

## Rejoinder to Igor Wysocki on Brain Death

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### Abstract:

The present text is a rejoinder to Igor Wysocki's rejoinder published in *Political Dialogues* 20 to Dominiak & Szczesny's paper *Brain Death in Japan: A Critical Approach*.

**Keywords:** philosophy, brain death, identity, bioethics

**Słowa kluczowe:** filozofia, śmierć mózgu, tożsamość, bioetyka

### 1. Rejoinder to Wysocki's "An Alternative to Essentialist Theories"

Let me straightaway start with a bit of *ad hominem*. Apparently, Wysocki does not seriously want to propose any alternative to essentialist theories of identity by replying to the same Dominiak a few years after the original publication by the latter. That would be like performatively contradicting himself – he obviously assumes that there is the same person (Dominiak) over time, while arguing to the contrary. But there is more to this than just discussing with the same author over time. Wysocki really thinks that

Psychological Account is an alternative to essentialist theories. Not to my mind, at least. Look, on Psychological Account of *Personal Identity* – that is the full name – there is some K (a *genus proximum*) of a given person, namely *personhood* as the substance-sortal category. A necessary condition for a given person, let's call him Mark, to be the same person over time is to belong to the substance-sortal category of persons. If Mark ceases to be a person, he perforce ceases to be Mark. In turn, a sufficient condition for Mark to be the same person over time is to be a person psychologically continuous with himself over a given time span. If Mark, all the time being a person, ceases to be psychologically continuous with himself at some earlier date, he perforce ceases to be Mark but not to be a person. There is therefore no wonder Wysocki himself concedes that Psychological Account is not so much an alternative to essentialist accounts as a kind thereof when he writes: "Generally, to be able to study personal identity over time, we need some minimal conception of what a person or an individual is". If this is not essentialism, what is it? Psychological

Account of Personal Identity is not an alternative to essentialism but a kind of essentialism, namely reductionist essentialism. Essentialism can be reductionist or non-reductionist. The former posits that we are subsumed under some substance but that our individual identity is reducible to some other relations like e.g. psychological continuity. The latter claims that we are subsumed under some substance but that our individual identity is irreducible to anything else. It looks to me that Wysocki took the non-reductionist essentialism for all essentialisms, committing himself to a peculiar philosophical synecdoche, and tried to impute it to Dominiak. If that is the case, it seems he presented no alternative to essentialist theories<sup>1</sup>.

Hence, this is true that “according to Dominiak, K (a *genus proximum*) of a given person is some substance (...) a brain, embodied mind, human organism”, but so is it for Wysocki: a person. For instance, for Wysocki an individual, we call him Mark, also is some substance, namely a self-aware bodily entity customarily labelled a *person*. So, also for Wysocki “generally speaking, the logic is as follows: if *e* is of a kind K, K being a specifically organized substance, then whenever K ceases to be instantiated in *e*, *e* is no more”. The only thing we should do is to substitute *person* for K and here we go. And I am sure there is no escape for Wysocki, because otherwise he would be committed to a claim that whenever K ceases to be instantiated in *e*, *e* can still be there, which can be translated into whenever *e* ceases to be a person,

*e* can still exist. An idiosyncratic account of *personal* identity, forsooth.

By the same token it is indeed difficult to see why “on the grounds of Psychological Account death wouldn’t mean the *momentaneous* cessation of the workings of some essential substance”? At some point in time a given person ceases to be psychologically continuous with himself and because, as we know due to Parfit<sup>2</sup>, psychological continuity is not a matter of degree (contrary to psychological connectedness), what would it be if not momentaneous? Apparently, it would not be spectacular, I suppose, but still, it would be effectuated in a blink of an eye. And obviously that would be cessation of the workings of some essential substance or better to say of essential *identity* of this very person.

So, to conclude this section, I cannot see any alternative to essentialist theories being successfully proposed by Wysocki in his current reply, although I know he has some unplayed trumps up his sleeve.

