

Death, ethical judgments and dignity

Katarína Komenská¹

Abstract

In Peter Singer's article "The Challenge of Brain Death for the Sanctity of Life Ethic", he articulates that ethics has always played an important role in defining death. He claims that the demand for redefining death spreads rather from new ethical challenges than from a new, scientifically improved understanding of the nature of death. As thorough as his plea for dismissal of the brain-death definition is, he does not avoid the depiction of the complementary relationship between science and ethics. Quite the opposite, he tends to formulate a stronger, philosophically more consistent argument to help science and medical practitioners to define life, death, and the quality of life. In my commentary, I would like to focus on two issues presented in Singer's study. Firstly, I will critically analyze the relationship between science and ethics. Secondly, I will follow on from Singer's arguments differentiating between end of life as an organism and end of life as a person. The latter case is necessarily linked with man's participation in her/his life, setting life goals, and fulfilling her/his idea of good life. Through the consequential definition of the dignity in ethics of social consequences, I will try to support Singer's idea.

Keywords: death, life, ethical judgments, medical law, dignity

Introduction

Peter Singer's interest in reevaluating the traditional definition of death has been significant for a long time. Examples of these attempts are the book *Rethinking life and death* (1995) or a number of (scientific as well as commentary) articles.² Since then, his thoughts and arguments have evoked vivid and controversial discussions on moral and legal aspects of life, death, dying, and quality of life. Nevertheless, in the light of new, and widely-covered stories in the media about patients' rights, medical life/death decisions, and hard cases of irreversibly sick patients, Singer returns to the debate on delimitation of death. He offers new arguments not only to sustain his own position, but also to critically re-evaluate the position of the US President's Council on Bioethics in its efforts to found a scientifically, legally, and morally plausible criterion of death. For this purpose, his article *The challenge of brain death for the sanctity of life ethic* reflects on improvements in medical and clinical praxis, methodology of determination of death, as well as individual arguments of the Council on the definition of death in legal and moral discourse. In his conclusions, he proposes rejecting the prevailing view of brain death (Singer, 2018). He also explains, how this rejection could move forward the whole debate on death, despite the differences in ethical positions of understanding human life and death.

There are two main propositions formulated by Peter Singer which have raised my interest and on the basis of which I develop my thoughts in this study. The first one is Singer's demand for ethics to be more involved and considered in the debate on death. Ethical judgements, according to Singer, are still somehow in the shadow of medical and scientific arguments. He claims that the determination of death criterion, whether in the legal or moral sense, is also of public and societal interest (emotional suffering, costs to society and the family, organ donation, etc.), and therefore should also contain ethical judgments.

Singer's second proposition is elementary to his ethical conclusions. According to him, it is necessary to differentiate between the concept of the death of an organism and the death of a person. This I found compatible with my understanding of dignity (as a dynamic model presented in ethics of social consequences) as well as relevant for contemporary discourse on

¹ University of Prešov (Slovakia); email: katarina.komenska@unipo.sk

² Articles and commentaries published for example in *The Guardian*, *The Independent* or the website *Project Syndicate* (Singer, 2017; 2014; 2012; Hari & Singer, 2004).

dying as an important part and aspect of quality of life. In the final part of this paper, I will try to compare his conclusions with my methodological approach to understanding dignity of life (and possibly death).

Need for ethical judgments in the legal and medical discourse?

Since the 60's, the brain-death (or irreversible coma) criterion of death had been discussed and proposed in the light of new, modern medical and clinical technologies (transplantation, life-support and resuscitation methods) and the societal and ethical challenges arising from them. The need for such a definition was explained as an increasing burden on patients who, with the help of new methods of resuscitation and life-support, are able to breathe and sustain some bodily functions, despite an irreversibly damaged brain, as a burden on their families, and the whole society. Increasing the amount, time, and expense of health-related-services (provisions of which are scarce and limited in each society), the need for implementing a new type of care (e.g. palliative care), and even the demand for organ-transplants (US President's Commission for the Study of Ethical Problems in Medicine, 1981), has created the pressure to delimitate the elementary function of living organism whose termination will characterize the end of life. Answers for these ethical questions were formulated through the language and methodology of science and medicine and, since then, death had been directly related to the understanding of life in its biological sense. In other words, it started to be formulated through naturalistic perspectives of life, health, and death (as brain-death).

In 2008, the President's Council in Bioethics opened the debate on the definition of death again. The goal of its report *Controversies in the determination of death: A white paper* (President's Council in Bioethics, 2008) laid in redefining death as total brain failure, a concept widely accepted in clinical, legal, and even public discourse as a criterion of death for over three decades. Its main arguments spread from the research of Alan Shewmon, Germain Grisez, and Joseph Boyle, who presented a number of cases showing the definition of death to be vague; cases, in which patients, at first proclaimed dead, showed a state of "reversible" brain damage. This has created a platform for debating methods and modern techniques for determination the state of (irreversible) brain-death, as well as the whole concept of brain death.

