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This is, we think, a particularly interesting newsletter. The articles included in this issue seem to go back to fundamentals, pushing back against either established practices or conventionally accepted views.

First is J. David Velleman’s book review of The Risk of a Lifetime by Rivka Weinberg. The book pushes back hard, among other things, against the permissibility of egg and sperm donation, and Velleman, in basic agreement with Weinberg, engages in lively and thoughtful discussion of utilitarian and deontological perspectives on the issue. Particularly interesting is his discussion of Weinberg’s application of Rawls to the parent/child relationship. Runaway Bunny gets a strong nod of approval from Velleman.

Included second is Susana Nuccetelli’s succinct critique of Zubik v. Burwell, the Supreme Court decision that recognized the legitimacy of religious objection in relation to non-profit organizations being required to include contraception in their employee health-care plan. Nuccetelli finds the decision problematic on two grounds: what are identified as religious objections are actually moral in nature, and, second, the “dirty hands” argument does not succeed.

A paper by Michael Davis follows in which he takes issue with a practice that occurs every day and that is fully accepted by most who have looked at the issue. Davis puts forward a very thoughtful challenge to the idea that it is ethical for doctors to harvest, for purposes of transplantation and for the purpose of saving lives, non-vital organs from adults who provide a fully informed consent.

Fourth is a paper by Gabriel Andrade who takes up the question of what to make, philosophically, with the idea of living forever through the technology of mind uploading. His focus is on transhumanism, and, in relation to this, he discusses the issue of identity in the work of Derek Parfit.

What follows next is a very short review by Wanda Teays of what sounds like a very unique book—Teaching Ethics with Three Philosophical Novels by Michael Boylan. What makes the book apparently is the inclusion of novels actually written by Boylan. Teays finds the first half of the book on moral theory very well presented and finds the novels interesting.

Last, a poem by Felicia Nimue Ackerman is included in this volume. We are always grateful to her for submitting her work to the newsletter.

Please consider submitting papers, works-in-progress, and book reviews to the newsletter.

SUBMISSION GUIDELINES

The APA Newsletter on Philosophy and Medicine is published by the APA Committee on Philosophy and Medicine. We invite submissions of articles and book reviews on any topic related to philosophy and medicine, as well as responses to material that appears in this newsletter.

All papers should follow the APA guidelines for gender-neutral language and use endnotes rather than footnotes. The APA Newsletters use The Chicago Manual of Style.

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Submissions for spring issues are due by the preceding September 1. Submissions for fall issues are due by the preceding February 1.

ARTICLES

Comments on Rivka Weinberg, The Risk of a Lifetime

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The Risk of a Lifetime illuminates every corner of procreative ethics and does so with bracing forthrightness and clarity—also a joy that belies the author’s claim to believe that life sucks. “Even when it’s good, it’s bad,” she says (120). Well, someone thoroughly enjoyed writing this book, as I enjoyed reading it, and the authorial voice sure sounds like Rivka Weinberg’s. So I doubt her profession of pessimism.
Unfortunately, for present purposes, that is my most significant disagreement with Weinberg. I agree with her that one’s gametes are like hazardous materials, and that one bears the responsibility of protecting others from their hazards or helping them to cope with whatever hazards they can’t avoid. (Weinberg calls this the Hazmat Theory of procreation. Wonderful.) I therefore agree that procreation is permissible only under conditions favorable to the life-chances of the person created. I’m tempted to agree that some amount of risk to that person can be justified by the costs to prospective procreators of forgoing parenthood instead. I definitely agree that the so-called non-identity problem is not and never was a problem for moral philosophy, because it arises under moral assumptions that no philosopher holds. I agree that the parental obligations attendant on procreation are not transferable in advance, and that donating gametes or embryos to strangers is therefore wrong. I agree that creating children with the intention of parenting them alone, or even with a non-marital partner, is morally problematic. In short, even Weinberg’s politically incorrect conclusions have my enthusiastic support.

I therefore find myself with nothing to do but kibbitz from the sidelines of her project. I’ll start with her solution to the non-identity problem. First, a brief review of the problem for those who would like a refresher.

We have an obligation to ensure that when children are born, they are born into good enough circumstances. In many cases, though, we cannot significantly improve the circumstances into which people will be born in the future without changing who gets born. Obviously, if a financially strapped couple puts off child-bearing until they are better situated, they are acting in the interests of their future children only de dicto—the interests, that is, of whoever ends up satisfying the description “their children”—since the children who are born well-off will not be the ones who would otherwise have been born into poverty. Less obvious but equally true is that our efforts to slow climate change will benefit future generations only de dicto as well, since reducing our use of fossil fuels for transportation, heating, and cooling will affect who copulates with whom and when, which eggs get fertilized by which sperm, and, consequently, who is born. After several generations, there may be no one on Earth who would have incurred the costs of climate change if we had let it take its course; and if we do let it take its course, there may be no one who would have enjoyed the benefits if we hadn’t.

So why not let climate change take its course? By the time any significant costs accrue, the world will be populated by people who wouldn’t have benefited from our preventive measures anyway—people, indeed, who will owe their very existence to our not having taken those measures, which in preventing the costs from accruing would also have prevented those people from existing. No one will be worse off for our having shirked our supposed obligations to future generations. Why, then, should we suppose that we have such obligations in the first place?

That’s the non-identity problem, made famous by Derek Parfit, who named it for the non-identity between the people who would exist if we took action and the people who would exist if we didn’t, neither of whom would be benefited or harmed by our choice. Weinberg’s ultimate response to the problem is that there is no known moral theory under which it can arise.

Utilitarianism takes no account of whether performing an action would make particular individuals better or worse off. Insofar as utilitarians have anything to say about consequences for people living in the future, they say it de dicto, referring to whichever people happen to satisfy that description. For this very reason, of course, utilitarianism encounters other problems in dealing with procreation. The version of the principle that calculates the general welfare as a sum requires us to make as many babies as we can, so long as the next baby would enjoy some positive amount of utility, however small, and would not detract as much or more from other people’s utility as it would add to the total with its own. The thought that we are morally obligated to bring about this result is what Parfit called the Repugnant Conclusion.

The alternative version of the principle, which calculates the general utility as an average, fords us to create any people with lower-than-average utility. Maybe that’s not a problem in the current state of the world, given how many people live in desperate circumstances: the average is a dismally low bar below which the population probably shouldn’t be increased, by anyone’s lights. Yet if the average level of utility in the world somehow rose, the Principle of Average Utility would begin to forbid the creation of happy people simply because their happiness would be below average. And insofar as we were in a position to create happier-than-average people, the principle would positively obligate us to create them.

In Parfit’s presentation, these problems appear as fallout from the non-identity problem, but only because Parfit attempted to address the non-identity problem by resorting to utilitarianism. The solution to these other problems is simple: don’t let fear of non-identity drive you into the arms of utilitarians.

Weinberg argues that deontological theories do not face a non-identity problem because the problem concerns the consequences of actions, and deontology doesn’t deal with consequences. Here I am with her in spirit, but the letter of her argument leaves me unsatisfied. I never know what people mean by “deontology” or “deontological theories.” If the term simply means moral theories that apply the concepts of right and wrong to action types directly, rather than through some indirect calculation, then I would say that consequences can figure in deontology, since some action-types are individuated by their consequences. Immiserating future people is wrong—that’s a deontological claim, and it forbids the very course of action that we will be taking if we ignore climate change.

I prefer to deal with specific deontological theories—one in particular, because it is the most plausible, in my view. And although this theory has no problem with non-identity, it may yet have a problem with non-existence, which would be a problem with future generations all the same. I’ll
get to that problem shortly, but first let me raise a further question about Weinberg’s treatment of non-identity.

Weinberg interprets the non-identity problem as arising from the assumption that existence is a benefit that will compensate future generations for any burdens that we might create for them. “The mistake that generates the non-identity problem,” she says, “is the counting of existence itself as a benefit bequeathed to you by your ancestors and capable of offsetting life’s burdens (either directly or by enabling you to enjoy life’s benefits)” (86). Her solution to the problem thus interpreted is that existence is neither a benefit nor a burden because it is rather a precondition for incurring either one:

Some things benefit us, some things burden us, but existing per se is just what it means to be a possible subject of benefits and burdens. And no matter how delighted you are to find yourself eligible as a subject of benefits and burdens, that eligibility is not a gift or benefit bestowed upon you by your parents because it is something you didn’t need and could not fail to have had. Never existing is not an option for any real person because all real people exist. Even if you love life, if your ancestors bury their hazardous waste sloppily and you suffer from the ensuing pollution, that suffering is harm they inflicted on you (i.e., they have set your welfare interests back). (86–87)

This solution to Weinberg’s version of the non-identity problem strikes me as raising another non-identity problem, which is, in fact, the one that I thought was the problem to begin with. Although environmental pollution will set your welfare back from the level it would have reached in a cleaner environment, the non-identity problem assumes that the pollution was caused by a social decision that also caused your existence. And although you can curse the pollution for damaging your welfare, you cannot curse the decision that caused it, even if Weinberg is right that existence itself cannot compensate for the damage. The reason why you cannot curse the decision for damaging your welfare is that you fare no worse because of it: you are no worse off in your polluted environment than you would have been if the decision that caused it had never been made, because you wouldn’t have existed in that case. And because you are no worse off for that decision, you have no grounds for complaining about it, much less cursing.

In this version, the non-identity problem is the same as the problem of locating the harm of death. The problem in both cases is that nonexistence has no welfare effects that can be compared to the goods and ills attendant upon existence. Future people sweating it out in the global sauna will be no worse off than they would have been if we had dealt with climate change because, in that case, they would never have existed; and dealing with climate change will not make future snow boarders better off, either, because they too would not have existed in the alternative. The problem, in other words, is how to apply the comparative concepts of harm and benefit where there is no second term for the comparison.

Weinberg apparently thinks that this problem, of comparing the welfare values of existence and nonexistence, would actually solve the non-identity problem. In a footnote, she says,

Those who reject comparisons between the value of existence and nonexistence . . . can reject the reasoning that leads to the non-identity problem since the non-identity problem relies on the view that a life worth living is no worse than non-existence, which, in turn, implies a value comparison between existence and nonexistence. (88, n. 9)

Here Weinberg suggests that the non-identity problem compares existing with never having existed and finds the comparison favorable so long as one’s life is worth living. On this interpretation, the problem would be forestalled by the argument against the possibility of making the comparison. But that argument—which is decisive, in my view—leads to the conclusion that future people who bear the costs of climate change will be no worse off than they otherwise would have been, because they wouldn’t otherwise have existed at all. So the incomparability of existence and nonexistence doesn’t solve the problem, but rather re-creates it.

Implicit in this last-quoted passage is that Weinberg does not reject comparisons of value between existence and nonexistence. She never makes such comparisons explicitly, so far as I recall, but she does discuss whether life itself is good or bad, and that discussion cannot help but presuppose a basis for comparison, because the distinction between good and bad is established by the zero-point on a scale of better and worse. Drawing that distinction requires a decision as to how much better than not-so-bad something has to be in order to be good, or how much worse than not-so-good in order to be bad. Without a scale of better and worse, there can be no question of where to place the zero-point.

