Personal identity and bioethical issues in the vicinity: the pluralistic approach to diachronic persistence

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Abstract. The article discusses the relationship between the concept and philosophical theories of personal identity on one hand and bioethical problems on the other. The paper argues that the discussion of the ethical issues of the beginning and the end of human life in terms of personal identity gravely suffers from the ambiguity of the terms. The case is made for a more appropriate framework, where the concept of «personal identity» is superseded with three concepts – of a human organism, a mental subject, and a person understood as a human being in the world in the process of developing his or her personality. The latter two designate the most plausible candidates for bearing the ethical significance typically associated with the beginning and the end of the existence of a human person – that is, his or her beginning of life and death. By contrast with the referent of the ambiguous «person», both a mental subject and a human being in the world in the process of developing his or her personality have definite objective temporal spans of existence (delimited by definite objective moments of beginning and end) that can be associated with appropriate ethical significance. However, there is a controversial issue as to which one confers the full (exceptional) value and dignity on a human life – the religious and the naturalistic perspectives sugest different answers to this question. A practical resolution of this controversy in a pluralistic society (with many adherents of both religious and naturalistic outlooks) can combine a more safe consciousness-based approach to legislative regulation of the issues related to the beginning of human life and to human death with a maximal space for personal choice.

Keywords: personal identity, diachronic persistence, personality, mental subject, organism, death.

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I. Introduction

The concept of personal identity figures prominently in bioethical debates concerned with the beginning and the end of life, organ transplantation, and respect for autonomy of persons.[1] This seems perfectly natural because, as Mary Warren remarks, «[w]hatever else we are, we are persons; and it seems likely that this fact will prove fundamental to the justification of the strong moral status that most of us want for ourselves and those we care about» [41, p. 90]. In tune with this, Michael Quante writes of *exceptional* (rather than merely strong) moral status that we usually attribute to human beings unlike all other living beings: «in such contexts as those in which the exceptional moral status of human beings in comparison to other *Lebensformen* is to be specified or justified, this usually occurs with recourse to the human personality» [28, p. 1]. In particular, «as far as questions of human dignity, the protection (sanctity) of life or the prohibition of instrumentalization are concerned, recourse to the concept of person is regularly taken in order to justify the exceptional ethical status of human life» [28, p. 2]. Because of this, M. Quante claims that personal identity is «a central principle of biomedical ethics, which factually guides our ethical intuitions and should also be used explicitly as a justificatory resource in adequate biomedical ethics» [28, p. 9].

However, the relationship between the concept of personal identity and bioethical issues is far from simple and straightforward, and the concept itself is quite ambiguous. This makes it questionable whether the concept turns out eventually illuminating rather than confusing. Would we not get more clarity and have more chances of achieving consensus on the bioethical issues associated with the concept of personal identity by discussing these issues in other, more precise and unequivocal, terms? Paradoxically, even Michael Quante, who declares personal identity «a central principle of biomedical ethics», in fact proposes to «forego the concept of person» [28, p. 3] (whose identity seems to be the literal meaning of «personal identity») as «not suitable for the answering of

[1] See, for example, two books that directly reflect this in their titles: Michael Quante's *Personal Identity as a Principle of Biomedical Ethics* [28] and David DeGrazia's *Human Identity and Bioethics* [5].

questions regarding synchronous unity and diachronic persistence» [28, p. vii].[2] He argues – albeit controversially – that bioethical issues having to do with the beginning of life and the moment of death (apparently associated with «personal identity» in the aspect of diachronic persistence) should be bound up with the identity of *human organism* (and not at all human person *qua* person!), while other bioethical issues (associated with «personal identity» in another aspect) – those having to do with the principle of respect for autonomy – are to be handled by means of the concept of «the narratively or biographically composed personality» [28, p. vi]. If so, «human organism» on the one hand and «personality» on the other take over, without any remainder, all there was apparently bioethically significant to «personal identity». The identity of a person *qua* person has no bioethical job to do!

This article aims to clarify the relationship between the concept and philosophical theories of personal identity, on the one hand, and bioethical problems on the other, and to develop and argue for a more appropriate framework, in which the concept of «personal identity» is superseded with three concepts: of a human organism, a mental subject, and a person understood (as a matter of stipulation rather than ascertaining the «correct» meaning of the term) as a human being in the process of developing his or her personality.

II. The meaning and philosophical theories of «personal identity»

What is that something called «person», whose identity is meant by «personal identity»? A natural place to look for the answer seems to be philosophical theories of personal identity. Among these, three main approaches are commonly distinguished. One is called «the simple view»; the two others are subsumed by the name «the complex view» – which comprises psychological and physiological (or biological) versions.

As Georg Gasser and Matthias Stefan explain, according to the simple view, «personal identity does not consist in anything other than itself; it is simple and unanalyzable» [8, p. 1]. In more detail,

[2] In particular, «the philosophical issue of the identity of the person over time is not aimed at a uniform phenomenon and is therefore not well-defined» [28, p. 9]. However, this sits badly with Quante's claim that «a complex conception of the identity of human persons over time provides biomedical ethics with a principle that factually guides our everyday ethical intuitions and should also guide adequate biomedical ethics» [28, p. 2].

> The simple view of personal identity [...] denies that a person's identity through time consists in anything but itself. Biological and psychological continuity may be regarded as epistemic criteria for diachronic identity, but they are neither necessary nor sufficient conditions for personal identity. There are no non-circular, informative necessary and sufficient conditions for personal identity: personal identity consists in nothing other than itself [8, p. 3].

