Persons and evidence for death: A reply to Bulzacchelli

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This article is a reply to Bulzacchelli's argument via two routes. First, I argue that Bulzacchelli has not clarified what he means by the two key terms in his argument: person and reduction. Second, and more importantly, I argue that Bulzacchelli's argument involves a contradiction. He seems to think that determining death on the basis of physiological evidence (i.e. the cessation of organismic functioning) is reductionistic. But he also endorses arguments against whole brain death (WBD) and those arguments maintain that because organ systems function (with external support) in the setting of WBD, the person still exists. But to say that the person still exists simply in virtue of organ systems still functioning is the very reduction Bulzacchelli intimates is a problem.

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Objections to the adequacy of whole brain death (WBD) criterion for determining death have typically focused on what is now called Shewmon's Challenge. Shewmon purported to show that patients who satisfy WBD criterion still manifest integrated bodily functioning—though all subjects were dependent upon respirator support (Shewmon 1998). The article from Bulzacchelli continues Shewmon's challenge though with important permutations. Bulzacchelli's argument seems to be that the human person is not reducible to any biological marker, and since any determination of death must involve such a reduction, there is a problem with determining death. Bulzacchelli remarks,

Rather, the problem arises when the physician attempts to pinpoint the moment at which the *medical* patient has ceased to be a *moral* patient. Because, today, we have essentially equated the

medical *diagnosis* of death with the ontological *fact* of death—or, as we have said, reduced, in thinking and practice, the ontological fact of death to a purely physiological matter—we have tacitly accepted the assumption that *moral* patency is coterminous with *medical* patency. (Bulzacchelli, 2012, 4)

Whereas Shewmon's Challenge aims to show that integrated functioning (IF) persists in the setting of WBD, Bulzacchelli's key claim seems to be that even in the setting of physiological *disintegration*, the person may still exist. To think otherwise appears reductionistic; it would involve a reduction of the person "to a naturalistic, biologicistic function" (Bulzacchelli, 2012, 3). If this interpretation is correct, Bulzacchelli's challenge can be thought of as a mirror of Shewmon's challenge.

It is unclear as to what exactly follows from Bulzacchelli's challenge practically

speaking, but he intimates that Catholic moralists should call for a moratorium on organ transplantation. He states,

[W]e contend that the evidence is clear—Total Brain Death does not necessarily correlate with the death of the human being, as has been shown, and, thus it cannot be considered ethical to remove organs for transplant on the basis of that criterion. We should bear in mind that, given the difficulties introduced by the clinically observed cases of non-immediate death (e.g. auto-resuscitation after prolonged periods of asphyxia), we should be prepared for the possibility that it may not be possible ever to identify a criterion for determining the death of the human being in time to harvest viable organs for transplant. (Bulzacchelli, 2012, 25)

In this short reply, I argue for two conclusions: I argue that Bulzacchelli has not clarified what he means by the two key terms in his argument: person and reduction. Though not devastating to his argument, lack of clarification on these key concepts renders assessment of Bulzacchelli's argument difficult. My second argument aims to be more forceful. On plausible interpretations of these terms, Bulzacchelli's argument is inconsistent. He charges those who think that a determination of death can be made on the basis of biological evidence with a reductionism. But he also endorses arguments against WBD and those arguments maintain that because organ systems may still function (with external support) in the setting of WBD the person still exists. But to say that persons still exists simply in virtue of persistent organ system functioning is the very reduction Bulzacchelli says is a problem. He cannot *both* endorse arguments against WBD, *and* argue that WBD does not provide good physiological evidence for death.

OBSCURITIES: REDUCTIONISM AND PERSONS

Bulzacchelli mentions in several places that the human person is irreducible. On a proper understanding of reduction, I agree. But that understanding is not clarified; one can ask, "Irreducible to what?" It seems that as per Bulzacchelli's understanding, the person is irreducible to the body, the "naturalistic, biologicistic function." Again, I would agree, but further distinctions are necessary here.