Of course, we can discuss whether a particular life would be better or worse than other lives, but that comparison is not relevant to a judgment about the value of life itself, the value of having a life at all, which is what I take Weinberg to be deprecating when she opines that life is bad. Having a life has to be judged in comparison with not having one, which is an impossible comparison from the perspective of the person involved, and so it cannot be better or worse enough to qualify as good or bad.

Now, the question whether life is good or bad might be interpreted as depending on a different comparison, between good things and bad things in life, the things that make a life better or worse than it otherwise would have been. This comparison is implicit in the philosophical notion of a life worth living, but that notion I do not understand. The phrase “a life worth living” is supposed to mean a life that sufficiently repays one for living it, which depends, I suppose, on whether all of the good things in that life outweigh the bad. I do understand asking whether a particular good in life is worth the price of bearing a particular ill; and so I can just about understand...
pairing goods and ills that cancel each other out and then evaluating the remainder as a surplus of good or ill. What I don’t understand is the assumption that this calculation will yield a value that is relevant to the decision whether such a life should be created. Whether a particular good is worth a particular cost may determine whether one should bear the cost in order to obtain the good, but it doesn’t determine whether one should elect to face that choice in the first place. The good may be worth it if one has to choose, but sometimes one would rather not have to. And the decision whether to face the choices inherent in a human life is the one that’s relevant to procreative decisions. That choice cannot be based on the welfare interests of the person whose life it might end up being, because it’s a choice between his having welfare interests to begin with and his having none.

After all, many of the choices in life are about how to satisfy needs that come with being alive and being human. Hunger, cold, illness, loneliness, and boredom constantly threaten, and one ends up shouldering many burdens simply to stave them off. The tradeoffs that one is willing to make in the face of those threats are not necessarily the same as one would make if the threats were lifted—as they certainly would have been if one’s parents hadn’t decided to have a child. I love my job, mostly, and I’m glad that in my youth I spent two years abroad during which I was desperately unhappy but acquired skills that turned out to be of great value to me as a professor of philosophy. Even so, I view that tradeoff against the background of the need to make a living and to find something to fill the time between September and May every year. If the living-worthiness of my life had figured in my parents’ procreative decision-making, however, it would have had to be judged not on the basis of costs and benefits assessed in abstraction—an assessment I have no idea how to make.

Parfit favored assessing the living-worthiness of a life retrospectively, in terms of whether the person would regret having lived it. But retrospection on a life is biased in favor of it and should not be the criterion of whether it should be started. For as Jay Wallace has argued, there is a natural bias in favor of one’s actual life, resulting from one’s attachment to it; or, as I have argued, resulting from one’s self-love. We shouldn’t justify creating a person on the grounds of the feelings he would develop for his life or himself if we created him. It’s one thing to create someone for ourselves to love; it’s quite another to create a self for him to love—he who wouldn’t need anyone to love if we didn’t create him. What’s worse, we tend to make the retrospective assessment of living-worthiness from the first-person perspective, by asking ourselves whether we would regret having lived the life in question. When we imagine looking back from the perspective of our deathbeds, we naturally imagine the attachment anyone would feel for an actual past and an actual self, and that attachment is irrelevant to procreative decisions, in which the question is whether the attachment will be formed in the first place.

Even when thinking about lives third-personally, we are strongly disinclined to say that they aren’t worth living, because that judgment would imply that the people living them should die or should never have been born, and that’s a nasty thing to say about anyone. But of course it’s not something that can be said about anyone in particular from the perspective of procreative decision-making, because there is as yet no one in particular whose life is at issue. The claim that a life would be such as no one should have to live it is different from the claims that a person already living should stop or should never have gotten started. The difference is precisely that the latter claim is about a particular person to whom we owe respect and for whom, even in imagination, we can feel human sympathy, whereas the former is merely about a description that should go unsatisfied. Lives that should be lived by the particular people who are actually living them may well be such as shouldn’t be lived in abstraction from their being lived by anyone in particular.

Returning now to the non-identity problem, I want to repeat my agreement with Weinberg’s view that it isn’t a problem for deontologists—or, as I would prefer to put it, for the only well-developed deontological theory, namely, Kant’s. I think that Kantians can steer clear of problems about future persons. That said, I think they still have to explain how they manage to do it.

After all, the version of the Categorical Imperative most applicable to procreation, the Formula of Humanity, mandates respect for persons, whereas the agent of procreation must put his or her maxim to the test of the Imperative before there is any person to respect. How can wrongly creating a person manifest a lack of respect for that not-yet-existing person, and how can refraining from creating a person manifest respect for a person who will never exist?

The Kantian answer to this question is that respect is not in the first instance an attitude toward individuals. To take a mundane example, not flushing the toilet is disrespectful to the next person who will use it, even if the toilet is in a public restroom and the identity of the next user is not only unknown but indeterminate. Clearly, the obligation to the next person is de dicto, and so the immediate target of respect must be a description, not an individual: it’s an obligation to (quote, unquote) the next person, and only by way of that description to the person who ends up being next.

This interpretation is supported by Kant’s language in stating the Formula of Humanity. What he says is that the respect owed to a person is respect for humanity in that person. I think that this form of respect can also be paid to humanity in the abstract without being targeted at its embodiment in a particular instance. An individual can therefore interpret moral respect or disrespect that wasn’t aimed specifically at him. The next user of the toilet cannot be personally disrespected, but personhood can be disrespected, and the next user will end up at the receiving end of that disrespect.
Similarly, future generations may intercept disrespect we show for personhood by letting climate change take its course. Failing to prevent wide-scale flooding, famine, forced migration, and social unrest is disrespectful of human aims, which will be thwarted, and human capacities, which will be stunted. It’s irrelevant that the subjects of those thwarted aims and stunted capacities won’t be the same as the people whose aims and capacities would have flourished in the alternative.

We can now think about our obligations to future generations without reaching untoward conclusions, repugnant or otherwise. The question becomes: What kind of circumstances does the dignity of personhood require us to provide for whatever instances of personhood we will end up creating? Or, more pointedly, what circumstances must we be able to provide for instances of personhood in order for creating them to be permissible? And that question is the one to which Weinberg devotes the second half of her book.

Weinberg’s answer to this question is also Kantian—or, at least, neo-Kantian, in that it is modeled on Rawls’s hypothetical contract between parties designing their society from behind a veil of ignorance as to what positions in that society they will occupy. For Weinberg, what the veil obscures, specifically, is whether one will be a prospective parent or an actual offspring, that is, whether one will be an adult who could procreate or a child who has been created.

As Weinberg notes, Parfit declined to apply the Rawlsian model to the case of procreation, but only because he assumed that the parties behind the veil would have to be prospective parents and prospective offspring—that is, adults who could procreate and children who could be created but do not yet exist. And then their negotiations would have to pit the costs and benefits of parenthood against the costs and benefits of existence itself, which would seem either incoherent or at least unfair (assuming existence to be a good thing on balance, though as I mentioned at the outset, Weinberg herself doesn’t assume so). Weinberg’s solution is not to discard the Rawlsian model but to apply it more coherently and equivocally, by assuming that the negotiation behind the veil of ignorance would involve parties who could end up either as prospective parents or actual children. And her argument for this solution initially struck me as compelling: she argues that the main costs facing the former parties are the costs of forgoing parenthood, whereas there are no costs to forgoing existence.

When I first read Weinberg’s application of the Rawlsian thought experiment to particular problematic cases, I found her conclusions highly plausible. They include the conclusion that the level of risk that one may impose on a child in creating it tends to decrease in inverse proportion to the number of one’s existing offspring. Because the risks of conditions such as Down syndrome increase with parental age past thirty-five, those who already have children by that age should view the permissibility of further procreation as diminishing rapidly—more rapidly than it would if the child in question would be their first. The reason is that the cost to parents of forgoing an additional child is lower than the cost of forgoing parenthood altogether, and so the parties behind the veil of ignorance would not accept as much risk attached to the possibility of being the additional child in return for the possible benefit of being the parent; conversely, they would accept greater risk attached to the possibility of being a first child in return for avoiding the possibility of being childless. That initially sounded right to me. So did Weinberg’s conclusion that the permissibility of procreation evaporates as the size of one’s brood approaches ten. Too many things could go wrong in a child’s life to justify increasing one’s offspring by a small fraction, and nothing can go wrong in the life of a child who doesn’t exist.

Nevertheless, I worry about Weinberg’s decision to allow the offspring in the Rawlsian negotiation to be represented by a party who will be an actual, existing child. One cause for worry is our reluctance to say that existing children should not have been born, even if we would have said ex ante that their parents should not have children. Admittedly, the causes of this reluctance, which I mentioned a moment ago, are not present behind the veil of ignorance. The offspring’s representative in the original position, not knowing which child he will be or which life will be his, could not have an attachment to them. Yet he would still know that there is a particular person out there beyond the veil, and that he, the dummy offspring, will soon become particularized as that person. I suspect that our reluctance to pass sentences of nonexistence on real individuals, whether pre- or post-natally, will skew the result of the thought experiment.

On further reflection, then, I’m not sure that I agree with Weinberg that the parents’ interest in having children should weigh in the balance against the risks that life would pose to a possible child. Of course, people shouldn’t have children if they don’t want to be parents (I’ll get to that issue in a moment), and so their wanting to be parents removes a moral obstacle to their procreating. But can it counterbalance other obstacles consisting in the hazards for the child they create?

I am tempted to think that when it comes to creating a human life, there is no balance of pros and cons. There is personhood, or humanity, and there are the preconditions for its potential to be fully realized. Short of those preconditions, procreation is impermissible; granted those preconditions, there may still be moral obstacles—an intention not to parent the resulting child is one—but they aren’t weights in a scale that takes goods and ills for the child into account on the other side. Or so I am tempted to think at the moment.

Weinberg believes, as I do, that donating gametes or embryos to strangers is wrong. The typical sperm donor is, if anything, worse than a deadbeat dad, because he deliberately procreates with the intention of abandoning his child—indeed, with the child already pre-abandoned—whereas the typical deadbeat dad didn’t intend to procreate, or initially intended to parent the child and changed his mind only after the decision to create it was irrevocable.

This negative judgment on gamete donation depends on the view that the biological tie between biological parent
and child is morally significant, and that the parental obligations entailed by that tie cannot be transferred at will. They can, of course, be transferred under the sort of exigent circumstances that lead parents to give up a child for adoption—an existing child with needs that the biological parents are unable to fulfill. If the parents had deliberately conceived the child with the intention of giving it up for adoption—say, because the mother wanted the health benefits of pregnancy without the fuss of parenthood—we would regard them with horror. It is beyond me why people don’t feel the same about other existing things; they are looking for what anchors their personal existence and the world of other existing things, and in ignorance of half their ancestry, all of which many donor-conceived children regard as life-damaging deprivations that they need never have suffered, because they need never have been conceived.¹

My view is that these admittedly harsh moral judgments need to be justified in terms of the significance of biological ties. Weinberg’s judgments on the subject are less harsh, or at least expressed less harshly, but I think they stand in need of the same justification. Why do donor-conceived children feel abandoned or adrift if their merely custodial parent is just as loving and giving as any parent, and more so than their unknown biological parent would have been? More importantly, are they justified in their feelings, or are they the victims of a culture that unduly valorizes or even fetishizes the biological family?