As opposed to this,

> The complex view analyzes personal identity in terms of simpler relations. The fact that a person persists over time is nothing more than some other facts which are generally spelled out in either biological or psychological terms, or both. That is, the complex view takes talk about «what personal identity consists in» literally. It aims to provide necessary and sufficient conditions for personal identity, thereby reducing it to the holding of basic biological or psychological relations. Whenever these relations obtain, personal identity obtains [Ibid].[3]

Michael Quante explains the difference between the simple and the complex views as a matter of two perspectives: first-person (Cartesian) and third-person (observer). According to the simple view, «the identity of a person over time is a fact that is not further reducible and which reveals itself essentially in the first-person perspective» [28, p. 9], whereas the complex view holds «that the identity of persons over time is constituted through empirically observable relations», and its analysis of personal identity «is not essentially tied to the first-person perspective» [28, p. 23]. This is true of the simple view and of physiological (biological) varieties of the complex view; however, it is doubtful that psychological versions of the complex view (that is, theories that construe personal identity as a matter of the holding of some psychological relations) can dispense with the first-person perspective and consider personal identity as reducible to «empirically observable relations»: the psychological facts that are supposedly constitutive of personal identity are not «empirically observable» (from outside) but are accessible only through first-personal evidence.

What is at issue in the debates between the supporters of these approaches? As far as I can see, there is a mixture of two kinds of questions: conceptual, considering the meaning of the word «person», and ontological,

[3]The *loci classici* of the debate include works by John Locke (1690) [19], Wilhelm Leibniz (1685-6) [14] and (1701-4) [15], Joseph Butler (1736) [4], David Hume (1739-40) [12] and Thomas Reid (1785) [31]; Locke and Hume representing psychological variants of the complex view, Leibniz, Butler and Reid – the simple view. For recent debates, see especially the collections [8], [30], [36]. For an introduction to both classical and contemporary accounts and debates on personal identity, see [26].

concerned with the ontological category (substance, property, process, etc.) to which persons belong and with their composition. (Are persons composed of some constituents, or are they ontologically simple entities? If they are composed, are their constituents psychological or physiological?)

I presume that the conceptual issues should be settled or clarified before the ontological debate begins. If it happens that when using such terms as «person» or «personal identity», different philosophers *mean* different things, then in discussing ontological issues, they are likely to talk past one another. For example, if I, when talking of «personal identity», mean the persistence of a person where «person» is understood as one in the process of developing «the narratively or biographically composed personality», and you mean the persistence of the subject of consciousness (beginning with the most primitive forms of phenomenal consciousness, such as experiences of pain), and yet other person means the persistence of a human organism, then our «theories» of personal identity will differ not because we disagree on some substantial matters, but just because they are theories of different things.

As far as I can see, one problem with the philosophical debates about personal identity is that it is not clear whether the participants *mean* the same thing. The debate is usually heavily dependent on conceptual analysis of such terms as «person», «I», and «self», which involves sophisticated and disputable theories of meaning and reference, as well as sophisticated and disputable applications of these theories. This implies that there is a single correct meaning of these terms, which ensures that if we use the terms correctly, we refer to the same things. However, this implicit assumption seems to me clearly mistaken. Different people, as well as the same person at different times and in different contexts, can – and often do – mean different things by the same word or expression. (In saying so, I do not mean clear polysemy, when the meanings are entirely different, but rather cases when they are different but quite close to achieve the same reference in most everyday contexts. For example, with the word «person», notwithstanding the difference among the three meanings mentioned in the preceding paragraph, if one uses it in an ordinary context in *any* of these meanings, the word refers to a living human being.)

Nevertheless, as far as I can judge, there is a genuine, substantial difference (one that goes beyond *words* and is concerned with how *things* are in the world) between supporters of the three main kinds of theories of personal identity: the simple view and psychological and physiological varieties of the complex view. To identify this difference, we need to

reconstruct the problem situation that gives rise to the debate on personal identity. I think that an adequate reconstruction would be nearly as follows.

The starting points is a Cartesian one: it is that (whatever else we may be) we are «things»[4] that think, have experiences, desires, etc. – that is, we are mental subjects. (Yet one our important capacity often associated with our status of persons is that we act, where *action*, as distinct from mere movements or instinctual-reflective behaviour, is characterised by conscious purposefulness.) We often refer to ourselves in this quality by the pronoun «I», or «myself» (splittable into «my self»), and in philosophical discussions, human mental (and acting) subjects are often referred to as «selves» or «persons». The substantial (as distinct from verbal) part of the debate about personal identity concerns the nature of human mental subjects. The simple view, which holds that «persons» are «simple» (not composed of anything), amounts to the claim that mental subjects (our selves) are individual (distinct and indivisible), ontologically fundamental entities. Conjoined with the recognition that, in addition to mental subjects, there are other (non-mental, physical) things, the simple view is tantamount to substance dualism. The physiological variety of the complex view amounts to the materialistic claim that mental subjects (our selves) are identical with some specific complexes of physiological constituents. This entails (implies) materialism (physicalism); however, the reversed relation does not hold: materialism does not entail a physiological version of the complex view. Although siding with such a version is most natural for a materialist, some materialists may prefer a psychological versions, holding that, although all our mental states are identical with some physiological states or their functional aspect, our selves are better construable in psychological rather than physiological terms, as streams, or «bundles», or some other complexes of mental states. This option is also taken by property dualists, who regard conscious mental states as non-physical (that is, not reducible to anything physical) states or properties but deny that there are some non-physical *things* (substances) that are *bearers* of these states/properties.

If my reconstruction is correct, then, on this understanding of «person» (as designating mental subjects like ourselves), the temporal continuity of personal identity (the persistence of a human person) begins at the moment when a mental subject emerges (whether or not it is identical with some physiological complexes) or, from the religious perspective, becomes

[4] I leave it open how these «things» qualify in ontological terms – whether they are substances, or processes, or «bundles» of states, or properties.

embodied and ends at the moment when it ceases to exist or, from the religious perspective, irreversibly departs from its body.

However, what and why does this matter (bio)ethically?