According to Singer, the weakest point of this report is not the critique of the brain death concept as such,³ but rather the dominant prevalence of the naturalistic point of view in the discourse. This approach remains focused on finding scientifically measurable, exact and verifiable facts on when the moment of death occurs. Therefore, most of the discourse on the elementary criterion of death focuses on depicting the death of an organism with limited (or no) regards to the wider understanding of said patient's life, its purpose, or quality. Despite the fact that the initial purpose and the need for this definition has spread from moral issues linked to end-of-life decisions, the humane and ethical aspects of life/death are obeyed in the discourse.

Singer clearly states the question on the role of ethics and ethical judgments in medicine and medical law discourse. Ethics has proven itself in past decades to be very useful for science by stating some (common sense) rules and limits for research, its mechanisms, and methods, but does it mean that *ethics* should be the judge of what is the best decision in medical and clinical praxis? To intervene with the biological functioning of one's body? To fill in the gap in knowledge of science? And, in some sense, to define what is legally appropriate in life/death decisions?

³ Mainly because it does not bring any new conclusions and, in the end, the position of the President's Council in Bioethics remained the same as the traditional definition of death. At some point Singer even claims that, despite criticism of the brain-death definition and its limits, experts in medical and natural sciences have not uncovered any new facts about life and death and therefore cannot contribute to the definition of death in its naturalistic sense (death of the living organism) (Singer, 2018).

Singer's response can be reviewed by presenting his analysis of the relationship between the world of facts and values, judgements of science and ethics. Peter Singer argues that the distance between facts and values cannot be overcome by exploring solely natural patterns of the world (Singer, 1981, pp. 73–74). He argues that both these worlds have, in their essence, a different nature. Values help to determine reasons for the action, but facts themselves are not able to give us reasons, purpose for the action. Simply, facts cannot determine what is valuable and our ethical premises cannot emerge purely from the biological essence of life (or, in this case, death). The main reason is that we, as persons, rationally choose ourselves and our own understanding of what is valuable (Singer, 1981, p. 77). Singer therefore asks himself whether it is actually possible to bring the natural world closer to the world of values through extending our (scientific) knowledge.

On one hand, it can be agreed on that ethics and ethical judgements cannot be constructed exclusively on the basis of scientific knowledge and examination of our biological nature. On the other hand, ethics do not arise from outside the natural world. Through natural sciences, we can at least clarify our relationships with others and with the world itself. Therefore, although it can be argued that moral values are formulated and declared by moral agents,⁴ their promotion is fulfilled in moral agents' ability to recognize and reflect the world in which they live (including the natural world). Reflecting on facts and knowledge discovered by science can help moral agents to determine what is right and what moral obligations and responsibilities they have. Even Peter Singer later concludes that persons (as subjects of morality) are, with their intellectual and cognitive abilities, able to proximate the world of facts and world of values and consciously reduce the distance between them and their perspectives. Nevertheless, according to him these worlds never intercept; they still have to be perceived separately (Singer, 1981, p. 150).

Different conclusions are formulated in ethics of social consequences. Unlike Singer, ethics of social consequences directly links the moral value with its manifestation in the world. While referring to L. Grünberg, it can be said that this ethical theory assumes that values are not (and cannot be) independent from the factual, real world. Moral agents formulate ethical judgements in complex interactions with the real world, either biological, or social (Grünberg, 2000, p. 13). Ethical judgements are elementary for moral agents to promote life and its survival, but they cannot be formulated outside of judgments based on facts and knowledge. A full and complex understanding of the world of values (morality) and facts can spread only from the well understood reality of the world and its nature. Therefore, values of life and death cannot be separated from its biological essence, but neither can they be perceived in such a restricted way.⁵ The life of a human being is a complex phenomenon, thus making decisions about its ending should consider all of its ethically relevant aspects.

Either perspective we choose to follow (Singer's or ethics of social consequences), the necessary conclusion is that ethical judgements and arguments are essential for medical and legal discourse on life/death decisions. Not only do ethics itself initiates the discourse, it also helps to reflect on the difference between the life of an organism and the life of a complex human being with its goals, quality, and purpose.

⁴ In Singer's terminology, persons.

⁵ It should be emphasized that ethics of social consequences understands there are qualitatively different manifestations of life and it has several significant aspects, e.g. social, emotional, psychological. This affects the attribution of the moral value of life to these living entities. I will address this issue further in the following part of this study while defining the value of dignity in ethics of social consequences. At this point, I merely tried to explain that the very first step in determining the moral value of life is its existence.

