

Bioethics and the Metaphysics of Death

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In recent years there has been a tremendous resurgence in philosophical interest in the metaphysical issues surrounding death.¹ This is, perhaps, not surprising. Not only are these issues of perennial theoretical appeal but they also have significant practical importance for many debates within applied ethics—especially bioethics.² And the bioethical debates that these issues are relevant to happen to be some of those that are currently the most pressing, having risen to prominence either as a result of contemporary public health concerns or as a result of recent advances in medical technology.

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That the fundamental issues of the metaphysics of death are both relevant to and important for many pressing bioethical issues can be illustrated through considering the ethical questions that concern the procurement of transplant organs. The recognition that there is a drastic and chronic shortage of organs available for transplantation has led to a heated debate over the ethics of various proposed means of increasing their supply. These proposed measures range from legalizing markets in human organs to introducing a policy of presumed consent, whereby a person will be presumed to have consented to have her organs removed post-mortem for transplantation into another unless she has expressly “opted out” of this. The ethical debate that surrounds the possibility of using a presumed consent policy to (try to) increase the number of organs that are available for transplantation rests on the explicit assumption that a person must (at least typically) consent to the post-mortem removal of her organs for this to be ethical, and hence that such removal is acceptable if consent can legitimately be presumed. (If this assumption were not in place one might simply advocate

a policy of post-mortem organ conscription—or, more accurately, organs takings—independently of the wishes of the persons whose organs they once were.) And this assumption, in turn, rests on the implicit assumption that it matters to a person what happens to her body after her death, not only in the (subjective) sense that a person might take an interest in what happens to her body after she dies, but in the sense that the thwarting of such a subjective interest could (objectively) either harm or wrong the person whose interest it was. But once this implicit assumption underlying the debate over the ethics of using a policy of presumed consent to procure transplant organs is uncovered it becomes clear that this very practical bioethical debate is directly linked to the metaphysical questions of whether one can harm or wrong the dead. If one can harm or wrong the dead then it would make sense to be concerned about securing persons' consent to how their post-mortem remains are treated. However, if one can neither harm nor wrong the dead then the justification for needing to secure a person's consent concerning the treatment of her post-mortem remains is considerably lessened, since nothing that could be done to these remains could adversely affect her. This outline of the relationship between posthumous harming, posthumous wronging, and the moral importance of securing persons' consent to the post-mortem use of their bodies is intended here merely to illustrate the general point made above: That the fundamental issues of philosophical thanatology are both relevant to and important for pressing bioethical issues. A more complete account of this particular issue, namely, the relationship between posthumous harms, posthumous wrongs, consent, and the use of the bodies of the dead, is taken up by T. M. Wilkinson, who in his contribution to this Thematic Issue "Consent and the Use of the Bodies of the Dead," addresses the question of when it is permissible to use persons' post-mortem remains.

The questions of whether the dead can be harmed or wronged are also clearly relevant to discussions of the ethical issues that surround research on the dead. For example, when it was revealed that Alder Hey Children's Hospital in Liverpool, England (along with other hospitals in the British National Health Service), was removing, retaining, and disposing of patients' remains (including those of infants and children) without authorisation public outcry focused not only on the harm caused to the surviving relatives of those whose post-mortem remains had been misappropriated but on the posthumous harm (and the posthumous wrong) that had allegedly been visited upon the individuals whose remains they were. In a related vein, recent advances in DNA testing have led to a considerable discussion over whether this should be used to secure new information about persons now dead—especially if it is known that the persons concerned took pains while alive to conceal the information that such testing might now reveal. There is, for example, an ongoing debate over whether or not it would either harm or wrong Queen Christina of Sweden (who died in 1689, and who was long

rumoured to be a hermaphrodite) to test her genetic material to discover her true gender.³ Less academically, there has also been considerable discussion over whether or not DNA evidence should be legally admissible in establishing the right of nonmarital children to inherit from their fathers' estates.⁴ The question of whether persons can be harmed or wronged by events that occur or actions that are performed after their deaths is also of obvious relevance to such bioethical issues as (among others) posthumous medical confidentiality, whether or not there should be a policy of presumed consent or presumed refusal with respect to assisted posthumous reproduction, the moral status of post-mortem pregnancy, and the morality of markets in cadaveric organs. Given this, Christopher Belshaw's contribution to this volume, "Harm, Change and Time" is of significant bioethical import, for in it he argues against the standard philosophical view that persons can be subject to posthumous harms.

Whether persons can be harmed or wronged after their deaths are not, however, the only metaphysical questions associated with death that are directly relevant to bioethics. The need to increase the supply of human organs that has led to the debate over the ethics of using a policy of presumed consent to (try to) achieve this is motivated in part by the concern that persons should (*ceteris paribus*) be saved from death, on the grounds that death is a harm to the person who dies. But this common-sense view has been famously (or notoriously) challenged by Epicurus, who in his *Letter to Menoeceus* wrote:

Make yourself familiar with the belief that death is nothing to us, since everything good or bad lies in sensation, and death is to be deprived of sensation. Hence the right recognition that death is nothing to us makes the mortality of life enjoyable, not by adding infinite duration to it but by removing the desire for immortality. For there is nothing to be feared in living, for one who has truly comprehended that there is nothing to be feared in not living. So one who says he fears death, not because it will hurt when it is here, but because it hurts when it is coming, talks nonsense, since whatever does not hurt when it is present hurts for no reason when it is expected.