III. The issue of bioethical relevance and the pluralistic approach to the diachronic aspect of «personal identity»

Naturally and intuitively, we ascribe considerable ethical significance to the moments of the beginning of a person's existence – which may be identified with the beginning of his or her life – and the end of his or her existence, which we would likely describe as death. However, do these natural intuitions apply to «person» in the sense of a mere mental subject or in some other sense? Arguably, the widely shared ethical intuitions concerned with the ethical value of human life and life-preservation, and badness (and legal culpability) of causing human death, whether deliberately or through negligence, are concerned with a concept of person that is not identical with, but more specific than, that of a mental subject.

This becomes obvious if we note that not only human beings but many other animals as well are embodied mental subjects: they possess phenomenal consciousness, they experience pain, cold, hunger, as well as pleasurable sensations, and some of them even joy and grief.[5] Nevertheless, the dominant ethical attitude toward other animal's life and death is drastically different from that toward human life and death. The justification for this, if there is one, should be that there exists a highly significant difference between human persons and other-animal mental subjects, and our ordinary use of terms «person» and «self» implies this difference: we usually apply these terms to human beings but not to any other animals. This distinction arises because we normally associate these terms with higher forms of consciousness – rather than merely phenomenal mental states characteristic of both other animals and humans – such as explicit self-consciousness, the capability of deliberation, etc. However, it seems that human beings develop these forms of consciousness considerably later than the moment when they become mental subjects. Most plausibly, they begin to develop these features after birth – from the moment when a child's body is separated from the mother's body, and the child is

[5] At least, almost all of us take them to be so – there are very few people that share Descartes's view that all non-human animals are mere biological automata that do not really have any experiences although they behave as if they do.

confronted with the external world and other people, and becomes engaged in the process of socialisation. It seems that our ordinary use of the term «person», as well as the specific ethical significance usually attributed to human life (much higher than that usually attributed to other animal's life), is concerned with this stage of human life.

This stage – let us designate it as «personal life» – begins later than the stage of phenomenally conscious life (and perhaps for some human beings, such as those heavily mentally disabled,it does not ever begin at all) and, although it usually ends at the same moment as phenomenal consciousness, sometimes it may end earlier.

Some philosophers argue that persistence of a person, in this sense, has no definite objective temporal limits. So, Michael Quante suggests that the concept of person (one that underlies our ideas of «the exceptional ethical status of human life» [28, p. 2], «the exceptional moral status of human beings in comparison to other *Lebensformen*» [28, p. 1]) implies *the conditions of personhood* or *person-making characteristics* such as «being the subject of mental episodes, being able to relate to herself in the first person form, a (rudimentary) consciousness of time and (at least rudimentary) knowledge of her own existence over time», «logical and instrumental rationality» and capabilities «of communication (in the broadest sense)» and «to recognize other individuals as persons» [28, p. 4]. These characteristics, except for the first one (which is definitive of mental subjects as such, no matter human or other-animal, person or not), are acquired or developed after the birth (although they certainly have some physiological underpinning that develops already in the mother's womb), some earlier and some later, and many of them are matters of degree. However, Quante suggests: the concept of person is such that personhood is not a matter of degree; it has «binary» (yes-no, either-or) character. One cannot be less or more of a person; he or she either is a person or is not. More precisely, on Quante's account, the concept of person is «a so-called 'threshold concept'»: it applies to «all individuals who exhibit the required properties and capacities to an adequate degree» [28, p. 5]. However, the «threshold» that demarcates person from non-person – the precise specification of the degree to which one has to exhibit «the required properties» to be a person and the way how the degree to which one exhibits them is to be ascertained – is objectively indefinite, vague, and conventional, socio-culturally variable, dependent on «societal ideals and behavioural norms», etc. [28, p. 5]. Hence, there is no objectively ascertainable and precise moment, or even a reasonably narrow time interval, at which one becomes a person.

I think that this argument is either mistaken or irrelevant. Admittedly, one *can* use the word «person» in the way (meaning) suggested by Quante; however, there is no reason why one *should* do so. It is debatable whether Quante's account best reflects the ways the word «person» is ordinarily applied, and even if it does, there exists another candidate that is firmly grounded in our language practice, can well account for many of our respective ethical evaluations and legal regulations, as well as guide them, and is both perfectly definite and objectively ascertainable. This candidate dates the beginning of the existence of a person by the moment of birth.

Indeed, in «Western» societies at least, the widely shared view is that the life of a newborn child is no less valuable than that of a mature person: the human life acquires its *full ethical value at least from the moment of birth.* Admittedly, many people believe that it acquires such value earlier; yet, at the very least, the moment of birth provides a strong candidate for consideration.

Accordingly, the use of the word «person» to designate a human being from the moment of birth is quite common. In this sense, «person» means a human being from the moment of birth, because this moment marks the beginning of the formation of self-consciousness and other characteristics underlying distinctively human (personal) mode of being (what Quante terms the «conditions of personhood» or «person-making characteristics»), as well as the emergence of «the narratively or biographically composed personality». This concept of a person finds its expression in jurisprudence, insofar as laws describe human beings as natural persons (and endow them with legal capacity) from the moment of birth. (For example, the civil codes of Germany and of Ukraine rule that natural persons acquire legal capacity at the moment of birth.) Non-human animals are not endowed with legal capacity and are not considered as persons not because they *have not developed «person-making characteristics» to a sufficient degree (above «the threshold») so far, but because they cannot develop them* (at least, in the natural course of events).

My point here is not that the correct meaning of the concept of a person is the one just outlined and hence, Quante's construal of this concept is mistaken. Rather, I reject the idea that there is a single correct meaning of the word «person», a single legitimate way it *ought to be* used. There is a living natural language, in which meanings are matters of how people use words (or expressions) and what they mean by them, and this is often not unified, so that there is no single correct meaning to the word at issue. With the word «person», it is likely that both Quante's and my analyses have good purchase on the ways the word is in fact used by different people in

different contexts. A dispute over which of the two meanings is the correct one would be a fruitless quarrel about words grounded on the assumption that our language is semantically unified – a claim that is generally false and is likely to be false in particular about the word «person».