One common approach to questions like these is to consult social-scientific data about the development, mental health, and careers of donor-conceived children. If they score just as well on these measures as other children, we are supposed to conclude that they were not disadvantaged by the absence of their biological parents, and that their unhappiness is therefore misplaced.

But I believe that the measurable components of well-being do not exhaust the phenomenon, do not even include some of its most significant components. People can grow up to be intelligent and healthy and successful while still being profoundly unhappy, and not in a way that gets reported as clinical depression. I think that being severed from one’s biological roots can lead to an existential unhappiness that no one should have to suffer, other things being equal (as they are not in cases of adoption). When children ask “Where did I come from?” they are looking for the point of connection between their own existence and the world of other existing things; they are looking for what anchors them to the material world. They may also be looking for an explanation of what they are like, and although it offends right-thinking people to say so, the fact is that their genetic inheritance has determined what they are like to a significant extent—not just their physical appearance but aspects of their mentality and personality that must be central to their sense of identity if they are to understand themselves at all. And even understanding their physical appearance is no small matter. Those of us to whom the mirror shows a face like the ones that hovered lovingly over our cribs may not appreciate the difficulty of feeling alienated from one’s own body.

Weinberg rightly treats the relationship of biological parenthood as a personal relationship carrying duties that, like some promisory duties, cannot be transferred to others. But this is the aspect of her motivational principle that needs justification, in my view. I would say that the biological tie between parent and child is personal in this sense because it is nonelective. There are two people who are responsible for your existence and cannot escape that responsibility, ’til death do you part. What they owe you, they can never escape owing, and likewise for what you owe them. If you have read the children’s book Runaway Bunny, you have glimpsed the sense of security that comes from that inescapable bond, a security that is important to children, and (I would add) not only to them.

This is not the occasion for me to defend these admittedly controversial claims. I raise them only to give a rough outline of something that is missing, in my view, from Weinberg’s defense of her positions on adoption and donor conception.

Weinberg defends those positions with the first of her two principles of procreative permissibility. The first principle requires that procreators be motivated at least partly by an intention to love and care for their offspring. Obviously, I endorse this requirement, but I think that the requirement itself stands in need of justification. Why not a requirement that procreators be motivated by an intention that their offspring be loved by someone, possibly someone selected by responsible technologists who ensure that the gametes be used with the intention that they procreate?

I don’t see how to answer this question without delving into the significance of biological ties, unpopular though the topic may be. I’m not suggesting that Weinberg shies away from unpopular topics—not she!—but we are now in territory where the lack of ideological diversity in academia begins to be felt, and that problem is worth mentioning when discussing a book that is so forthright on controversial topics.

Finally, a controversial topic that Weinberg touches on but doesn’t discuss. I’d like to hear more on this topic in her plainspoken and sensible style.

Weinberg briefly remarks on the importance of marriage as a precondition of procreation. Hurrah for marriage, I say—two cheers at least. But why marriage? The marriage wars recently settled by the Supreme Court produced a lot of words on the topic, but most of them were motivated by agendas having to do with adult sexuality. Reference to the interests of children were frequent but superficial, to my way of thinking. Yes, children should have two parents who are in a committed relationship, but what difference does the marital commitment make in that relationship, and how does it benefit a child? Weinberg apparently thinks it does, and I’d like to hear more.
By now I have said many things that may have offended members of the audience. Some of you may be single parents, I assume; some may have intended to be single parents from the very beginning; some may have children with disabilities or Down syndrome. Please remember that my views do not lead to the conclusion that particular children should not have been born. I’ve never met a child who shouldn’t have been born, and I have known some severely disabled children. If a child isn’t conceived, there is no particular child who isn’t conceived, hence no personal identity that is disrespected. All there is, I believe, is humanity in the abstract, which goes without an additional instance, possibly because of our respect for humanity itself.

NOTES
3. For a recent survey of donor-conceived adults, see https://www.wearedonorconceived.com/guides/survey-results/.

Contraception and Religious Freedom: A Philosophical Analysis of Zubik v. Burwell

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I. BURWELL V. HOBBY LOBBY STORES AND ZUBIK V. BURWELL

Health-care professionals and institutions have sometimes objected, on grounds of conscience, to participation in medical therapies to which patients are legally entitled. Recently, the US Supreme Court has heard two cases brought by conscientious objectsors to participation in prescription contraceptive medications, devices, and services—i.e., birth control products and procedures routinely used for family planning, which range from contraceptive pills and emergency contraception to hormone injections and implants, intrauterine devices and tubal ligation. Until very recently, the most common objections to contraception on the basis of conscience have involved individual religious objectors, usually physicians, nurses, pharmacists, and other health-care providers. A pharmacist, for example, who objects to contraception on conscience grounds might try to talk the customer out of using the treatment, deliberately delay the product until the point when it ceases to be effective, and even destroy prescriptions for contraceptives so that the customers cannot obtain them elsewhere.

But Burwell v. Hobby Lobby Stores, a case decided by the US Supreme Court in 2014, famously involved a non-medical, for-profit corporation that objected on the basis of religious reasons to any participation in contraceptive coverage for its employees. The owners of Hobby Lobby Stores opposed a mandate of the so-called ACA (the 2010 Patient Protection and Affordable Care Act) requiring that employers include in their employees’ health-care plans cost-free coverage for contraception. On the plaintiff’s view, that mandate imposed a substantial burden on their religious freedom, something protected by the federal Religious Freedom Restoration Act of 1993 (RFRA). Given the RFRA, accommodations for religious objectors to a government’s provision must not place substantial burdens on their religious liberty unless the government can show that it has compelling interests in enforcing the challenged provision—interests that are such that they cannot be satisfied by less restrictive means. But the Court found for Hobby Lobby Stores, determining the introduction of accommodations for religious objectors to the ACA mandate on contraceptives that were consistent with the RFRA.

Burwell v. Hobby Lobby Stores heralded what appears to be the rise of religious objection to facilitating contraception by for-profit, non-medical corporations. The parallel case that concerns me here, Zubik v. Burwell, indicates a similar trend among religious nonprofits. This action was brought by some Roman Catholic groups whose aim was to obtain an expansion of existing accommodations for religious objectors to the ACA mandate of contraceptives. They included David Zubik himself, the Bishop of Pittsburgh, and an international congregation of women known as the Little Sisters of the Poor (hereafter, “the Zubik plaintiffs”). To this effect, they initiated litigation against Sylvia Burwell in her capacity of Secretary of Health and Human Services (HHS). At the center of their litigation was whether compliance with existing accommodations for religious objectors amounted to a substantial burden on the plaintiffs’ religious liberty, as protected by the RFRA.

On March 29, 2016, a divided Supreme Court reached what was widely regarded as a compromise: it ordered both parties to submit briefs addressing the questions of

Whether and how contraceptive coverage may be obtained by petitioners’ employees through petitioner’s insurance companies, but in a way that does not require any involvement of petitioners beyond their own decision to provide health insurance without contraceptive coverage to their employees.

In practice, this decision had the consequence that the Zubik plaintiffs needed no compliance with existent provisions for religious objectors to the ACA mandate on contraceptive coverage, but could instead directly inform their insurers that they did not wish to pay for the coverage. The insurer would then notify the government, which would establish an alternative provision of cost-free contraceptives to employees, making it clear that it was not their employers’ health plan that was picking up the costs. In an interesting further development, some Evangelicals and Mormons (who ordinarily regard themselves as religious objectors to abortion but not to contraception) came out in support of the Zubik plaintiffs, perhaps because of fear that the 2010 health-care law in the US could slide into having similar mandates for employers’ coverage of abortion, physician-
assisted suicide, or any other medical interventions that they do find objectionable on religious grounds.

II. RELIGIOUS OBJECTION TO THE ACA MANDATE ON CONTRACEPTIVE COVERAGE

By 2014, the Obama Administration’s accommodations for religious objectors to the ACA mandate on contraceptive coverage required objectors to either file a form or write a letter notifying the government of their intention to be exempted on grounds of conscience. The government would then arrange contraceptive coverage directly with the objectors’ insurers at no cost to the employees, thus guaranteeing compliance with the ACA mandate for free access to contraception. For the Zubik plaintiffs, however, filling out a form or writing a letter stating their status of religious objectors to contraception counted per se as a substantial burden on their religious freedom. But as I argue next, determining whether that was, in fact, a plausible contention requires weighing in the following considerations.

First, it is not obvious that the Zubik plaintiffs could consistently appeal to their religious freedom as the grounds for their lawsuit against the HHS. To do so, their objection against collaboration with the ACA mandate on contraceptives must be based on strictly religious grounds. But it can easily be shown that it was not so based, for their objections to contraception are familiar from the mainstream Catholic theologians’ reasons against not only contraception but also beginning-of-life interventions such as abortion, in-vitro fertilization, and preimplantation genetic diagnosis. Prominent among those reasons is a Sanctity-of-Life argument based on Aquinas’s view that human life and procreation are absolute values. If they are, then any action that prevents procreation or destroys life is morally impermissible except when it can be morally justified by appeal to the doctrine of double effect. Consistent with this argument is the Natural Law theorist’s view that the value of human life arises through the order of nature. Within that order, the morally permissible sexual act is an act of conjugal love aiming at reproduction, something that conflicts with contraception. According to the official stance of the Roman Catholic Church on contraception, which Pope John Paul II outlined in his 1995 encyclical Evangelium Vitae, contraception “contradicts the full truth of the sexual act as the proper expression of conjugal love” and it is therefore “opposed to the virtue of chastity in marriage.”

If this analysis is correct, it follows that the Zubik plaintiffs do not qualify as strictly religious objectors, since their objection to the ACA mandate on contraceptives is based on fundamentally moral grounds that are essentially secular and can be traced to Aquinas’s Natural Law theory. As a result, it falls instead into the category of conscientious objection to a medical service, where

An objection qualifies as being based on conscience just in case it is based on beliefs that are essential to the objector’s identity and moral integrity.

Surely, as commonly agreed, conscientious objectors are a protected group in democratic societies. But there is little room now for supporting the Zubik plaintiffs’ claim that existing accommodations to the ACA mandate on contraceptives amount to a substantial burden on their religious freedom.