Death of a person and death with dignity

As stated above, Peter Singer proposes for medical ethics and law to focus on the definition of the death of a person (in comparison to the biologically determined criterion of brain-death). This approach, on the one hand, does not reject the biological understanding of death as a natural consequence of life. On the other hand, it accepts that declaring someone to be alive or dead in medical and clinical praxis should not ignore a particular human being and his or her moral value. Therefore, in the words of William R. Clark, “clearly death must also have a biological meaning independent of the human condition. In the death of our cells, we are no different from all of the other organisms on earth condemned to die as a condition of birth. [...] we normally think of death in the terms of death of the person – the integrated whole composed of personality, will, memory, passion, and the hundreds of other things that make each of us unique [...] and the loss of “personhood” [...] is increasingly viewed as one of the most important aspects of human death” (Clark, 1996, pp. x–xi).

Singer argues in a similar way. Not only has personhood a specific moral significance in moral decision making (Singer, 2001, pp. 87–88),⁶ but it also allows us to focus on what is valuable and what is of some quality in a person’s life. It helps us to realize that the biological life of a patient, who has lost all abilities to make any conscious, rational decisions about their own goals, plans and purpose of life, is not something that should be unlimitedly protected. It is a life of an organism that, at this point, is already dead as a person and, therefore, expendable and replaceable. Personhood, as a patient’s ability to make conscious and free decisions, will not return (despite any limited activity and reaction of the brain that can be detected by physicians and other medical professionals). Singer would then say that this patient has a moral concern not to suffer (as a sentient being), but this concern has different moral significance than moral concerns of other patients-persons (for example patients who need organ transplantation).

In ethics of social consequences, a similar tendency for differentiation of moral concerns can be detected. It spreads from understanding the concept of life and its dignity. A dynamic model of dignity allows us to consider different aspects of life in our decision making, without ignoring the moral obligations towards non-human forms of life. In regards to the discourse on defining death in medical ethics and law, a further understanding of dignity might help to differentiate between the moral rights for life (and death) of particular patients.

The debate on dignity has been established in this ethical theory to determine the possible criteria for differentiation of the moral value of life, either with the help of the criterion of the biological form of an individual living being and/or by other aspects of its life, e.g. consequential aspect (Gluchman, 2017, pp. 131–144; Švaňa, 2016; Klembarová, 2015; Lešková Blahová, 2010). The value of dignity is then delimited via considering three aspects of dignity. The first aspect is tied to the respect and the reverence for all living things (their existence in a particular life-form), the second aspect of dignity can be ascribed only to those objects which fulfil the criteria of moral agency, and the third aspect is directly linked to actions and consequences of these actions conducted by moral agents (Gluchman, 2008, p. 111).⁷ Accordingly, we can say that the value of dignity is a dynamic concept, which quantitatively and qualitatively differentiate. Similarly, other values within the primary axiological basis of this ethical theory (values of moral right and humanity) are understood as

⁶ Of course, Singer considers all sentient beings to be members of the moral community with their own moral standing. Nevertheless, there is a difference in moral significance between persons and sentient non-persons (Singer, 2001, p. 87).

⁷ Ascribing this third aspect of dignity is based on the consequences of concrete actions of moral agents, in other words, the dignity of moral agents can increase/decrease according to how s/he can contribute to the “good” of the moral community and how s/he can guarantee the prevalence of positive social consequences over negative ones.

dynamic concepts connected with one's life rather than in its absolute and rigid axiological sense.

Quantitative and qualitative differences between individual members of the moral community must be reflected and considered in the process of ethical decision making and actions towards them. To create a practical framework for setting priorities between individual moral concerns within the moral community, authors of this ethical theory have started to discuss the idea of moral significance.^{8,9} Adela Lešková Blahová claims that it is an attribute of the concept of the moral value of life. It expresses qualitative and complex characteristics, which individual living things have (or don't have) with regards to their morally relevant interests (e.g. sensitivity, reproduction, movement, perception, instinctive behavior, the ability to learn, to associate, practical intelligence, self-reflection, autonomy, etc.) (Lešková Blahová, 2010, p. 90). Following thoughts on differentiation among members of the moral community and the dynamic model of dignity, ethics of social consequences accepts the variability of moral significance. It affects not only the delimitation of value of dignity but the understanding of values of humanity and moral right for life, its protection, and promotion, too.¹⁰ Subsequently, discussing the definition of death in medical ethics and law must also emphasize the discourse on the moral concerns of human patients (who either are or are not moral agents), their dignity, and their morally relevant interests.¹¹

Does it mean that death should come hand in hand with dignity? Can death become a morally relevant interest of man? Is there a way to sufficiently connect the value of dignity (respect and reverence for life) to death as a biological part of life? According to ethics of social consequences, this relation is considerable. In comparison to Peter Singer's conclusions, ethics of social consequences understands the difference between the death of a person and death as a purely biological attribute, too, but does not consider these two aspects of death (biological and ethical) as two separate and non-related arguments. Nevertheless, this theory offers an even more extended understanding of death through its definition of dignity. Consequently, death could be perceived as having various qualitative and quantitative differences.¹²