However, insofar as we are interested in the bioethical issues concerned with diachronic persistence of a person – particularly its temporal limits, that is, the moments of its beginning and end – only one of these two meanings is relevant. In fact, Quante himself argues that the concept of person identified in his analysis is unfit for the purpose. However, he fails to note that there exists another concept of person that can fulfil this role (or, at least, a considerable part of it). Instead, he transfers the entire explanatory burden to the concept of human organism. The concept of person identified in my analysis has important advantages. Firstly, it is not a vague socio-culturally variable threshold concept but sets clear-cut objective temporal limits for the diachronic persistence of a person. Secondly, it aligns with the widely – although not universally – shared view that the moment of birth of a human being is highly ethically significant, as far as the value and dignity of human life (as opposed to non-human animal life) is concerned. Again, the moment of birth (the beginning of the existence of a person in this sense) is at least *prima facie* a strong candidate for distinctive ethical significance. By contrast, there are no later such moments in a person's development (in particular, because there is no clear-cut objective moment when a human being becomes a person in the other, threshold-concept meaning advanced by Quante) until death.

So far, we have established that the word «person», as used in natural language and philosophical discourse, is ambiguous. Consequently, disambiguation is required to discuss fruitfully bioethical issues having to do with the identity of a person (personal identity) as his/her persistence over time, its beginning and end. As a matter of disambiguation, we have also identified two distinct concepts frequently designated by the term «person». Each is a plausible candidate for bearing the ethical significance typically associated with the beginning and the end of the existence of a human person: the mental subject (one capable of having phenomenal mental states, experiences) and the human being (a person) in the world, engaged in the development and reshaping of self-consciousness, other «person-making characteristics», and of his/her individual personality. Both entities have definite objective beginnings and endings, and both have important ethical intuitions bound to them. Plausibly, there is also a third entity that has these features – a human organism. At the earliest stage of a human life, there is a succession of the three moments marking

the beginning of each of these three entities.[6] First, an organism emerges; at some later point, it acquires the properties that enable experiences, and thus a mental subject emerges; at a yet later moment, a child is born and gets confronted with the world and other human beings, and enters the process of socialisation and personality formation. At the end of a human life, there are three events marking the end of each of these entities, although these moments – all three, or two of them – often coincide: the moment when a human being irreversibly loses all features qualifying him or her as a person; the moment when a human being irreversibly loses phenomenal consciousness (the moment of his or her last experience); and the moment from which the human body (corpse) no longer qualifies as an organism. Now, instead of a barren verbal debate as to which one of these entities is a proper subject of the beginning of life and of death, coupled with a misguided assumption that all the ethical considerations concerned with the beginning of life and with death should be bound to these two moments, we had better discuss and clarify the ethical and legal significance of each of these three entities, and the beginning and the end of the existence of each of them. Once this is done, nothing substantial (rather than merely verbal) remains in dispute.

So, what is the ethical significance of the persistence (and the moments of its beginning and end) of human organisms, mental subjects and persons in the sense stipulated above? To begin with, why are they ethically significant? As far as I see it, two widely shared basic ethical intuitions can explain and justify this significance: one concerns mental subjects, and the other concerns the distinctively human mode of being associated with terms «person» and «personality».

The first intuition locates the root of ethics in compassion and considers as basic ethical requirements reducing and alleviating suffering and promoting pleasure and happiness. Insofar as non-human animals are capable of suffering and pleasurable sensations, this intuition applies to them as well as human beings. There may, and plausibly does, exist an ethically significant difference in degree: it is plausible that animals with more subtle and complicated nervous organisation have more intense sufferings and pleasurable sensations and emotions; however, there is no difference in kind between human beings and other sentient animals in that respect.

[6] I use the term «entity» in the sense «something», leaving open the question about the ontological status of this something – whether it is a substance, or a bundle of properties, or a stream of states, or a process, or a stage of a process, or anything else.

The second intuition holds that human life possesses a special value and dignity that does not pertain to other animals – a difference in kind rather than in degree. Human beings have it because they are drastically different from other animals in having «person-making characteristics» such as explicit self-consciousness and distinctively human mode of life. These distinctive features are typically implied by the term «person»; that is why we apply it to human beings but not to other animals.

A human being (organism) becomes a mental subject capable of experiencing suffering and pleasure from the moment of the emergence of the mental subject.[7] However, it appears that the development of the features that make a human being a person begins later, from the moment of birth. At least, this follows from the naturalistic perspective, provided we do not make metaphysical assumptions grounded on religious faith rather than observable facts. If this is correct, then ethical considerations that apply to the human fetus at this stage (from its acquiring the capacity for experience to birth) are in principle the same as those that apply to other sentient animals. The distinctive (exceptional) value and dignity of human life come into effect only at the moment of birth. This logic should also apply to the final stage of life, if it happens that a human being irreversibly loses all person-making characteristics yet retains, for a time, phenomenal consciousness (capacity to experience pain, cold, hunger, and pleasurable sensations). In such cases, considerations of respect for the person that this human being once was (although is no longer) can provide good reasons for special treatment; but they likewise provide good reasons for special treatment of a human corpse. And by the same reasoning, the lives of human beings who are born so heavily mentally impaired that they are incapable of developing person-making characteristics that normally distinguish human beings from other animals does not have intrinsically the same value and dignity. Nevertheless, it may be reasonable to treat them *as if* they do – for pragmatic reasons and out of respect for humankind.

Things look very different in the religious perspective. If we assume that human mental subjects (souls) are *created by God as different in kind* from non-human animal mental subjects, then human life acquires its full value and dignity from the moment when the soul becomes embodied. Apart from such religious assumptions, it is unclear whether there can be any plausible considerations that would justify the idea that human mental

[7] I leave aside the question at issue between materialists and substance dualists – whether the organism becomes (identical with) mental subject, or it gets associated with a mental subject as a distinct entity (substance).

subjects are *different in kind* from other animal mental subjects *from the very beginning of their existence* (or from some other definite moment before birth), so that this difference underlies the exceptional value and dignity of human life. In the absence of such considerations, naturalistic and religious outlooks diverge fundamentally on the question of when a human life acquires the exceptional value and dignity: for the religious outlook, it should be the moment of the emergence (embodiment) of a mental subject (soul); for the naturalistic outlook (even if it is naturalistic substance dualism), it should be the moment of birth.