Whenever we discuss reductionism, we are asking about whether one thing can be "reduced" to another. Searle (1992) has noted that what we typically mean by reduction is that one thing is "nothing but" another. These issues are front and center in the philosophy of mind. In this setting, Searle has helpfully delineated various forms of reduction including ontological, theoretical, logical/definitional, and causal reductions. I wish not to explain all of these as that task is irrelevant to my argument, but a brief word or two about the distinctions noted here is sufficient to motivate my complaint against Bulzacchelli. Ontological reduction in philosophy of mind will say that certain mental states are nothing but certain long-standing neural events. A belief, for example, is "nothing but" a long-standing neural event which is to say that, for example, my belief that WBD is sufficient evidence for death *is* identical to a cluster of neurons. Now Searle is a materialist of sorts, but he does not want to be *that* kind of materialist, one who ontologically reduces mental states to neural states. He does think, correctly, that mental states are not the *same things* as neural states. One can consistently reject ontological reduction and still hold that these mental states are nevertheless *caused by* neural events just as hunger is a mental state but is caused by low-blood sugar triggering a

physiological process leading to the mental state of "I am hungry." This would be a causal reduction. My purpose here is obviously not to discuss the merits of Searle's philosophy of mind, it is only to limn the different kinds of reduction one has on offer when we discuss the nature of mind and the human person. In this regard, Bulzacchelli has not given us any indication of what he means by reduction.

Why is this lacuna such a bad thing? The reason is that not all reductions are so bad. St Thomas Aquinas, for example, holds to a hylomorphic understanding of the human person as being a soul-body composite. One can understand this to be a reduction of sorts: human persons are "nothing-but," to use Searle's phrase, soul-body composites, or "nothing but" substances with a rational nature. We might classify this reduction as a definitional/logical reduction in the tradition of Boethius. And why would such a reduction be bad? Bulzacchelli gives us nothing to go on in this regard.

The treatment of persons, for Bulzacchelli, fares no better. He intimates that persons should not be reduced to their naturalistic-biologistic functions (p. 3 quoted above and also p. 17 of Bulzacchelli). By "naturalistic-biologistic functions" I will interpret him to mean the functioning human body. I am expecting him to hold, then, to some sort of dualism; after all, the traditional understanding of the human person in the Catholic intellectual tradition is a hylomorphic dualism: we are not monists and we are not Cartesian dualists.¹ Grave problems occur, however, when Bulzacchelli criticizes Father Moraczewski for being "clearly reductionistic" (p. 11) and in the next paragraph saddles Father Moraczewski with a "hyper-Cartesian or Platonic" dualism. Bulzacchelli's interpretation of Moraczewski is not in my opinion accurate, but I also think that Moraczewski's understanding of

the person is not entirely in line with Aquinas's understanding. But I will not pursue these exegetical points. I observe only that in this section of the paper, Bulzacchelli clearly eschews a Cartesian substance dualist understanding of the person, but what he replaces that understanding with is unclear.

With these brief remarks in mind, Bulzacchelli leaves us with an incomplete specification of reduction, and he clearly rejects a Cartesian substance dualist understanding of the person. What his understanding of the person is, we cannot tell. And clearly, when the question addressed is whether a person exists in the setting of WBD, we need to know what it is to be a person.

THE CONTRADICTION

Bulzacchelli seems to think that the evidence is obvious and clear that whole brain and cardiac death are not individually sufficient evidence for death of the person. Although I focus on WBD here, I have to correct briefly a misunderstanding on cardiac death. Bulzacchelli thinks that the evidence of the "Lazarus phenomenon" demonstrates that cardiac death should not be used to determine death of the person. This is incorrect. Donation after cardiac death (DCD) is of two varieties: controlled and uncontrolled. Controlled donors are always no-codes, meaning that they do not receive cardio-pulmonary resuscitation (CPR) if their hearts were to stop. The Lazarus phenomenon has never been detected in patients not receiving CPR. In fact, the Institute of Medicine notes that the longest recorded length during which someone auto-resuscitates (*sans* CPR) is sixty-five seconds (Institute of Medicine 2000). For uncontrolled donors who do receive CPR, they usually receive temporary organ preservation measures, while the

medical staff tries to contact the family or surrogates for consent. What this means is that the time between asystole and when organ extraction procedures begin is usually longer than the twenty-two minutes cited by Bulzacchelli. Since the Lazarus phenomenon only shows up for those receiving CPR, it provides no challenge to the epistemic certainty we have that controlled DCD donors and WBD donors are dead. (I would argue further, but not here, that it does not even challenge our epistemic position vis-à-vis uncontrolled donors).