So that most fearful of all bad things, death, is nothing to us, since when we are, death is not present, and when death is present, then we are not. So it is nothing to the living and nothing to the dead, since with regard to the former, death is not, and as to the latter, they themselves no longer are.⁵

The standard response to Epicurus' argument (and those of his Roman follower, Lucretius) by those who reject his conclusion has been to argue that death is a harm to the person who dies insofar as it deprives her of the goods of life that she would otherwise have enjoyed.⁶ But, while this response might appear plausible it immediately leads to a further metaphysical question: *When* is a person supposedly harmed by her own death? As Jens Johansson observes in his contribution to this issue, "The Time of Death's Badness," the two most popular responses to this question are the view that a person's death can be a harm to her before she dies (priorism),

and the view that a person's death can be bad for her after she dies (subsequentism). (Other possibilities include the view that a person's death is eternally bad for her—eternalism—and the view that a person's death can be bad for her at the time of her death—concurrentism.) Johansson observes that part of the support for priorism and subsequentism rests on the idea that that if one holds that death is not a harm to the person who dies at any particular time (the atemporal view) it would be noticeably and unsatisfyingly different from other harms. Johansson argues that this idea is mistaken, and that atemporalism avoids some of the problems that priorism and subsequentism are subject to. Of course, one might insist that unless there is a time at which a person's death is a bad to her then it is not a bad to her, and so the Epicurean view is correct. And this, in turn, would have important implications for many debates within contemporary bioethics. Thus, if death is not a harm to the person who dies it would seem easier to justify the legalization of both physician-assisted suicide and euthanasia. Similarly, if death is not a harm to the person who dies but her pre-mortem suffering (obviously) *is*, it would make sense to allocate medical resources away from life-extending (and -saving) practices technologies and towards those aimed at the alleviation of suffering. But, argues Johansson, even if one insists in this way that one must find a time at which a person's death is a bad to her this can be done by identifying periods that begin before her death and end after it.

So far, then, three major metaphysical questions that surround death have been identified, together with (some of) the ways in which they are relevant to bioethics: the question of whether death is a harm to the person who dies, the question of whether persons can be harmed after their deaths, and the question of whether persons can be wronged after their deaths. (Note that these last two questions are distinct. It is possible that a person could be harmed without being wronged—subjecting her to a just punishment would be an example of this. And it is, at least according to some deontological theories of ethics, possible to wrong a person without harming her—breaking a promise to someone where this has no effect on her well-being might be an example of this.) But these are not the only metaphysical questions that death gives rise to and that are relevant to issues in contemporary bioethics. Most obviously, one might ask what death is, and hence which criteria should be used in clinical practice to identify when a human has died—should these be cardiopulmonary or neurological, and, if the latter, should they be based on whole-brain, higher brain, or brainstem criteria?²⁷ In a related vein one could also question whether or not humans cease to exist at the moment of their death, or whether they continue to exist, either as merely physical corpses or in some form of afterlife (which might or might not include awareness). While the latter possibility is frequently dismissed out of hand by contemporary philosophers (who are often working within a secular framework) this dismissal might be too hasty. This is the view that

Russell DiSilvestro argues for in his contribution to this issue, “The Ghost in the Machine Is the Elephant in the Room: Souls, Death, and Harm at the End of Life,” in which he outlines some of the experiences that have led persons to believe in the existence of souls that can survive the deaths of the bodies that previously housed them. As DiSilvestro notes the possibility of some sort of post-mortem survival should alter how we approach discussions of the nature and harm of death, as well as those that concern the possibility of posthumous harm. And, like the other metaphysical questions that surround death, the possibility of an afterlife is of considerable bioethical interest. The assumption that persons cease to exist as sensate beings is the cornerstone of the Epicurean argument that death is not a harm to the one who dies—and so if it transpires that this assumption should be rejected then so too should this Epicurean argument. And, as noted above, the conclusion of this Epicurean argument has important implications for the moral impetus to increase the supply of transplant organs—as well as (among other issues) ethical questions surrounding physician-assisted suicide, euthanasia, and the allocation of medical resources.

The metaphysical issues that surround death—what is death?, is death a harm to the person who dies, and, if it is, when is a person so harmed?, can a person be subject to either posthumous harms or posthumous wrongs?, and could a person continue to exist after her death?—are thus clearly both relevant to and important for contemporary bioethics. However, that this is so should not lead one to think that solving these thanatological questions will thereby enable one also to solve the bioethical dilemmas that they are relevant to.