However, what about a human organism at the stage between the conception and before the emergence (embodiment) of a mental subject? As far as I can see, there is no reason to attribute any *intrinsic* ethical value to human life at this – vegetative – stage of the prenatal development of a human organism. We do not endow the life of an individual plant with any ethical value, and a human organism at this stage is not relevantly different, except in virtue of the fact that, *if it develops into a conscious human being and person*, then its healthy development (and actions conductive to it) will be beneficent for that conscious human being and person, whereas actions that ruin its health are harmful for that conscious human being and person. In other words, at the vegetative stage of the development of a human embryo/fetus, future parents, physicians and other participants in the process bear ethical, and ought to bear legal, responsibility before that future person for actions that are likely to have bad-or-good consequences for his/her health. They are praiseworthy for whatever good and culpable for whatever bad they do for the health (and hence, wellbeing) of the person that is going to be born.

The logic of this approach has several important consequences for bioethical debates.

First, because the life of an embryo/fetus at the vegetative stage has no intrinsic ethical value and dignity (that is, no value not derived from that of a person who will be born, *if he/she is going to be born*), there is no moral obligation (except perhaps before God, if one accepts certain religious assumptions) to ensure that a person will be born. That is, it is not ethically blameworthy (and should not be legally punishable) to make abortion at the vegetative stage of the development of an embryo/fetus. If the potential person-child is not born, there is no one before whom potential parents would be ethically responsible.

Secondly, the ethically relevant moment at which the ethical responsibility for the health of an embryo/fetus (if parents are going to give birth to it) comes into effect is *the moment of conception*, or the moment at

which future parents become aware of the conception. From that point onward, any harm inflicted upon the embryo/fetus can negatively affect the health of the future person that it is going to become. This allows us to dismiss, as ethically irrelevant, arguments to the point that a human organism, or a human being (where «the concept of the human being is used in a purely biological sense» [28, p. 28]), begins to exist at some later point.[8]

Thirdly, there is no ethical symmetry between the vegetative stage of the prenatal development of a human organism and the vegetative stage at the end of life, if that stage happens to take place. When a human being irreversibly loses consciousness in all its forms (becomes incapable of experiencing anything) but his/her body still functions in the purely vegetative way and meets biological criteria for being an organism, its ethical status is no different from that of a corpse. For all ethical and legal purposes, such a body/organism should qualify as a corpse. Accordingly, the moment of the irreversible loss of consciousness should count as death, with all it ethical and legal consequences. The artificial (medical) maintenance of such a vegetative existence is ethically unjustified, except at private expense in cases where there is an explicit living will (advance directive) from the deceased person or an explicit request from his/her close relatives. Spending public costs for this purpose is an ethically wrong waste of funds that could be spent on living people who need medical help. As a private matter, of a dead person who made appropriate directives in advance or his/her close relatives, it is the same as disposing of a corpse: the persons that have rights to dispose of it can arrange for its burial, cremation, mummification, or any other practice consistent with respect for a deceased person. The maintenance of the vegetative life-process should also be an option.

The thesis that the moment of the irreversible loss of consciousness should qualify as death was defended by a number of bioethicists. They also argue that the adoption of this position has an important consequence

[8] There is no consensus as to what this moment is supposed to be. So, Michael Quante argues that this should be the moment of «the initiation of the activity of the individual genome of this organism, which normally happens at the four to eight cell stage (between the second and fourth day after the fertilization of the egg-cell)» [28, p. 41]; Barry Smith and Berit Brogaard maintain that this should be the moment of the end of gastrulation, which is normally the sixteenth day after fertilisation) [34]; Lawrence Becker argued for the earliest time at which generative development of a human fetus can be completed, which is the beginning of the seventh month of pregnancy [1]; David DeGrazia argues for a span (rather than a moment) when the functional differentiations of the cells of the embryo develop, «between the sixteen cell stage and full differentiation» [5, p. 251-252].

concerning the (physiological) criterion of death: it requires the revision of the criteria so far adopted in the national legislations and adoption of *the higher brain – or rather consciousness-related – death standard*.[9] In most countries, the legally adopted criterion is the so-called «the whole brain death standard», defined as a «catastrophic injury to all the major structures of the brain including the hemispheres, diencephalon, brainstem, and cerebellum» [35], in some countries – «brainstem death standard», that is, destruction of the brainstem. According to a recent worldwide review of protocols on determination of brain death, «of the 62 protocols (79%) that provided a definition of death, 54 (87%) referred to whole-brain death, and 8 (13%) referred to brainstem death» [16, p. 301]. However, these criteria are inadequate if death is identified with the irreversible loss of consciousness, because the neurological correlate of consciousness is not the whole brain or brainstem but the upper brain – namely, the cortex and associated structures. A human being can be in a permanent vegetative state (having irreversible loss of consciousness), and therefore be dead according to the consciousness-related (higher brain) death standard, while nevertheless he or she is still legally counted as alive under the whole brain standard and the brainstem standard – lower subsystems of the brain are functioning and keep most bodily functions afloat. Such a vegetative life, with no experience, has no ethical value and human dignity, whereas its maintenance involves the waste of expensive medical resources that could be used to save health and lives of other individuals.

The typical objection raised by the opponents of the consciousness-related death standard is that «it declares death in cases in which the brain stem remains intact and functional and the organism breathes spontaneously and successfully carries out all other somatic functions, apart from the generation of consciousness», so «it is obviously false to say that such an organism is biologically dead» [24, p. 181-182]. A more concise formulation is: «Death is the absence of life in an entity that was

[9] See, for example, works of H.T. Engelhardt [6], R. Veatch [37; 38; 39], J.C. Hoffman [11], M. Green and D. Wikler [10], K. Gervais [9], C. Machado [20; 21; 22], J. Lizza [17; 18], B. Sarbey [32; 33], P. Nowak [27], and the collection edited by R. Zaner [42] dedicated specially to the issue of getting «beyond whole-brain criteria» of death.