I now turn to Bulzacchelli's Challenge understood as indexed to WBD. A few introductory comments are in order to give the reader a more comprehensive understanding of the issue. First, Bulzacchelli endorses Shewmon-type challenges to WBD. Bulzacchelli, however, fails to cite the numerous replies to Shewmon's Challenge and this can give the reader the impression that the literature has resolved the issue in Shewmon's favor. But there are notable replies to Shewmon's Challenge and I briefly recapitulate them here (such replies include Bernat 1998; Dubois 2002, 2007; Deecke 2007; Khushf 2010; Lee and Grisez 2010; Eberl 2011). Shewmon's (1998) Challenge wishes to say that integrated organismic functioning persists even in the setting of WBD. And if the organism still functions *as* an organism, the human person is still present. There are basically three routes in reply to this argument:

- (a) One could argue that there is a metaphysical difference between IF mediated by the patient's own functional potencies versus IF mediated by external means of support. The point would be to show that there are two species of IF, and only one is necessary to be a human individual and that *it* is lost in WBD. These two species

are on the one hand, integrative functioning that is *due to* external support (respirator, pressor support etc.) and on the other integrative functioning that is actualized by the patient herself. Patients who are brain dead are *wholly* dependent upon external support with no possibility of *reversal*. As Eberl (2011) explains, when the vital functions of the organism are "taken over" by external means, and such support is required interminably, there is no sign of a rational soul remaining. If a rational soul were present, we would expect it to exercise control over the organism's functioning—we would see signs of *self-integration*. Patients in the intensive care unit who are dependent upon life support are not a counter-example to this line of argument, since their dependence is not known to be irreversible. There likely remains an active potentiality to function as an independent/individual human organism.² Furthermore, other clear signs of the rational soul's presence may remain—e.g., consciousness. An assumption with this route is that determining death looks at the entire evidential picture the patient presents, not at whether any one organ system persists.

- (b) A second route is to argue that human persons are substances with a rational nature. When answering the question "what is it?" a correct answer focuses on the specifying potencies the organism has lost. (Specifying potencies are those potencies that make us distinct kinds of things.) For human beings, the specifying potency is a "radical capacity" for rational activity (as to distinguish us from other animals, even sentient ones), and these are lost upon WBD. This route does not entail a commitment to a higher-brain criterion because

there is evidence that patients suffering severe cerebral damage can still exercise limited cognitive functioning (see Shewmon et al. 1999; Claus and Nel 2006; Sara et al. 2007; Canavero et al. 2009). An implication of this route is that a WBD patient may still be an *organism*, just not a *human* organism—its rational potencies are irreversibly and completely absent, sentience, even, is not present.

- (c) A third route is to argue that the cases Shewmon brings forth are too rare to function as the strong evidential challenge it is meant to be. What is usually seen in patients transitioning to WBD is a cascade of organ failure leading to clear disintegration of the human organism.

These are the main routes by which to respond to Shewmon's challenge. I have only limned them here. The interested reader should consult the original material for a more complete defense.

I may now turn to what is the most pressing problem for Bulzacchelli's argument. As quoted in the beginning of this paper, Bulzacchelli maintains that the problem with diagnosing death is that the ontological fact of death is reduced to a physiological matter. Owing to the ambiguity of the term reduction and person, there is a choice of how to interpret Bulzacchelli's argument. On the one hand, we can see Bulzacchelli's challenge as identical to Shewmon's, which consists of the following conjunction: (i) IF persists in the setting of WBD; (ii) the presence of IF entails the presence of the person—or at least, it supplies evidence enough to withhold extracting the patient's vital organs. On the other hand we can interpret Bulzacchelli's Challenge as offering a distinct one, namely; (iii) in the setting of WBD, IF may *or may not* persist, and (iv) even if IF does not persist, the person may still be

present because the person is not identical to physiological functioning—that would be reductionistic.