III. DIRTY-HANDS ARGUMENTS IN REPRODUCTIVE CARE

Furthermore, it can be argued that in a liberal democracy, conscientious objectors’ protected status must be qualified in certain ways, since they need to be balanced with what is fair for all concerned. For one thing, since the US Supreme Court’s 1965 decision in Griswold v. Connecticut, women in America are legally entitled to contraception as a method of birth control. Similarly lawful is early abortion since the Court’s 1973 decision in Roe v. Wade. From the Zubik plaintiffs’ perspective, absent grounds for invoking a legal argument premised on the RFRA’s protection of objectors’ religious freedom, the best reason against participation in the legal practice of contraception is a moral argument based on the unfairness of making conscientious objectors to contraceptives facilitate that very service. But such a “Dirty Hands” argument would be weak for more than one reason. For one thing, their refusal to comply with the mandate on contraceptives seems unfair to the substantial majority of people in America, religious and secular alike, who generally comply with the reasonable demands of their government even in matters about which some disagree on moral grounds, such as funding abortion or capital punishment with their tax dollars. Compare a parallel argument offered in an attempt to render morally permissible the 1976 Hyde Amendment, a provision aimed at restricting the use of public funding for abortions. According to bioethicist David DeGrazia, the Hyde Amendment is morally justified on the grounds that paying for the procedure is unfair to abortion critics. “That women have the right to terminate pregnancy,” writes DeGrazia, “does not mean the public has to pay for abortion.” On his view, since there is a substantial minority of abortion critics who desire to avoid “dirty hands” (i.e., collaboration with the practice), it is unfair to use their tax money for something they oppose.

Yet this argument fails in a way that illustrates what’s wrong with the Dirty-Hands argument against compliance with the ACA mandate on contraceptive coverage by conscientious objectors. For although at first DeGrazia appears to have offered a good moral reason for the Hyde Amendment (viz., the unfairness to abortion critics in using public funds to pay for abortion), that reason cannot withstand scrutiny. After all, on a number of plausible conceptions of distributive justice, in a liberal democracy residents have not only a legal but also a moral duty to fund the apparatus of government through taxes, even in situations where they do not endorse and may even oppose the causes being pursued with their tax dollars. This moral duty holds unless the law is unjust in ways that can justify individual or collective acts of civil disobedience. In the absence of such grounds, socially responsible reformists should limit their objection to working toward changing public opinion so that they may eventually elect leaders capable
of carrying out more congenial agendas. In the meantime, they should comply with the reasonable provisions of their democratically elected officials.

Consider a related scenario: it is a widely acknowledged fact that many Americans are opposed on moral grounds to their states’ practice of executions as punishment for certain crimes. Yet their tax dollars are used to fund executions routinely. But would it be right for them to refuse to pay taxes? It seems not. A willingness to live in a liberal democracy typically requires compliance with commonly accepted rules, which in turn suggests that they should be willing to finance their government’s decisions, including those that they actively criticize on moral grounds. Responsible reformists would work toward creating the conditions for a change in the government’s policies they oppose, but would do so within the framework of existing laws and institutions. By analogy, the use of federal funding for abortions seems not unfair to those who morally object to abortion in the typical case. But if the use of public funds for abortion or capital punishment is not unfair to those who object to these practices, then it is not unfair to corporations, whether for-profits or nonprofits, to be required to provide free contraceptive coverage for their employees through their insurers.

IV. THE UPSHOT
What, now, shall we make of the Zubik plaintiffs’ contention that compliance with informing the government of their conscientious objection to providing such coverage amounts to a substantial burden on their religious freedom? Given the considerations above, there is more than one problem facing this contention. First, the plaintiffs’ deep philosophical reasons for objecting to the ACA mandate on contraceptive coverage fail to qualify as strictly religious. In fact, they appear quite secular. If so, the plaintiffs have no grounds for invoking the protections to religious freedom afforded by the RFRA. Furthermore, the weakness of a Dirty-Hands argument, their best argument for a conscience-based objection to participation in contraceptive coverage for their employees, has been exposed by analogy with DeGrazia’s failed attempt to support restrictions on the use of public funds for abortion. In either case, it hardly seems unfair that conscientious objectors be required to comply with what democratically elected officials regard as a reasonable health-care provision. The inevitable conclusion is that the Supreme Court was too quick in seeking a “compromise” with the Zubik plaintiffs.

NOTES
1. A case in point is that of Neil T. Noesen, a weekend pharmacist at the K-mart in Menomonie, Wisconsin, who on a Saturday in 2002 refused a refill of a prescription for contraceptive pills on file at that pharmacy. Noesen, acting on what he said were his religious beliefs, not only refused to dispense the contraceptives but also refused to inform the customer where she might obtain them. Since she needed to reassume the cycle of pills on the following day, she approached a Wal-Mart pharmacist, who was willing to dispense them. Yet Noesen did not authorize the transfer of her prescription. Ultimately, his superior at the K-mart, who had been unaware of Noesen’s conscience-based objection to contraceptives, dispensed the pills one day after the customer was supposed to resume taking them. The Wisconsin Pharmacy Examining Board later issued a reprimand to Noesen. For more on this case, see ACLU, “Wisconsin Court Upholds Discipline of a Pharmacist Who Refused to Fill Birth Control Pill Prescription.”

2. For more on this exemption, see “45 CFR 147131 – Exemption and Accommodations in Connection with Coverage of Preventive Health Services,” Legal Information Institute, Cornell University Law School, https://www.law.cornell.edu/cfr/text/45/147131.


4. Note that a non-absolutist Sanctity-of-Life doctrine is not committed to the moral wrongness of contraception or abortion. Such a doctrine can be found, for example, in Ronald Dworkin’s Life’s Dominion (pages 34 ff.). The standard source for an absolutist Sanctity-of-Life doctrine is Thomas Aquinas’s Natural Law theory. This theory entails that human reproduction should be promoted always except when the act hindering or destroying it (e.g., contraception and abortion) can be justified by the principle of double effect. Since in most cases contraception is used for family planning, in most cases it is unjustifiable by that principle.


7. In 1976, Illinois Congressman Henry Hyde proposed an amendment to the annual appropriations bill forbidding the use of federal tax dollars to pay for abortions, except in cases of rape, incest, or threat to the woman’s life. The so-called Hyde Amendment was passed by Congress and became law in the same year. In 1980, it withstood a challenge to its constitutionality in Harris v. McRae. The US Supreme Court ruled that its constitutionality rested on the ‘due process’ clause of the 14th Amendment.


9. Conceptions of justice in health care that can be used to support this conclusion include two accounts offered in the context of the access-to-health-care debate. Norman Daniels’s 1981 fair-equality of opportunity account and Allen Buchanan’s 1984 pluralistic account, and the utilitarian conception of the principle of double effect. Since in most cases contraception destroys it (e.g., contraception and abortion) can be justified by the principle of double effect. Since in most cases contraception is used for family planning, in most cases it is unjustifiable by that principle.

10. Conceptions of justice in health care that can be used to support this conclusion include two accounts offered in the context of the access-to-health-care debate. Norman Daniels’s 1981 fair-equality of opportunity account and Allen Buchanan’s 1984 pluralistic account, and the utilitarian conception of the principle of double effect. Since in most cases contraception destroys it (e.g., contraception and abortion) can be justified by the principle of double effect. Since in most cases contraception is used for family planning, in most cases it is unjustifiable by that principle.

REFERENCES


Medical Ethics and Harvesting Non-Vital Human Organs from Healthy Donors

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Much has been written for and against the sale of human organs for transplant. On that subject, I shall be silent. I shall also be silent on the subject of harvesting human organs just before an otherwise inevitable death or just after. Nor shall I say anything about harvesting a human organ under circumstances that might be coercive. My concern is the harvesting of non-vital human organs freely donated by a well-informed, competent donor, with years of life ahead, for example, a physically healthy, mentally competent, middle-aged man who, after much reading and many discussions with family, friends, social workers, and physicians, offers one of his kidneys for immediate use because he wants to prevent his sister dying of kidney failure.

My thesis is that such harvesting should be a violation of medical ethics. Such harvesting should be unethical even if it helps both to save the life of an individual patient and to reduce the overall death rate. It should be unethical because it endangers, or actually harms, the health of the person whose organ is harvested, “the donor,” without offering that person any medical benefit in return.

I said should be unethical, not is unethical, because I am presenting an argument for a change in medical ethics, not reporting the state of medical ethics today. I will explain later why I do not think I am simply reporting the state of medical ethics today.

I do not expect the argument presented here to convince everyone of its conclusion. Indeed, I would not be surprised if many found it no more plausible than Zeno’s proof that Achilles cannot catch the tortoise. What I expect, or at least hope, is that the argument will convince everyone reading it to rethink the unique relation that typically exists between the harvesting physician and the living organ donor. What is the donor to the physician? What is the physician to the donor?

But first, some definitions.

IMPORTANT TERMS
By “human organ” I mean any part of the human body that the body will not replace once the part has been removed. A human organ does not regenerate. By this definition, blood, sperm, and similar bodily fluids are not organs. The body will soon replace them (as long as it is not dead or dying). The same is true for hair, fingernails, and the like, provided the “roots” are left. On the other hand, kidneys, corneas, lungs, faces, and the like are human organs. For now, they can only be replaced surgically, if at all. The human body will not regenerate them.

An organ is “vital” if it is necessary for a life to continue. Human organs can be “vital,” like the heart, or “non-vital,” like a cornea. Some organs, like the kidneys or skin, are vital if harvested altogether, but non-vital if only some lesser unit (such as one kidney or a small patch of skin) is harvested. My focus here will be the harvesting of non-vital organs because they are the harder case for my purpose. To harvest a non-vital human organ from a living human’s body is merely to mutilate the body, that is, to weaken its defenses to disease, to leave scars, or otherwise to make the body in question less healthy. Of course, harvesting most human organs, such as a kidney or lung, from a living body involves major surgery, and all but the most minor surgery itself risks injury or death whatever its purpose, a fact that any surgeon must consider before agreeing to operate. Nonetheless, to harvest a vital organ from a living donor (without replacing it) is to kill the donor outright—an act much harder to defend.

By “ethics” I mean neither ordinary morality nor moral theory. Ordinary morality may be said to consist of those standards of conduct (rules, principles, ideals, and the like) that all reasonable persons (at their most reasonable) would want all others to follow even if everyone else following those standards would mean having to do the same. Among moral standards are “Don’t lie”; “Keep your promises”; and “Help the needy.” Ordinary morality applies to “everyone”—or, at least, to everyone reasonable enough to follow the standards consciously.

In contrast, “ethics,” as I shall use that term, refers only to those morally binding standards that apply to members of a group just because they are members of that group (a “group” being any number of reasonable persons less than everyone). Business ethics applies to people in business and no one else; computer ethics, to people while using computers and no one else; and engineering ethics, to engineers and no one else. Ethics (in this sense) always includes standards that exceed morality’s minimum. Standards that just meet morality’s minimum just are moral standards. Standards that fall below that minimum are...
not ethics (as I shall use the term). There are no “terrorist ethics” or “torturer’s ethics”—except with scare quotes to signal irony or analogy.