As for terminology, «the higher brain death standard» is widely used but rather imprecise, because it is not a matter of some part of the brain – the *higher brain*, or the *upper brain*, that is, the cerebrum – losing irreversibly *all* its functions but the matter of the brain irreversibly losing *higher functions* – those that involve *consciousness*. Although in fact, these functions are localised in the cerebrum, not all functions of the cerebrum are consciousness-related. It is possible that consciousness is irreversibly lost even while some functions of the cerebrum continue to be performed.

once alive. Biology is the study of life. Therefore, the definition of death should not involve non-biological concerns» [23, p. 20].

My response to this argument is that it is purely verbal. It assumes the rigid monosemy for the word «death» (that is, that there is a single legitimate meaning of the word «death», and that using this word in different contexts in somewhat different senses cannot be advisable) and is ethically irrelevant. As for the meaning of the word «death», as it is used in ordinary language, and its being «a biological phenomenon», I would first ask the question «Is consciousness (and hence, mental subject) a biological phenomenon?». It seems that it is: as far as I know, all (phenomenally) conscious entities are living beings (animals), and consciousness emerged generally at some stage of the biological evolution, and it emerges individually at some moment of a fetus' development. Now if consciousness is a biological phenomenon, then the emergence of individual consciousness (or a mental subject) and the irreversible loss of consciousness (that is, death according to the consciousness-related standard) is a perfectly biological phenomenon as well.

Michael Quante objects that «there is only one subject of human death, namely the human organism» [28, p. 88]. I think that this claim rests on a mistaken essentialist notion that there is some quasi-concrete thing called «death» rather than that there is a word «death» that is used in a certain conventional meaning or several meanings. In fact, the real use of the word «death» in ordinary language does not seem to support Quante's claim. Our ordinary language concept of death is not unequivocally referring to the end of life in the purely biological sense (the end of the existence of an organism). Consider, in particular, the following relevant semantic points.

1) We are not normally prone to describe the end of the existence of an individual plant as its death. «Death» seems more naturally applicable to humans and animals than to plants, and the likely reason for this is that humans and animals, unlike plants, possess (at least phenomenal) consciousness. However, it is not words that matter. Whether or not we describe the end of the vegetative life (of plants) as «death», we do not ascribe to it the ethical significance comparable with the ethical significance we ascribe to the death of a human person. Typically, we do not ascribe to the «death» of an individual plant any ethical significance at all (except for special cases when this particular plant has some special cultural or ecological significance). Note also that while we can, and often do, describe the process of plants' withering away as their «dying», there is no definite moment of a plant's «death». Arguably, the same generally

holds for vegetative life/death, and even more generally, for «life»/«death» in a purely biological sense (see footnote 10).

2) In the traditional religious perspective, human death is thought of as the departure of the soul, and arguably, the secular counterpart for this is the end of the existence of the mental subject, individual consciousness associated with the organism/body/brain. The commonly shared underlying view is that if a conscious being is no longer there (embodied) – whether because it departs to another form of existence or because it exists no longer – the human being is dead.

3) As John Lizza emphasses, it «has always been a commonsense understanding of death that did not depend on knowing a point at which the organism has irreversibly lost its integration as a whole, but has always involved recognition that conscious interaction with the human person is no longer physically possible». The underlying – perfectly traditional and commonsense – death-concept is that «a death has occurred because our relationship to the other has been permanently severed by the permanent loss of the biological means for such a relationship». This «civil meaning of death has always been a part of what the single word "death" has meant to us. [. . .] Our death has always been a "cultural" and biological event». It is not to say that biological notions «has not always been part of our understanding of what our death involves». It is rather that in past, before recent technological developments made it possible to «artificially sustain bodies in unprecedented ways», these biological and personal/civil/social features were tightly tied together, so that the moments when the former and the latter were irreversibly lost merged into a nearly same moment. Now that they are untied by advances in medical technology, «a single concept of death can no longer coherently hold together the various intuitions we have about death», and hence «[w]e should bifurcate the concept of death in a way that will make better sense of our different and in some ways inconsistent beliefs about death» [17, p. 11-12]. It is this personal/civil death-concept that is ethically and socially significant, – in particular, for the legal definition of death.

4) The commonsense concepts of life and death, and the commonlanguage words to express these concepts, predate biology for many thousands years, and they did not have much to do with something like integrated functioning but had much to do with consciousness. Living beings – including plants, gods, and spirits – were thought of as having sensations, feelings and thoughts, and death was thought of

as the embodied-consciousness-terminating event – either (usually) as a matter of the consciousness-bearing entity, soul, leaving the body and departing to another world, or (sometimes) as a matter of there being no consciousness (sensations) anymore. (On this matter, it is advisable to heed to Socrates and Epicurus: «either death is a state of nothingness and utter unconsciousness, or, as men say, there is a change and migration of the soul from this world to another» [29, p. 133-134]; «death is the privation of all sentience» [7, p. 651].) It is implausible that during a few last (scientific biology informed) centuries these commonlanguage words have lost this semantics.