Let us present a possible understanding of death with dignity in ethics of social consequences. Firstly, patients, who fulfil the criteria of moral agency (Kalajtzis, 2012), might relate death to the question of quality of life. In these cases, moral agents are able to understand their life with their purpose and they are able to set their own vital goals.¹³ In a state of health, they can freely, responsibly and consciously promote their life and its moral value in their actions and in reaching their vital goals (consequential aspect of dignity). But (how) should we protect the moral right for life of patients, if they lose the ability to reach

⁸ Topic introduced to ethics of social consequences by Adela Lešková Blahová (2010). She was influenced by authors such as Kenneth E. Goodpaster (1978) and Robin Attfield (1999).

⁹ Another issue related to the problem of setting priorities within the moral community is the delimitation of the extended concept of moral community in which morally relevant relationships play an important role in setting the priorities between the moral concerns of its members in practical and everyday moral experiences (Komenská, 2018; 2014).

¹⁰ Which are, together with the value of dignity, recognized as primary values in ethics of social consequences and which all are directly linked to a complex understanding of moral value of life.

¹¹ Here a confrontation with Nicolai Hartmann's view might be productive, who claimed that death is a disvalue (in comparison to the value of life that is given to us to protect and care for) and could hardly have a positive (or at least right) connotation (Cicovacki, 2017, pp. 155–168).

¹² Gradual evaluation of the meaning of death is not an idea exclusively reflected on only in secular thinking. Even in theological and religious discourse, the differentiation of death as a meaningful or worthless event in life can be perceived (Davies, 2007, pp. 153–175).

¹³ Term used by Lennart Nordenfelt in his holistic theory of health (2007). In ethics of social consequences, a similar aspect of active participation of moral agents on their lives (and their moral value) can be perceived. This aspect of moral agency has been recently compared to Spinozian ethics (Petrůvová Joppová, 2018, pp. 46–48).

their vital goals or set any new, adequate ones? The same possibility for an ethical choice should be guaranteed to all moral agents in their conflicts between life, health, and death. In such cases, the wishes and goals of moral agents should be of highest importance in making any decision regarding their death.¹⁴ Dying with dignity might be for them an eligible answer to ethical dilemmas, mostly if they cannot fulfil their goals and if they consider their life to be irreversibly bad and full of suffering.

In the second type of case, the situation gets more complicated. What happens if the patient's condition deprives him/her of the status of personhood/the status of moral agency? The moral value of life is not lost to the patient, but the qualitative and quantitative differences are obvious. At this point, ethics of social consequences would partially agree with the conclusions of Peter Singer. There is a significant contrast between the morally relevant interest of this patient (not moral agent) and the interests of members of the moral community, who still preserve their status of moral agency. The difference between ethics of social consequences and Peter Singer lays in perspectives on how these theories support their arguments in considering such a patient as dead (as a person/moral agent). Oppositely to Singer, who will argue through the utilitarian perspective of the good of others and greater utility for the rest of the moral community (organs for transplantations, lesser costs of health care, ending emotional and social suffering of family members), ethics of social consequences would determine the patient to be dead as a moral agent because of the protection of patient's life, quality of life and dying, and, last but not least, to protect his/her dignity. This approach puts focus on what is good for the patient and it promotes moral right, humanity, and dignity in the final moments of this patient's life.

Conclusion

Life and death are complex phenomena which, in everyday decision making, manifests in different perspectives. In ethics of social consequences, the focus in understanding these phenomena lies in delimitation of their moral value and their reflections via relevant knowledge about their appearance in the natural world. This might also be a reason why the moral value of life is not understood in this ethical theory as an invariant and absolute value, but rather as something to be reflected on and evaluated in the given context and situation. Consequently, death (as a natural component of life) is a part of the ethical conceptualization of the moral value of life. This might be an important and effective approach to solve various contemporary bioethical issues. It can help us to define the different needs and morally relevant interests of members of the moral community. Through the analysis of dignity and its dimensions in ethics of social consequences (biological, intellectual-cognitive, consequential), it was concluded that death might be understood as a morally relevant interest of any members of the moral community. This applies if (and only if) it promotes the dignity of one's life (and its end).

Nevertheless, either through the argument of the sanctity of human life, the argument of the quality of life, or the argument of utilitarianism, the involvement of ethicists and philosophers in reentering the debate on death is required and welcomed to overcome the limits of medical and legal discourse on redefining death.

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¹⁴ Following this argument, the moral agent has the right to choose death above life (either in the form of euthanasia, (assisted) suicide) or in rejecting any treatment), if s/he believes his/her life is deprived of dignity and quality.

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