Consider the first disjunct according to which Bulzacchelli's challenge is aligned with Shewmon's. This is not an outrageous interpretation as he endorses components of Shewmon's challenge. But how is the presence of integrated organismic functioning going to count as evidence for the presence of the person unless the person is understood to include an organismic component? More specifically the notion of a person needed to run Shewmon's Challenge needs to include an essential component that specific functional organ systems are sufficient to indicate the presence of the person.³ Consequently, endorsing Shewmon's Challenge to WBD reduces the person to the functioning of certain organ systems. The person is "nothing but," on this view, the persistent-functioning-of-certain-organ-systems-supported-by-external-means. This appears to be the very reductionism problem Bulzacchelli says; and it is one he commits when he endorses Shewmon's challenge.

Interpreted as a distinct challenge, Bulzacchelli appears committed to a Cartesian substance dualism. If physiological disintegration does not tell us whether the person is present or not; the person, on this view, must be something wholly distinct from organismic functioning. Why must the person be *wholly distinct* on this view? If organismic disintegration is *evidentially inert* as to whether the person still exists, the person cannot be understood as embodied at all. Again, the problem here occurs when Bulzacchelli rejects Cartesian dualism and at the same time wishes to hold that the functioning biological organism (the "medical" patient as he says) is not coterminous with the person (the "moral" patient). So, either organismic disintegration provides evidence that the person is dead or it does

not. If it does, then organismic functioning is a component of personhood. If it does not, then organismic functioning is not a component of personhood, in which case persons would be non-organic, i.e. immaterial substances. So, on either interpretation, Bulzacchelli is committed to contradictions with other things he says in his article.

Bulzacchelli thinks, or should think, that there is a difference between human corpses and living persons. And he should think that such differences are *observable* differences. So what is the problem with determining death and letting medical professionals make that determination? When the human body loses its ability to self-integrate, we have strong evidence that the person is no longer there. This is as straightforward as one can get in bioethics and is probably why the WBD standard has never been challenged until very recently. This is not to say that making judgments that a person is dead involves “checking off” what person-relevant properties the patient lacks. Such judgments require the virtue of prudence.⁴ But I believe that a prudential assessment of the entire evidence WBD patients give us is sufficient to support a judgment that the person no longer exists.⁵

ALS patients, it is not the case for whole brain dead patients.

³The presence of somatic integration is actually overstated by Shewmon supporters. What persist are certain organ systems, and they only do so because the organism is wholly and irreversibly dependent upon external support. The ontological importance of mentioning the need for external support is explained briefly above (i.e., b). Such patients are functionally equivalent to decapitated patients whose bodies are kept functional by outside means. PVS patients are radically different in that they only need to be fed, but self-integration is still present. There are, of course, complexities here. For brevity, I focus my attention strictly on what Bulzacchelli claims. For more on the decapitation example, see Dubois (2002: 427). A reviewer pointed out that though the decapitation example is informative it may not be definitive. Our intuitions say that the decapitated patient is clearly dead. The reviewer asks whether our intuitions here focus on the metaphysically irrelevant feature that such a patient lacks a head or face? I am inclined to say two things that cannot be defended here. First, lacking a head or face *is* metaphysically relevant – how can a person be headless or faceless? Second, I believe our intuitions on death do track the *functional* similarities between the decapitated patient and the WBD patient.

⁴I thank an anonymous reviewer for emphasizing this point.

⁵I would like to thank two anonymous reviewers for very helpful comments on this paper.

ENDNOTES

¹For an accurate and informative discussion of Thomistic dualism, and how it differs from Cartesian dualism, see Stump (1995).

²ALS patients are not a counter-example either, even though it may be known that their dependence on ventilator support is irreversible. To think so would focus on the functional dependence of one organ system (respiratory system) and not on the functional integrity of the organism as a whole and not on other signs of the soul's presence (i.e., consciousness). In determining death, we are determining whether a *unified rational substance* still exists, and this is clearly the case for

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