correct definition of death will implicitly assume that organ transplantation ought to be facilitated, thus invoking the second discussion without engaging in it directly. Likewise, Lizza seems to view his paper as a contribution to the second, ethical discussion, when his rhetoric is more in line with the first, definitional discussion. Any attempt to define and determine criteria for human death irrespective of the interpretation, use, and con-

¹¹ Truog (2007); Truog, Miller (2014).

sequences of this definition is not engaging with the ethical features of human life and death. This is not to say that attempts to prove oneself right about the definition of death are fruitless; it is just that this is a metaphysical and not an ethical project.

In closing, I propose that discussions about the definition of death ought to focus less on which definition of death is the right one, and more on *why* we declare death – which purposes do we hope to achieve with this definition? Is the goal to be right, or to produce good outcomes? Given some of the rhetoric in the debate over the definition of death, rhetoric which is striking in its insensitivity to the position of families who are faced with difficult decisions in complex situations, perhaps ethicists have been more concerned with being right than with doing good. Yet my suspicion is that, while the metaphysical discussion on death may be preoccupied by the definition of this term, the ethical discussion really concerns what the definition of death *does*. So, let us instead ask what different definitions of death will do, and spend less time discussing who is right.

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