The term “medical ethics” currently has at least three senses. In one, it refers to standards that apply to anyone working in medicine, including nurses, osteopaths, biologists, and even hospital administrators. In another sense, “medical ethics” refers to the special standards that apply to physicians (MDs) and no one else. It is the ethics of physicians (including surgeons), their profession’s ethics. I shall hereafter understand “medical ethics” in this second (professional-ethics) sense, reserving “biomedical ethics” for the first. In this second sense, medical ethics consists of those morally binding standards of conduct (rules, principles, ideals, and the like) that all reasonable physicians (at their most reasonable) want all other physicians to follow even if their following those standards would mean having to do the same. The Code of Ethics of the American Medical Association (AMA) is (in large part at least) a statement of medical ethics in this second sense. There is little in it about which physicians disagree, whether they are members of the AMA or not. In contrast, the Hippocratic Oath is not a statement of medical ethics: many physicians today, especially at their most reasonable, disagree with much in the Oath (everything from the prohibition of surgery to the invocation of ancient gods such as Apollo and Aesculapius).

Moral theory is the attempt to understand morality, including ethics, as a reasonable undertaking. Those who study that part of moral theory concerned with medical ethics or biomedical ethics often refer to what they do, their theorizing, as “medical ethics.” This is a third sense of “medical ethics,” one I shall avoid here for the sake of clarity.

MEDICAL ETHICS OF HARVESTING FROM HEALTHY DONORS

The AMA’s Code of Ethics now has an entire chapter devoted to the procurement and transplanting of bodily organs (Chapter 6). A few sentences are relevant to our subject. Let us begin with three of these in Opinion 6.2.1:

Transplantation offers hope to patients with organ failure. As in all patient-physician relationships, the physician’s primary concern must be the well-being of the patient. However, organ transplantation is also unique in that it involves two patients, donor and recipient, both of whose interests must be protected. 5

While much in these three sentences seems right, there is a paradox at its center. On the one hand, according to the second sentence, the physician’s primary concern when transplanting an organ must be the patient’s well-being (as if there were one, and only one, patient). On the other hand, the third sentence asserts that organ transplantation is “unique” in having “two patients,” the donor as well as the recipient, both of whose interests must be “primary” (or, at least, “protected”).

Transplanting is probably not unique in being a medical relationship having two patients. There is (arguably) at least one other such relationship (even if “patient” is understood strictly), that is, the relationship existing when one physician tends to a pregnant woman during childbirth. The physician then seems to have two patients, the child as well as the pregnant woman. A more serious objection to the claim of uniqueness is that the harvesting physician often, perhaps even typically, has only one patient (in this strict sense at least). Indeed, another Opinion (6.1.1) seems to make one-patient-at-a-time the standard arrangement during transplantation:

Physicians who participate in donation of nonvital organs and tissues by a living individual should: . . .

b) Avoid conflicts of interest by ensuring that the health care team treating the prospective donor is as independent as possible from the health care team treating the prospective transplant recipient.

So, it seems, no physician directly involved in transplanting an organ should have more than one patient at a time (the donor or recipient but not both). The physician who (in some sense) has more than one patient (such as a physician coordinating the harvesting team with the transplant team) should have no patient before her. In this respect, an organ transplant seems like a few other medical relationships, such as triage, where there is (in a special sense) more than one patient.

There is also a question about what “primary” means in 6.2.1. How can the well-being of both donor and recipient be primary? If “primary” means what it usually means in the AMA’s Code of Ethics, the donor’s well-being seems to be decidedly secondary (even if the donor has a physician of his own). What the donor should expect from the harvesting physician is no more harm than necessary for the organ’s removal, not a medical benefit. The donor is less like a patient than like a subject of medical research, someone who freely contributes to medicine’s goal without medical benefit. But there is also at least one important difference between what justifies the risks that research subjects bear and what justifies the risks organ donors bear. On those rare occasion when research subjects risk death or injury, they do it for a public good, medical knowledge. An organ donor routinely risks death or injury for a private good, the benefit of the recipient. Indeed, the donor willingly suffers mutilation. In this respect at least, the relationship of physician to donor may be unique: the harvesting physician is knowingly harming the person under her knife for the sake of another.

Before 2012, the World Medical Association (WMA) also accepted the two-patient conception of transplantation (but without any claim for the uniqueness of having two patients at the same time): “The primary obligation of physicians is to their individual patients, whether they [the patients] are potential donors or recipients of transplanted organs.” 6 The WMA abandoned the two-patient conception of transplantation in 2012. 6

Clearly, the two-patient conception of transplantation is inadequate—perhaps, even incoherent. What alternatives...
might there be? The Declaration of Istanbul provides one.7 Technically, the Declaration is the work of biomedical ethics, not medical ethics, since it is the work of a meeting of 150 representatives of scientific and medical bodies from around the world, government officials, social scientists, and ethicists, not merely a meeting of physicians or medical bodies. Nonetheless, the Declaration is more careful in its use of “patient” than the AMA is. The Declaration never uses “patient” to refer to the donor of an organ, only to refer to its recipient. Indeed, it says (Proposals): “The act of donation should be regarded as heroic and honored as such by representatives of the government and civil society.” An act is heroic when it does great good for another at considerable cost (or at least considerable risk) to the agent. Saving a drowning child by throwing her a rope and pulling her to safety is (typically) not heroic, just a good deed; in contrast, swimming through shark-infested waters to save the child is heroic.

While we can acknowledge the heroism of living donors—if willing, competent, and informed—we must also acknowledge that such heroism is, as such, not part of the physician-patient relationship. A physician may be heroic, but patients seek relief from suffering. One who seeks only to sacrifice is not a patient. So we must ask what, if anything, justifies a physician harvesting organs from a healthy donor. The obvious answer is the medical good done, that is, saving the life or improving the health of the recipient. But a moment’s thought reveals that medical good can only be half an answer. Physicians must not forget their profession, especially the limits it is reasonable to impose on the way they serve a patient’s health.

THE PROFESSION OF MEDICINE

The relationship between physician and patient is, of course, not simply a matter of “First, do no harm” and then contribute to the patient’s health. Physicians routinely harm patients without any contribution to health, for example, when they do cosmetic surgery, such as a breast enlargement or “nose job,” to improve the appearance of a healthy person.8 What justifies such surgery, even though it weakens the tissue or structure amended, is not the patient’s health but the satisfaction of an esthetic desire that would otherwise go unsatisfied or be satisfied by people substantially less qualified to operate on the body (such as cosmetologists or tattooists). Much the same can be said of abortion, except where the (physical or mental) health of the mother is at stake. Pregnancy as such is not a disease. In abortion, the physician sometimes risks harm to the patient without medical benefit to patient or fetus. The AMA’s Code of Ethics no longer prohibits such abortions. Thus, in some cases today, medical ethics allows physicians to do medical harm for a non-medical benefit.9

Typically, that non-medical benefit is a service to the patient’s overall “autonomy.” No doubt, service to the patient’s overall autonomy also contributes to the willingness of physicians to harvest non-vital organs from competent living donors who freely ask it. The importance of such autonomy can be seen in all four documents we have examined (the AMA Code of Ethics, the two WMA Statements, and the Istanbul Declaration). All four include elaborate procedures to ensure that donors are both well-informed and competent when they allow non-vital organs to be harvested from their healthy bodies. We might then expect all four documents to exclude minors from being donors, since (by definition) minors lack full autonomy. Not so. Both the AMA Code (6.1.1.g) and the two WMA Statements allow minors to donate an organ “under exceptional circumstances.”10 The Istanbul Declaration is silent about minors but does expressly recommend avoiding practices that “induce vulnerable individuals or groups (such as illiterate and impoverished persons, undocumented immigrants, prisoners, and political or economic refugees)” to donate organs (Principle 6.c). Presumably, minors should also count as “vulnerable individuals.” So the Istanbul Declaration (speaking for biomedical ethics rather than medical ethics) seems to disagree, however implicitly, with the medical documents about allowing minors to be donors—at least under exceptional circumstances.

Nonetheless, the willingness of both the AMA and the WMA to allow minors to be organ donors, if only in exceptional circumstances, at least suggests that autonomy is not the only relevant factor to be considered. What others might there be? Certainly, there is the desire of physicians to benefit those in need of medical assistance, that is, patients who need a transplant for health or life. The physical similarity between ordinary surgery and removal of an organ for transplant also seems relevant. Perhaps a third factor is that physicians feel that minors are sometimes mature enough to make the heroic sacrifice autonomously, especially if the legal guardian agrees and the minor has an emotional connection with the intended recipient. The AMA must have balanced many competing factors to reach today’s standard for organ donation.

Such balancing would explain why the AMA seems to disagree with the WMA about donation by adults who are mentally incompetent. (Hard cases often divide even the most reasonable members of a group.) The AMA offers no procedure for donation by mentally incompetent adults but does not prohibit it. The WMA now flatly prohibits the mentally incompetent to donate. However, before 2012, it treated minors and incompetent adults the same:

minors or mentally incompetent persons should not be considered as potential living donors except in extraordinary circumstances and in accordance with ethics committee review or established protocols. (F.11)

Plainly, physicians find both donation by minors and donation by mentally incompetent adults to be hard cases. They should find them hard, since in neither case can physicians (without considerable ingenuity) claim to be serving the donor’s autonomy. In both cases, they seem to be risking the health of a non-autonomous non-patient to improve the health of one or more patients.

CONCLUSION

I am a philosopher, not a physician; so, as I understand medical ethics, I can only advise those who authoritatively decide questions of medical ethics, not actually know what is ethical for them. My job is to help physicians to be as reasonable as possible when they jointly decide the
question on which I advise. Being reasonable includes avoiding inconsistency, paying attention to facts, especially those not in controversy, and so on. Here is my advice on the harvesting of non-vital organs from healthy, living donors.

There are temptations to help others that should be refused, for example, when a government asks a physician to provide medical assistance during torture or a patient wants a healthy arm amputated because his body-image does not include the arm. The harvesting of non-vital organs from living minors or incompetent adults seems to belong to this category, a temptation to be refused. Without an appeal to the donor's autonomy, the argument for allowing surgeons to mutilate those under their knife for the benefit of others seems too weak. But even if we assume that the donor is a competent adult, physicians should not (it seems to me) mutilate a healthy person, however willing, just to benefit another. That is too much like amputating the healthy arm of a patient merely because she would rather have it amputated than revise her body-image or live with dissonance between body and body-image. The surgery does not serve the (physical or mental) health of the person under the knife but some non-medical interest. Therefore, it should be unethical for physicians to harvest the non-vital organs of living donors, however willing, competent, and informed the donors are. The AMA Code of Ethics and WMA Statement should be so amended.