First, it might be the case that concerns other than those raised by an interest in the metaphysics of death will be relevant to the bioethical questions that these thanatological issues apply to, and so even if these metaphysical questions can be resolved further bioethical discussion will still be needed. For example, while the questions of whether a person can be harmed or wronged by events that occur after her death are important to the debate over the ethics of research on the dead, even if it could be established that such posthumous harms and wrongs are impossible this would fail to show that such research can progress with impunity. This is because these metaphysical questions are only two aspects of this debate. Others might include the question of who owns (or should own) the body in question, what limitations such ownership should place on the ways in which it is used by those who do not own it, and whether and to what extent the interests of those living persons who are concerned about how it is treated should be taken into account. (Belshaw considers the last of these issues in his contribution to this Issue, recognizing that even if one denies the possibility of posthumous harm this might not solve the ethical questions to which this issue is relevant.) Similarly, even if (in the highly unlikely event that) it could be established that persons could be harmed or wronged by (for example) how

their post-mortem remains are treated this would not necessarily show that it is ethically incumbent on surviving persons to respect these persons' wishes concerning the treatment of their bodies after their deaths. It might be that the posthumous harms that would be inflicted on persons through thwarting their interests in how their post-mortem remains were to be treated would be outweighed by the need to avoid imposing even greater harms on the living. One might, for example, accept that a person could be harmed posthumously by the taking of his organs for transplant into another when he had expressly stated that he wished his body to remain intact, but at the same time believe that such takings should occur if they would save the lives of third parties. Similarly, one could accept that persons could be wronged by actions that occur after their deaths but hold that these wrongs could be justified (i.e., the persons performing them would still be blameworthy for their actions, but this blame would be mitigated by the circumstances they were in) if inflicting them upon persons would prevent even greater wrongdoing.

Second, it might be the case that the influence that the answers to these thanatological questions will have on bioethical debate will be muted for indirect reasons. Even if, for example, it is impossible to harm or wrong a person after her death, and even if no other concerns played a direct role in the debate that this question was relevant to, establishing that posthumous harms and wrongs are impossible might still not eliminate the possibility of needing to secure a person's consent to the treatment of her remains. This is because it might be the case that knowing that their remains would be treated in ways they did not consent to would cause distress to persons while alive. (Such distress might occur even if they were convinced that they would be immune to posthumous harms and posthumous wrongs.) This distress would not be brought about by the putative mistreatment of their corpses. It would thus not be a case of either posthumous harming or posthumous wrongdoing, for it would be occasioned by something that occurred while the person was still alive (i.e., the belief that her remains would be mistreated). However, its occurrence could serve to justify a social practice of respecting persons' wishes concerning the treatment of their post-mortem remains *as though* they could be subject to posthumous harms or wrongs.⁸ And, if so, this would undercut any influence that the answers to the questions of whether the dead could be harmed or wronged might have had on guiding the practices that are the subject of bioethical debate.

Yet even if securing the answers to the metaphysical questions that surround death might not itself decide the outcome of the bioethical debates to which they are relevant the attempt to secure them is still important to these debates, for three reasons. First, showing that an argumentative position P (e.g., that the dead can be harmed) is untenable is still important for those debates in which P plays a role even if its elimination from those debates will not determine their outcome. Second, while reasoned argument concerning such (possibly) emotionally charged issues as the prospect of one's

one death or the posthumous treatment of one's corpse might not have a significant effect on one's emotional responses to these issues it might have *some* effect on this. Acceptance of the Epicurean position concerning the putative harm of death, for example, might not actually extinguish the fear of death that lurks within a secular breast entirely, but it might serve to assuage it. And, finally, even if the answers to these thanatological questions will not themselves solve any of the bioethical issues that they are relevant to, both recognizing the questions and possessing the answers would (both separately and together) give one a far better understanding and appreciation of the issues themselves.

For these reasons, then, persons interested in either contemporary bioethics or the metaphysics of death will find much of value in the arguments of the papers contained within this Thematic Issue of the *Journal of Medicine and Philosophy*. Not only does each make an important positive contribution to the debate in which it plays a role but in so doing they each illustrate how issues in applied ethics can be usefully illuminated through careful attention to the philosophical theory that undergirds them.

NOTES

1. See, for example, Warren (2006), Scarre (2007), Sperling (2008), Luper (2009), May (2009), Belshaw (2009), Bradley (2009), Taylor (2012), Kagan (2012), and Taylor (forthcoming).
2. The current relationship between the metaphysics of death and many contemporary bioethical debates thus resembles that which existed between autonomy theory and bioethics in the late 1970s. It remains to be seen whether interest in the metaphysics of death will permeate bioethical discussion in the same way that the concept of autonomy has done over the last four decades.
3. See, for example, Masterton (2007) and Masterton et al. (2010).
4. See, for example, Cooper (2006).
5. Epicurus, Letter to Menoeceus. This translation of this key passage is from Furley (1986).
6. See, for example, Nagel (1993).
7. These issues are discussed in (for example) Younger, Arnold, and Schapiro (1999), and in the papers contained in *The Journal of Medicine and Philosophy* 35, 3 (2010): 223–380. See also Ewin (2002, chap. 6).
8. These two points are made in the context of outlining the possible bioethical implications of the (full-blooded Epicurean) position that death is not a harm to the person who dies, that posthumous harm is impossible, and that persons cannot be wronged after their deaths in Taylor (2012, 3–5).

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