I think that these considerations make it advisable to convene that the word «death» can be used in two senses, so that we can talk both of *the death of a person qua* a conscious being (mental death) and of *the death of an organism* (biological death). In the consciousness-related sense, the word «death» refers to the end of the existence of a conscious human being or non-human animal being *qua* a conscious being (a mental subject); on the biological meaning, it refers to the end of the existence of an organism.[10] It is the former rather than the latter that is an appropriate focus for ethical concerns and legal regulations on such issues as those of

[10]In fact, the notion of biological death (the end of the existence of an organism) is itself vague: there is no definite single moment that clearly qualifies as the end of the existence of an organism (of any kind), because organisms do not end their existence by anything like momentary disappearance into nothingness. Some authors argued that biological death is a process rather than an event: «Clearly we are dealing here with a continuous process of growth and decay. There is no magic moment at which "everything" disappears. Death is no more a single, clearly delimited, momentary phenomenon than is infancy, adolescence, or middle age» [25, p. 695]. Those authors who argued for a biological definition of human death appeal to the continuation/cessation of integrated organic functioning; however, they advanced and argued for a number of different propositions as to how organism's «integration» should be understood, and what functions are to count as integrative. As Karen Gervais points out, in a sense, even a decapitated human organism whose functions (such as oxygen assimilation, food-metabolization, blood circulation) are maintained in a more or less integrated way can count as biologically alive [9, p. 57]. Our common language concepts of death, organism, and integrity do not draw a clear borderline between life and death in a purely biological sense. This line, if it is needed for purposes of biological science, has to be drawn as a matter of biologists' convention that is arguably most useful for those purposes.

Moreover, Lizza plausibly argues that «what it means for a living thing to be integrated as a whole depends on the sortal (kind) concept by which it is identified» [17, p. 1]. In other words, what it means for an organism to exist as an integrated whole depends on «a particular kind of living thing». For a human being, the capacity for consciousness is a very good candidate for being a necessary condition of appropriate (human-kind-specific) integratedness. If so, the most appropriate biological definition of death may turn out the consciousness-related definition.

the discontinuation of medical treatments and transplantation medicine.[11] What matters for the bioethical debate concerning death is not the correct sense of the word «death» but that, as Ben Sarbey observes, «there is a mismatch between our values and our legal definition of death»: «The current legal standard of total brain death is inconsistent with what we value in persons» [32, p. 743], whereas the consciousness-related brain death standard fits our values much better.[12]

Ben Sarbey points out that the adoption of the consciousness-related death standard may be problematical because there are considerable practical (technological) difficulties in establishing «higher-brain death», although he notes that there are practical (technological) difficulties in establishing «whole-brain death» as well [32, p. 750]. However, I think that the solution to this problem is straightforward: according the consciousness-related standard, a person is considered dead if and only if it is ascertained, with an appropriate level of certainty, that the standard is satisfied. If such certainty is lacking, a person is considered alive. Moreover, it is implausible that establishing «higher-brain death» presents more difficulties than establishing «whole-brain death», for the simple reason that whenever «whole-brain death» is established, «higher-brain death» is also established by the same token. However, there is likely to be a considerable number of cases where the patient is not «whole-brain-dead» but is *ascertainably* (with an appropriate level of certainty) «higher-brain-dead».

[11] One may note that it would be the same as convening to use the word «death» in one sense, of the end of the existence of an organism, and targeting the corresponding ethical and legal regulations not at the moment of death but explicitly at the moment of the irreversible loss of consciousness, perhaps introducing the special term for this moment. However, such a convention would be inconvenient and difficult to put into practice, for it would involve bulky changes in language, especially the language of law and medicine.

[12] Cf.: «When we speak of human death [...] [w]e are making a practical statement with policy implications. [...] human death is a social and moral concept quite beyond the biological. [...] the only reason the definition of death receives any attention at all in the realm of public policy is that the term summarizes and legitimates what might be called 'death behaviour', a radically different set of social relationships and actions» [39, p. 15-16].

«[C]hoosing a definition of death for public policy and other social purposes is, in fact, a philosophical, religious, or social choice. We should pick the definition that produces the most consistent and reasonable implications for how we should treat people. We are, in effect, trying to identify the moment at which society should decide that someone is no longer with us and that we should treat that person the way we treat the dead. [...] the choice of a definition of death is not a scientific one but a social one» [40, p. 8].

From the perspective of the approach developed in this article, there is yet another problem that, as far as I know, has not been explicitly discussed in the debate between the champions of the consciousness-related brain standard and other standards. They seem to overlook the distinction between «what make us a person» [32, p. 747], which is distinctively human and explain why we do not qualify other animals as persons, and phenomenal consciousness, which both human beings and non-human animals possess. The situation seems possible when a human being irreversible loses distinctively human, person-making characteristics but is still capable of experiencing pain, cold, hunger, as well as pleasurable sensations or even emotions. If so, then instead of the dichotomy of personal and vegetative life, we have the trichotomy of personal, animal, and vegetative life. Accordingly, the ethical question arises: what should be the rights and obligations of society toward a human being in such a state, already not a person but still not a «vegetable»? I suggest that the solution should be that if there is an advance directive, it should be followed (including euthanasia); otherwise, society should maintain the life of such a human being, of humanly appropriate quality, while it is capable of experiencing anything. One can remark that this is not the way we treat lives of other animals, and ask about the reasons for such a privilege. I think that such a difference is justified as a sign of respect for the person that this human being once was, as well as respect for the human kind.

IV. Some residual issues

Two groups of residual issues must be addressed here in order to appreciate the proposed approach and its ethical consequences more precisely and fully.

The first concerns the possible divergence between the moments of the emergence of mental subject and of consciousness, and with the criteria by which we can identify the appropriate moment. Views diverge on these matters depending on our theory of mental subjects (substance dualistic theory: a mental subject is an ontologically simple entity-substance; materialistic theory: a mental subject is an organism/body/brain capable of experiencing; psychologistic view: a mental subject is a kind of psychological continuity) and on whether our outlook is naturalistic or religious. However, I will argue that these divergences can be reconciled.