The argument just made may seem “paternalistic,” that is, physicians may seem to be preempting a decision properly belonging to the patient in order to protect the patient. I agree that the analogue, refusing to amputate a healthy arm to satisfy body-image, may sometimes arise from medical paternalism, but I must deny it. Physicians may have many reasons for refusing to amputate a healthy arm. Some of these are not paternalistic, for example, that they consider such an amputation a poor use of their time or skill. The refusal of physicians to harvest a non-vital organ from a healthy donor may arise from the same non-paternalistic motive. The person seeking to be a donor may have a right—indeed, a fundamental human right—to make the donation in question. But no physician has a natural duty to harvest the organ in question just because someone wants it harvested, nor should physicians have a professional obligation to do such a thing. If physicians agree that they should not amputate a person's healthy arm to satisfy that person's body-image, they should agree as well that physicians should not harvest a non-vital body organ from a healthy donor.

Since this is an argument from analogy, reasonable physicians may disagree about how strong an argument it is, especially since the strength of the argument depends on how close they consider the analogy between harvesting a non-vital organ from a healthy, living donor and amputating a healthy arm from a competent adult who asks it. Yet, the strength of the argument does not lie in the analogy alone. There is also an implicit argument concerning who physicians should count as a patient.

Insofar as “patient” is understood to be one who seeks medical benefit for himself, neither the would-be amputee nor the would-be living donor is a patient, strictly speaking, just an unqualified candidate for the status of patient. Surgery on such a person would therefore be foreign to medicine. If the purpose of surgery should be medical benefit to the person under the knife—or, to allow for cosmetic surgery, abortion, and the like, some other contribution to that person’s well-being—someone who sacrifices his welfare for the medical benefit of another is not a patient but a victim, much like Iphigenia at Aulis, sacrificed to bring wind so that the Greeks could carry destruction to Troy.

But even if a healthy, living, would-be donor is a patient, strictly speaking, say, because he seeks the physician’s help insofar as she is a physician, what he seeks is still not medical assistance, strictly speaking. It is almost as if (but not quite as if) he asked the physician to harvest all his organs for the medical benefit of others. Such an operation would cause his death. Medical ethics should, physicians agree, not allow a physician to do as such a patient asks even though he has freely given his informed consent, the physician has the skill, and society would benefit overall from the net savings in lives. How does the harvesting of non-vital organs from willing, competent adults, even if fully informed, differ enough from harvesting all the organs from a healthy donor to make it reasonable to allow the harvesting of non-vital organs from a healthy, living donor?

The problem here is not that the would-be donor is acting irrationally. To ask to have all one’s organs harvested and thrown away would be irrational, the waste of a life, but to ask to have them all harvested for a net savings in human lives is not irrational, merely extremely altruistic. The problem is that physicians have not organized to provide social good as such but to make a specific contribution to the social good, roughly, to cure the sick, comfort the dying, and protect the healthy from disease—and to do that one patient at a time. Physicians have had trouble with letting hopeless patients die precisely because letting them die is uncomfortably close to killing them—and killing patients is not something physicians (at least at their most reasonable) want to allow other physicians to do—or, indeed, to do themselves.

I do not claim that physicians could not reorganize medicine to pursue the social good more directly—as, for example, public health does, though even public health does not aim for the social good as such but only for a healthy population. Public health has nothing to say about the social good insofar as the social good concerns finance, general education, esthetics, or the like.

What I do claim is that physicians are unlikely to reorganize to serve the social good more directly anytime soon. And, therefore, for reasons of consistency, they should avoid harvesting non-vital human organs from healthy, living donors to help the sick, just as they now avoid harvesting vital organs for the same reason. For the physician, a patient should be someone who seeks medical benefit for herself—or at least a benefit similar to medical benefit, such as in cosmetic surgery or elective abortion. Someone who asks a physician to help her sacrifice herself for the...
medical benefit of another is too unlike a patient to count as one even by strong analogy.

NOTES

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3. Hippocratic Oath, http://ethics.iit.edu/ecodes/node/4220 (accessed August 8, 2017). This is (more or less) the original. There are, of course, many modern versions with some or all the objectionable parts edited out. But the existence of many different modern versions is itself evidence that the original is not a statement of modern medical ethics.

4. American Medical Association, Code of Ethics, https://www.ama-assn.org/delivering-care/ama-code-medical-ethics (accessed July 28, 2017). For the sake of focus, I shall say nothing here about the claim that “the physician's primary concern must be the well-being of the patient,” though that is another provision needing revision. The physician’s primary concern should be the health or medical well-being of the patient. The physician’s primary concern should not include the patient’s financial well-being, political career, opportunities to buy ancient artifacts, or any other such non-medical contribution to the patient’s well-being (except where the interest affects health, of course).


8. For a long list of ways in which physicians may (more or less) ethically do harm, see my "The State's Dr. Death: What's Unethical about Physicians Helping at Executions?" Social Theory and Practice 21 (Spring 1995): 31–60.

9. Though the AMA Code is now silent on abortion, the history of that silence makes it clear that abortion remains a difficult subject for medical ethics.

10. The current WMA Statement limits the "special circumstances" to when the "minor" is "competent," not noticing that minors are, by definition, not competent—at least as the law defines "minor" and "competent."

11. Though the (recently revised) AMA Code no longer mentions torture, the AMA’s position seems to be that it still does not allow physicians to attend torture sessions because of how “patient” is defined. See, for example, https://wire.ama-assn.org/delivering-care/torture-coercive-interrogations-and-physicians (accessed September 16, 2017). In contrast, the AMA has (as far as I know) no position on amputation to satisfy body image. Nevertheless, physicians I have asked about this example uniformly say physicians should not amputate. They seem to distinguish such cases from sex-change operations, which they regard as professionally proper, because they regard the patient’s longstanding and extreme unhappiness with the pre-operation body to be a mental, or even physical, illness. From that perspective, the harder case is not sex-change but cosmetic surgery for mere esthetic reasons. Perhaps here, what is important is the low risk of death or serious injury if a physician rather than a cosmetologist, tattoo artist, or the like were to perform the surgery.

12. Compare AMA Opinion 1.1.1: “A patient-physician relationship exists when a physician serves a patient’s medical needs.” The Opinion goes on to list three exceptions to this definition, none of which are relevant here.

13. My thanks to Thomas Fisher for helping me distinguish this issue from the one above.

Philosophical Difficulties of Mind
Uploading as a Medical Technology

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INTRODUCTION

Futurist Arthur Clarke is known, amongst other things, for having proposed three principles of prediction regarding future technologies. The third of those principles states that any technology sufficiently advanced is indistinguishable from magic. It is important not to misinterpret this principle. Clarke was a rationalist, and he did not mean to validate sorcerers and magicians. But he did trust that the power of science may be such that, eventually, there would be technologies so impressive that they would end up resembling many of the marvels claimed by science; the difference, of course, would be that science would provide a rational support for its proposals.

Physicians and health-care professionals are aware that no matter how much they may improve living conditions and contribute to well-being, ultimately, health care is a war that will be lost. The medical profession is imbued with an understanding of the finality and inevitability of death. This naturally creates a universal sense of anxiety, as has been consistently documented in philosophical reflection¹ and psychological experiments. Yet, precisely as a result of these anxieties, most of the major religions try to circumvent the finality and inevitability of death by promising some form of immortality.

Rationally speaking, there seems to be no support for such religious promises. But perhaps Clarke's third principle is relevant in this regard, for it is not altogether irrational to believe that, in the not-too-distant future, science will offer technologies indistinguishable from the ancient promises of science and religion. In this regard, the promises about immortality are emblematic. For the past couple of decades, researchers and scholars have been discussing the possibility that science may deliver the religious hope for eternal life.

This trend, generally known as transhumanism, is growing in popularity amongst biomedical scientists and health-care professionals. If the prospects become realized, we may be hopeful that, in the future, there may come into existence a number of technologies that may allow human...
beings to suspend death indefinitely and, in a sense, be immortal. These prospects, of course, are entirely theoretical, and plenty of justified criticisms have been leveled against proposed technologies as too optimistic. Yet, these prospects should still warrant philosophical consideration, for if they do become a reality, both patients and health-care practitioners will have to reflect about the implications.

(1) THE PROSPECT OF MIND UPLOADING

One of the transhumanist proposals is cryonics, the preservation of corpses in low temperatures. Although it is not a technology that purports to bring persons back to life, it does purport to conserve them until some future technology might be capable of resuscitating dead bodies. If, indeed, such technology were ever developed, we would need to revise the physiological criterion for death. For if brain death is a physiological point of no return and the very definition of death (as it is widely accepted under the Harvard criterion of death), then bodies that are currently cryogenically preserved and will be brought back to life were not truly dead after all.

Most scientists are skeptical of the prospect of resuscitating already dead people, but some are more enthusiastic about the prospect of indefinitely procrastinating death by stopping the aging processes. Aubrey De Grey has proposed some strategies for engineered negligible senescence: their goal is to identify the mechanisms accountable for aging, and attempt to stop, or even reverse them, for instance, by cell repair. Some of these strategies involve genetic manipulation and nanotechnology.

Even if it were not possible to revert aging via biochemical mechanisms or through nanotechnological repairing, perhaps no biological solution is needed. Instead, immortality could be achieved by substituting organic tissue with synthetic tissue. In such a manner, artificial organs could be designed, and these may replace deteriorated natural organs. Therefore, with designed synthetic organs that carry out the same functions, the parts that constitute the human body could be constantly regenerated, and with that, aging could be stopped altogether.

In this technological project, human beings would replace their organs with artificially designed parts. And the hope for eternal life would be to eventually become a machine that, inasmuch as it is made up of parts not subject to the same type of biodegradation as organic parts, could continue to exist indefinitely.

Science fiction literature has explored this concept extensively. Science fiction authors refer to this concept as a cyborg, a hypothetical organism made up of artificially designed parts. Ever since, cyborgs have been proposed as a hopeful route to immortality. Futurist Raymund Kurzweil, for example, proposes that our best prospect of overcoming death is that we become cyborgs.

But the key philosophical question is, would a cyborg still be a human being? Can we legitimately consider human an entity that is made up of synthetic pieces? As a matter of fact, cyborgs already exist. Roughly speaking, a pirate with a wooden leg was already a cyborg. And ever since, the development of prostheses in various fields of medicine has dramatically expanded. In all those cases, an artificial creation has replaced a natural part in the human body.

Obviously, one replacement does not alter human identity. A patient with a prosthetic leg has not ceased being a human being because a prosthesis forms part of her body. But if one prosthesis does not make a difference between a human being and a non-human being, then neither would two, three, or four prostheses. Yet, if we gradually substitute organs with prostheses, when would the human being become a machine altogether?

This brings forth a consideration of the so-called sorites paradox. This paradox, first proposed by Eubulides, is concerned with the vagueness of terms. When joining two grains of sand, is that a heap? Of course not. What about three grains? Again, no. But, if we keep adding grains, eventually, we’ll be in the presence of a heap. The paradox is about determining at what specific point a non-heap becomes a heap. Historically, philosophers have not provided a clear and unanimous solution to this paradox. Perhaps we should assume a tough solution: human beings are already machines the moment one particular artificial prosthesis or implant is added, and therefore, to fully become cyborgs would not be a major change in our constitution.

As a corollary of becoming cyborgs, enthusiasts of immortality technologies have explored the concept of “mind uploading” as another strategy to achieve immortality. Mind uploading is about transferring mental contents from the brain to a non-organic device, most likely a very sophisticated computer. Under this concept, the death of the brain does not imply the death of the person, for the mental contents of the person would be safeguarded in a computer.

The goal of this project is to create a complete emulation of a person’s brain. Once the brain is completely modeled, mental contents would be reproduced. If we assume a materialist conception of the brain, then we come to the conclusion that mental contents arise as a result of the physical activity of neuronal circuitry. In such a manner, by emulating neuronal interaction, mental activity can also be emulated. Therefore, even if the brain dies, its contents may be preserved, because these contents are emulated in a machine that reproduces the information hosted by the brain.

The designers of this technological prospect assume that the mind is analogous to software residing in hardware, and its contents can be transferred and reproduced in other machines. Software is stored in hardware, but a “backup copy” can be stored in another piece of hardware, in case the original hardware fails or is destroyed. If the original hardware is destroyed, this does not imply the destruction of the software, as long as it has been safeguarded in another machine. Likewise, the brain may host the mind, but if a backup copy of the mind is created in a computer, the death of the brain will not imply the death of the mental contents, because it can still be recovered with the backup copy.
The creation of a backup copy would be achieved by artificially emulating the same patterns that neurons establish when generating mental contents. Proponents have devised various hypothetical methods to achieve such purposes. First, the brain of the dead person could be cryogenically preserved, and then it could be thinly sliced. This would allow the formulation of a detailed analysis of neuronal circuitry, and taking this as a model, an artificial copy could then be created. Inasmuch as the brain is emulated, the mind would also be emulated.

Another method has also been proposed in which a map of the brain could be created. Current brain imaging techniques offer a very general image of the brain, but enthusiasts cherish the hope that, in the future, new radiological technologies could create images so detailed that they may allow a thorough emulation of the brain. Perhaps an invasive nanotechnological procedure could be used; microscopic cameras could be introduced deep within the brain so as to register in detail neurological activity, and based on the recollected information, the whole brain could be reconstructed.

For now, there is greater concern in conceiving an artificial machine that may have the capacity to store the large volume of data, and to emulate the complexity of the human brain. In 2005, for example, the Blue Brain project was launched; its purpose is the creation of a computer that may emulate the brain of a less complex mammal. So far, with a vast storage capacity, the Blue Brain project has only been able to emulate a few seconds of neuronal activity in the brain of a mammal. Yet, if we admit Moore's Law (i.e., technology has been growing at an exponential rate), then perhaps in the not-too-distant future, this limitation will be overcome.

Thus, under the project of mind uploading, human beings would submit our brains to be emulated by machines. Our brains, made up of organic tissue, would eventually die. But hypothetically, inasmuch as we will have been careful enough to make backup copies in artificial brains, the death of our brains does not imply the end of our existence, for we will continue to live with our minds uploaded in machines. In other words, we will have become robots, and will continue our existence with an entirely synthetic brain. Every time the synthetic materials of the machine that hosts our mind need substitution or repairs, the mental content could be stored in a new backup copy. In such a manner, we could achieve immortality: in a sense, we would have no need to die, because every time the host of our mind becomes deteriorated, our mental contents could be transported to a new machine.

Science fiction has notoriously explored this possibility. Perhaps the most emblematic example is that of the film Avatar: in this movie, human beings have the possibility of creating their own avatars, i.e., robots to which conscience can be transferred.

The hypothetical technology of mind uploading implicitly carries a series of philosophical assumptions regarding the nature of the mind that need to be addressed. The mind-uploading project rests upon a functionalist understanding of the mind. According to this view, the mind is not an immaterial substance (i.e., the soul); but the mind is not identical to the brain either (the conventional materialist view). Instead, the brain is identical to the functions that the brain generates, but that could also be fulfilled in another physical structure.

According to this view, if a machine managed to emulate the patterns or the functions of the brain, then it will have generated mental activity. In that scenario, the aspirations of Artificial Intelligence are fulfilled: inasmuch as the constitution of the brain is not the brain, but rather, the function of the brain (or any other object that may emulate it) develops, then the enthusiasts of Artificial Intelligence esteem that at least it is possible to create a machine that has the same mental functions of human beings.

In that regard, the project of mind uploading is basically a derivative of Artificial Intelligence. This project aspires to create a machine that has the same mental functions of persons. The goal of mind uploading is to exhaustively emulate the functions of specific brains to the point that such emulation allows identifying the machine with the person whose brain was emulated.

2. PHILOSOPHICAL UNDERPINNINGS OF ARTIFICIAL INTELLIGENCE

Apart from its technical difficulties, the project of mind uploading faces a deeper philosophical objection. It is questionable up to what degree we may affirm that a machine may actually have a mind; in other words, could a machine ever be a person? This issue has been widely discussed by philosophers, and a field of its own has arisen as a result, the Philosophy of Artificial Intelligence. The first thinker to formally ask whether Artificial Intelligence could ever be on par with natural intelligence (i.e., if a machine could ever be conscious) was the great mathematician Alan Turing.

Turing is famous, amongst other things, for having designed a model of a machine that would manipulate and interpret symbols, and from that task, it could follow algorithms in various degrees of complexity. Ever since, Turing and his followers estimated that intelligence, whether natural or artificial, is basically about the interpretation and manipulation of symbols. Once the fundamental mechanism of intelligence is known, intelligence could eventually be emulated in a machine. Nevertheless, many critics argue that there is a series of mental functions that machines will never be able to perform, and according to their view, this is enough to distinguish natural intelligence from artificial intelligence.

The first of these alleged limitations is the ability to think rationally. But if we understand “rational thinking” as the capacity to solve problems on the basis of effective decisions, then it is obvious that machines do think rationally. A computer is capable of solving complex logical and mathematical problems with astonishing speed. There does not seem to be a justification by which these functions cannot be called “rational thinking.”
It is also argued that a machine would never be creative.\textsuperscript{19} But again, this is highly questionable. There are computers that, with sophisticated programming, may develop visual and acoustic artistic creations. Anticipating this objection, Turing himself clarified the meaning of “creativity,” and he defined it as the capacity to take us by surprise.\textsuperscript{20} In that sense, in order to examine whether or not a machine can be creative, we must ask whether or not it can surprise us. Turing was hopeful that a computer with enough storage capacity can exhibit enough behaviors that go contrary to our expectations to be called “creative.”

Other critics of Artificial Intelligence claim that a machine will never have a capacity for self-reflection; in other words, it will always lack a sense of self, as opposed to human beings. But, once again, Turing and his followers have disputed this. According to Turing’s followers, it is perfectly viable to elaborate an algorithmic program that allows the machine to report its own internal states. This seems to be a sufficient criterion to affirm that a machine can indeed have an inner sense of reflection.

As a corollary of the previous objection, critics of Artificial Intelligence have also pointed out that a machine can never have emotions.\textsuperscript{21} This is perhaps the most common objection: according to this view, machines may be able to think rationally and even be creative, but they will never have feelings. Yet again, this objection is questionable. It seems possible to build a machine that, depending on the stimuli that it gets, expresses emotions. In that sense, if the machine is insulted, it could express words of sadness; if it is praised, it could express words of joy, and so on.

Other critics claim that a machine will never have free will. Inasmuch as a machine runs with algorithms, it is determined to behave according to its previous determination. And, that being the case, then the machine has no autonomy. However, it is doubtful that even human beings have free will;\textsuperscript{22} for very much as machines, it seems our behavior is already determined by the laws of nature. Some philosophers consider it possible to be determined and free at the same time;\textsuperscript{23} but then, if that compatibilism applies to human beings, it should also apply to machines: a computer could be determined and free at the same time. At any rate, a machine would need a vast storage and complexity capacity in order to consider that, even if the computer’s decisions have been previously programmed, they come from a previous examination of the situation.

Be that as it may, in light of the objections according to which machines will never be able to elaborate mental functions that we human beings have, Turing proposed a test so that one day (hopefully, in the not-too-distant future), we will determine whether or not a machine is conscious. This test is delightfully simple. A person engages in two written conversations: one with a computer, the other one with another human being. However, the person does not know beforehand who is who. If, after engaging in both conversations, the person is not able to distinguish who is the human and who is the computer, then we will have to admit that the machine is as conscious as the other two human beings.

Turing proposed this test in the mid-twentieth century. Given the great advances that were taking place in the area of cybernetics, Turing predicted that, in just a few decades, machines would pass the test. However, his predictions have not come true. So far, no machine has passed the Turing test.\textsuperscript{24}

Computers have managed to easily perform functions that human beings do not master, such as storing enormous volumes of data, or elaborating complex calculations. Furthermore, in the early days of Artificial Intelligence, skeptics doubted that someday a machine could defeat a human rival in chess. However, in 1997, the Deep Blue computer defeated Gary Kasparov.\textsuperscript{25} Yet, no machine has been able to fool an interlocutor, and thus pass the Turing Test.

While it is true that computers may be able to master high functions, they have difficulties emulating mental functions that human beings master from early infancy. For example, computers are not able to properly understand language twists. Isaac Asimov’s I, Robot features a number of stories where machines erroneously follow commands due to their inability to understand irony, sarcasm, etc.

The advances of Artificial Intelligence have turned out to be slower than initially expected, but that does not rule out that, sometime in the future, computers may be able to master the functions that currently are not able to perform. If that day comes, then the prospect for mind uploading may have a higher probability of coming to be real.

Nevertheless, some philosophers have claimed that, even if a computer passed the Turing test, that would not be proof that a machine can be conscious. These critics believe that, at most, a machine would give the appearance of thinking, but that does not imply it is really doing so. Suppose someone expresses kind words to a computer, and the computer replies, “I love you.” According to the critics’ argument, a machine may display signs of an internal state as love, without actually feeling love.

The most emblematic of Artificial Intelligence’s philosophical critics is John Searle. He is famous for proposing a thought experiment that, in his view, erodes the hopes that someday, a machine will be conscious. The experiment is as follows: suppose a person is inside a room with a door. From the outside, this person receives papers with questions in the Chinese language. The person inside the room does not know Chinese, but has a huge manual that gives instructions about how to respond to the questions.

In such a manner, for example, the manual stipulates that a question with a particular ideograph be responded to with some other specific ideograph, and so on. If the manual is properly followed, the person inside the room could have a fluid conversation without necessarily understanding the conversation itself. From the outside, an observer could get the impression that the person inside does know the Chinese language. But in fact, such person does not know the Chinese language; she is only following the instructions of a manual.
According to Searle, something similar goes on with Artificial Intelligence. If a machine passes the Turing Test, it would give the impression of being conscious. But, very much as the person that gives the impression of speaking Chinese when in fact she does not, the machine could give the appearance of having consciousness, when in fact it is just running an algorithm. The crucial thing, in Searle’s view, is to acknowledge that Artificial Intelligence may develop syntax (how to structure symbols for mental functioning), but not semantics (what symbols really mean). 26

Searle’s objection is interesting, but it does not seem totally persuasive. Searle suggests that the external appearance of having consciousness is not a guarantee of actually being conscious, and for that reason, the fact that a computer seems intelligent does not imply that it is actually conscious. But Searle’s argument could easily be applied to human beings: strictly speaking, just because a person screams when she is hit in the face does not imply that the person is truly conscious. As a reply to this argument, behaviorists propose that, at most, we can only aspire to observe behaviors or the external manifestation of mental contents, but not the mental contents themselves. 27 And by observing other people’s behaviors, we may suppose that, underneath those behaviors, there is consciousness.