The moment of the emergence of a mental subject can be either the same or somewhat earlier than the moment of the emergence of consciousness in the sense of the very first experience. On the psychological theory, they are the same; on the substance dualistic and materialistic theory, a temporal gap may occur between the emergence of a mental subject as something *capable of experiencing* and its first experiences. If such a gap exists, which of these two moments carries ethical significance? To answer this question, we have to pay notice to cognitive limitations. The point is that we cannot obtain the (first-person) evidence from an embryo/fetus about his/her experiences. All we can know (as far as there being a mental subject or consciousness is concerned) is whether there are physiological conditions that, according to the best scientific knowledge, are sufficient conditions for experiencing. (Plausibly, scientific knowledge about physiological conditions that underlie experiences of human persons after the birth should be also valid for the pre-natal stage of development.) Hence, the best practicable criterion of the existence of a mental subject is whether an organism meets these physiological conditions, and *for all practical concerns, the ethically significant moment is the one when the corresponding physiological conditions are in place, or are detected.*

However, can a substance dualist object that a mental subject (soul) may emerge (or get embodied) prior to the appearance of the physiological conditions? I think that although this is logically possible, it is highly implausible. Consider first the naturalistic (emergentist) variety of substance dualism. On this view, mental subjects emerge (in the strongest sense of popping up «out of nowhere») as distinct non-physical entities (substances) at a certain moment of physiological development according to a special psycho-physical law of nature. Since a mental subject is, *by definition,* an entity capable of experiencing, it is natural to suppose that the moment when he or she emerges should be the moment when there are physiological conditions that make experiences possible! Now consider the religious-creationist form of substance dualism. On this view, mental subjects are created and united with human bodies (brains) by God. When does this happen? *Prima facie*, the moment can be arbitrary: it is surely in the power of God to do this whenever He wants. However, it is implausible, from the religious standpoint, that God does such things (or anything at all) at haphazard. Rather, God does everything expediently at the proper time. The proper time for a human soul (mental subject) to be created and united with a human body (brain) is when this body (brain) is in the condition to do its part of the job of evoking experiences (consciousness). Thus, from both the naturalistic-emergentist and the religious creationist

perspectives, it is reasonable to suppose that a mental subject capable of experiencing (a soul) emerges or is created and united with a human brain at the moment when the brain structures causally responsible for experience are formed.

The second group of controversial issues is due to the significant divergence between the religious and naturalistic outlooks regarding the relative significance of the moments (1) of the emergence of a human mental subject and (2) birth. From the religious standpoint, the moment of the creation and embodiment of a human mental subject (that is, a human soul) should be the one at which the life of the human being acquires its full (exceptional, as compared to other animals) value and dignity, and so the moment of birth has no special ethical significance. From the naturalistic point of view, the prenatal human mental subject is not principally different in kind from its animal counterparts; hence, both moments – of the emergence of a mental subject and of birth – are ethically significant, but it is the latter rather than the former that confers the full (exceptional) value and dignity of a human life.

How should this divergence be *practically* resolved (in particular, in legal regulations of abortion and of end-of-life treatment) in a pluralistic society, both religious and naturalistic outlooks have many adherents? My suggestion is that the controversial issue should be practically resolved so that the life of a human individual was defended more rather than less. The regulations should target at the earliest beginning (the moment when a human being acquires the capacity for having experience) and, by default, the latest endpoint (the moment of the irreversible loss of this capacity).

In relation to abortion, this implies that it should be allowed only before an embryo's/fetus' brain has formed structures responsible for the capability of having experience. According to contemporary scientific assessments, first experiences (of pain) occur not earlier than after 20 weeks of gestation (see, for example, [2; 3; 13]),[13] which is considerably later than the gestational limit of 12 weeks, within which abortion is allowed freely in most countries of Europe and North America. However, in most of these countries, abortion is allowed on specific grounds beyond this gestational limit and beyond 20 weeks – a practice that is ethically problematic.

In relation to the end of life, this implies that if a situation happens when a human being irreversibly loses higher forms of consciousness, which are distinctive of human persons (as compared to non-human animals), but

[13] Cf.: «Neurological evidence suggests that a fetus becomes sentient at some time between five and seven months' gestation» [5, p. 279].

retains capacity of having experience, his/her life should be, by default, sustained with the appropriate care. However, a person should be able to decide for oneself. The explicit will of a person formulated in advance should be supreme, that is, a person in such a situation should have the right to euthanasia in accordance with their advance directive.

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Персональна ідентичність та асоційовані біоетичні проблеми: плюралістичний підхід до діахронічної тяглості особи

Дмитро Сепетий

Анотація. У статті обговорюється взаємозв'язок між поняттям та філософськими теоріями персональної ідентичності, з одного боку, та біоетичними проблемами, з іншого. Запропоновано та обґрунтовано тезу, що дискусія стосовно етичних питань початку та кінця людського життя з точки зору персональної ідентичності серйозно страждає від неоднозначності термінів. Це зумовлює доцільність формування більш відповідного концептуального каркасу, в якому поняття «персональна ідентичність» замінюється трьома поняттями – людського організму, психічного суб'єкта та особи, що розуміється як людина у світі в процесі розвитку своєї особистості. Останні два поняття позначають найбільш ймовірних кандидатів на етичну значимість, яка зазвичай асоціюється з початком та кінцем існування людини, тобто з початком її життя та її смертю. На відміну від неоднозначного поняття «особа», як психічний суб'єкт, так і людина у світі в процесі розвитку своєї особистості, мають певні об'єктивні часові проміжки існування (обмежені об'єктивними моментами початку та кінця), які можуть бути наділені відповідним етичним значенням. Проте питання про те, з яким із цих понять має бути пов'язана повна (виняткова) цінність і гідність людського життя, є суперечливим: відповіді на нього виглядають відмінними в релігійній та натуралістичній перспективах. Практичне вирішення цієї суперечки в плюралістичному суспільстві (в якому і релігійний, і натуралістичний світогляди мають багато прибічників) може поєднувати більш безпечний, свідомість-орієнтований підхід до юридичного регулювання питань, пов'язаних з початком людського життя та смертю людини, та максимальний простір для особистого вибору.

Ключові слова: персональна ідентичність, діахронічна тяглість особи, особистість, демаркація, психічний суб'єкт, організм, смерть.

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