In that sense, when a person screams upon being hit in the face, we assume that person is in pain. In rigor, we cannot know if, indeed, underneath that scream there is pain, or if the person is just an automaton that is following some algorithm. In the same manner, whenever a machine exhibits advanced signs of reasoning (or creativity, or emotions), we may safely assume that, indeed, the machine is conscious. Therefore, there seems to be no reason to assume that persons do have minds but machines do not.

3. MIND UPloading AND THE PROBLEM OF IDENTITY

A second major philosophical problem that comes up with the prospect of mind uploading is as follows: even if we admit that a brain-emulating machine may indeed be conscious (as discussed above), can we legitimately affirm that such a machine is identical to the person whose mental contents were transferred? This raises the problem of personal identity, i.e., under what criteria can a person be considered the same in different moments?

If we assume the soul criterion of identity (i.e., a person retains her identity if and only if she retains the same soul), 28 then mind uploading would not guarantee immortality. If we assume that the soul is not identical to the mind (and this is a very ambiguous topic amongst those who accept the existence of the soul), then the machine would not be identical to the original person. For, even if the machine had the same mental contents as the original person, it would not have the same soul, and inasmuch as the soul would be considered the constitutive element of the person, then the machine would not be identical to the person.

Furthermore, if we assume the body criterion of identity (i.e., a person retains her identity if and only if she retains her same body), 29 then, again, mind uploading would not guarantee immortality either. For even if mental contents are emulated in a machine, this machine would not preserve the original body of the person, and hence, it would not be identical to the original person.

However, the body criterion faces some notorious difficulties. Upon transferring the mental contents, the emulating machine will acquire a sense of self indistinguishable from the self of the original person. And in that sense, the continuity of the body seems irrelevant; the truly relevant aspect seems to be a psychological criterion. This is intuitively supported by a famous thought experiment proposed by John Locke: 30 if a cobbler one day wakes up with the memories of a prince, and the prince wakes up with the memories of the cobbler, who would be who? Locke argued (pace intuition) that the cobbler would be the person with the memories of the cobbler, even if he wakes up in the palace.

In mind uploading, the machine would preserve all the memories, fears, desires, knowledge, etc. that the original person had. Therefore, it seems proper to consider that the machine would be the person herself. If the original person committed a crime, then it seems reasonable to believe that the machine with the uploaded mind should be punished, for that machine is conscious of the acts of the original person.

As mentioned above, those who uphold the project of mind uploading accept (at least implicitly) a functionalist understanding of the mind. If we were to use another terminology, we could say that a person could be understood as a pattern of neuronal organization. Therefore, wherever this pattern is generated, the original person continues to exist. It is irrelevant whether it is in a brain made up of organic matter, or a machine made up of synthetic material; the important issue is the pattern that such an object generates. In that sense, even with a different body (or, for that matter, with an artificial brain), the person would continue to exist, and hence, immortality would be guaranteed.

But if we accept this reasoning, a new problem arises. In the same manner that one person’s mind can be uploaded in a machine, it could also be uploaded in two, three, or a thousand machines. And if many machines coexist, even with the same mental contents, then it is not intelligible how all those machines can be identical to the original person. For, in that case, we would violate the transitivity principle of identity, according to which if A is identical to B, and B is identical to C, then A is identical to C.

Let us suppose that Jack dies and his mind is uploaded to a computer. Apparently, this machine would be Jack himself, as psychological continuity is preserved. Whenever asked about his name, the computer will answer he is Jack, he will produce memories from his childhood, etc. Yet, other machines could very well be uploaded with Jack’s brain with the same degree of accuracy. Therefore, those other machines would also have psychological continuity with Jack. But if we assume that all those machines are identical to Jack, then they would have to be identical to each other, due to the principle of transitivity. This is absurd, and as a
result, it seems more reasonable that none of the machines
were identical to Jack in the first place. In that case, mind
uploading would not guarantee true immortality.

Some philosophers have tried to offer a solution to this
problem. Robert Nozick\textsuperscript{31} posits the “closest continuer”
criterion of identity to tackle this issue. According to this
criterion, psychological continuity would be a criterion if
and only if there is one candidate for personal continuity.
In that case, the computer would indeed be identical to
Jack, as long as there is no other computer with the same
psychological continuity. Nozick’s solution is ingenious,
but ultimately flawed. Personal identity does not rely on
external conditions; the existence or inexistence of another
machine seems irrelevant when considering whether or not
the first machine is identical to Jack.

In this sense, this difficulty regarding the psychological
criterion and the understanding of a person as a “mental
pattern” seems to support the idea that a person will
continue to be herself if and only if she preserves her
original brain. Any artificial emulation of the brain would be
a replica, but not identical to the original person.

However, there are some counterarguments that could
be used by enthusiasts of mind uploading. Derek Parfit
proposes that the continuity of the organic brain is not
necessary to ensure the preservation of personal identity.
Very much as in the other arguments, Parfit presents
another thought experiment.\textsuperscript{32} Suppose that 1 percent
of a person’s brain is replaced with synthetic material. In
fact, something very similar is already taking place with
neural implants (i.e., artifacts implanted in the brain that
allow for the correction of some neurological disorders).\textsuperscript{13}
Would the person with the brain implant still be the same?
Presumably, yes, for a 1 percent substitution of the brain
does not alter identity. In fact, some patients have had
more than 1 percent of their brains removed, and nobody
would argue that they become a different person.\textsuperscript{14}

Yet, we may foresee that one who upholds the view that
the organic brain is the basis of personal identity will
not admit that a 99 percent replacement of the neurons
with synthetic material will allow for a preservation of
personal identity. But if a 1 percent replacement does not
alter personal identity, whereas a 99 percent replacement
does, at what point does a person cease to be herself and
become another? Once again, we come to terms with the
sorites paradox, and there does not seem to be a fully
satisfactory response.

In fact, the human body entirely recycles its atoms every ten
years. A significant percentage of human beings (at least in
modern times) replace some part of their tissue with some
synthetic substitute. Once again, this raises the question,
if a tooth filling does not alter personal identity, then why
wouldn’t it be the same with the synthetic replacement of
the brain?

Indeed, if we extend this criterion to the brain, we may say
that a totally synthetic brain does preserve identity. But in
order to do so, the synthetic brain must be formed as a
result of a gradual replacement of the organic brain. Thus,
it would be necessary for each brain cell to be replaced by
synthetic cells. At the end, the whole brain will have been
replaced, and an entirely new synthetic brain will come
up. Inasmuch as the organic brain is gradually replaced by
the synthetic brain (and crucially, not just emulated), the
problem of duplication would be avoided.

Be that as it may, if there are still doubts about the person
with the synthetic brain being identical to the person with
the organic brain, then we may recur to another argument
posited by Parfit,\textsuperscript{15} according to which the preservation
of identity is not really relevant when considering the
prospects for immortality or for the continuity of existence.
In Parfit’s view, there is no precise criterion, and for that
reason, what is really relevant is psychological continuity.

Thus, the implication of Parfit’s view is that it would suffice
to know that there will be a synthetic brain that will conserve
our mental contents. We needn’t worry about whether
there will be duplicates. The truly relevant element is that
someone will have the same mind as the original person.
The idea that identity does not matter is intuitively hard
to accept, because it seems to imply that there is no self
with a unity of experiences, but rather, a bundle of mental
contents.\textsuperscript{16} However, for those who are willing to overcome
this initial intuitive resistance, Parfit’s view solves many of
the philosophical problems that arise with the prospect of
mind uploading.

\textbf{NOTES}

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    The Emotion Machine: Commonsense Thinking, Artificial
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20. Turing, “Computing Machinery and Intelligence.”
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BOOK REVIEW
A Review of Michael Boylan’s Teaching Ethics with Three Philosophical Novels

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Talk about a complete package: Michael Boylan’s new book, Teaching Ethics with Three Philosophical Novels, is a veritable Bento box. It’s got theory in one compartment. Literature in another. And an appendix section for classroom use.

For those teaching Ethics, Philosophy of Literature, or the Humanities, Boylan’s text has many qualities. For one thing, students as well as faculty will appreciate its accessibility along with in-depth discussions that are both challenging and philosophically interesting. That it has the basics for an entire course is a significant benefit. To say the least, Boylan has done a great deal to lift the load of preparation off the instructors’ shoulders. Given Boylan’s history of publications and years of experience in the classroom, he has much to bring to this enterprise.

The book is well organized. It starts with an overview of Boylan’s own work on Ethics and Personhood—highly
regarded here and abroad—followed by a succinct presentation of the three major ethical theories—Virtue Ethics, Utilitarianism, and Deontology. This constitutes the first section of the text. This approach is both pedagogically and philosophically sound. Laying the groundwork with ethical theory helps students see the value of conceptual frameworks in doing philosophy. It also helps dismantle the notion that opinions are on par with reasoned argument. That said, the book allows for the flexibility to prioritize the literature and integrate ethical theory so the two areas work in conjunction. It also allows for the inclusion of more and/or different ethical theory, should instructors wish for a wider theoretical base from which to draw.

The second and largest section of the book consists of three of Boylan’s own novels: Rainbow Curve, To The Promised Land, and Naked Reverse. Instructors may opt to include additional fiction, but Boylan’s choice of three novels allows for a gradual and more civilized pace.

As anyone knows who has taught Applied Ethics using literature, case studies, or films, students generally respond with considerable enthusiasm. The novels bring the issues to life—a vehicle to understanding ethical theory and making the abstract more concrete. In a word—relatability. Boylan’s approach encourages students to become engaged with the stories, to connect with the characters, and to reflect on the ideas and values expressed as the plot unfolds.

The last section of the book is an appendix with such handy tools as a sample syllabus, course requirements, and a group project. Here we see an effective way to structure a course using this text. We also see the value of restricting the required reading—limiting the number of novels to three. Boylan balances the course reading and lectures with the inclusion of student (group) presentations across the semester. Not only does this ensure student participation with clear guidelines about the expectations, it also affirms the value—and centrality—of dialogue. For those who want to know if they are successful in teaching ethics, Boylan’s text may be just what you need.

POEM

The Fat Ladies Sing

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We revel in our candy bars
And cookies, cake, and pie.
That vegetables taste wonderful
Is one humongous lie.

But now we face admonishment.
Our size sets off a fuss.
The war against obesity
Includes a war on us.

We know our girth is plentiful,
But listen to our voice.
When thinking of our corpulence,
Why can’t you be pro-choice?