## 2. Rejoinder to Wysocki’s “Throwing Doubt on Essentialism as Such and *a Fortiori* Essentialist Theories of Identity”

As to the opening antiessentialist argument – “Essentialists claim that for the individual I to exist over time is to remain of the kind K (K being I’s *genus proximum*). Yet, belonging to some (and not the other) kind is determined by I’s essential properties. And now, if we investigate I’s properties what means can we resort to when determining I’s essential properties other than pointing to I’s *genus proximum*? It seems to be

1 On substance-sortal vs phase-sortal and on reductionist vs non-reductionist accounts of identity see: J. McMahan, *The Ethics of Killing: Problems at the Margins of Life*, Oxford University Press, New York 2002, p. 5–6.

2 D. Parfit, *Reasons and Persons*, Oxford University Press, Oxford 1986, passim.

an insuperable obstacle in the form of *circulus vitiosus*: I's *genus proximum* is K because of such and such essential properties E's. And why does I have the essential properties E's (and not any other set of properties)? Because they are determined by I's *genus proximum*. It looks as though we haven't started and we are running in circles" – I sadly concede it might be right, although I will venture to derail it.

There can be some properties of things, particularly of persons, that are impossible to deny argumentatively. For instance, a property of being an actor, a property of being a self-owner or a property of having free will are impossible to deny without falling thereby into performative contradiction:<sup>3</sup> arguing that I am not an actor would be itself an act; arguing that you do not have a free will would be giving you reasons for free acceptance or dismissal, presupposing thereby that you have a free will to take part in an argumentation *etc.* We can call all properties that are argumentatively unassailable, as well as all properties logically derivable therefrom, essential properties. "And now, if we investigate I's properties what means can we resort to when determining I's essential properties other than pointing to I's *genus proximum*?" Well, pointing to their necessity, making a transcendental argument and avoiding *circulus vitiosus*. So, simply speaking, how do we know that some properties of a given individual are essential whereas other are accidental? By not being able to deny the former – they must be essential or if you claim otherwise, you are talking nonsense.

Or more generally, we can proceed aprioristically in a broader sense, i.e. also by stipulating or analytically refining a common parlance definition and only then checking which empirically existing entities actually have the properties stipulated in the definition. Then of course belonging to a given kind would be determined by I's properties but not the other way round; we would simply call some of I's properties essential but without suggesting that they are "really" or "metaphysically" essential properties. How good our stipulations are would be simply "recognized by their fruit".

### 3. Rejoinder to Wysocki's "A Dying Patient Thought Experiment"

Before we get to the eponymous thought experiment, it is good to know my controversialist's proclivities in advance, so that we can know where his conclusions come from. According to Wysocki, a proposal to "make it lawful to remove organs from living, precisely defined and indubitably diagnosed, anencephalic infants"<sup>4</sup> is a "wonderfully insightful remark". Well, tastes differ but his are telling indeed, aren't they? From this wonderfully insightful point of view it is difficult to see why George's diagnosis – "luckily Paul is a person and persons are minimally functional organisms; so, however miserable Paul might be now; thankfully, he is still alive" – is "overoptimistic". According to Wysocki, Paul's functional organs are there still up for harvest – not particularly comforting perspective, let alone an overoptimistic one.

But seriously, Wysocki's "main thrust now is that the pronouncement of death

<sup>3</sup> See on this topic e.g. H.-H. Hoppe, *Economics and Ethics of Private Property*, Ludwig von Mises Institute, Auburn 2006, *passim*.

<sup>4</sup> P. Singer, *Rethinking Life and Death*, Oxford University Press, New York 1995, p. 52.

is *not only descriptive* but it also contains *some ethical judgment*". Fair enough but let's do some philosophy. "Contains" in what sense? According to Wysocki, "contains" means "a mixture of descriptive and normative language" and only from the normative part of this mixture follow "legal consequences"; and then "when the patient is found dead, their moral status change and 'when' in the previous clause is purely definitional and not consequential", meaning that the patient's moral status does not change *because* he has just died, rather the very pronouncement of his death is a pronouncement of already changed moral status: "the part of the meaning of death of a patient is that from now onwards the patient's organs can be harvested". But if that is the sense of "contains", then it is difficult to see why Singer's proposal to "make it lawful to remove organs from living (...) infants" is according to Wysocki a "wonderfully insightful remark". For this proposal can then mean only one of the two things. Since according to Wysocki definition of death "contains" ethical judgment about what matters (and about permissibility of organ procurement) and is indeed a "mixture of descriptive and normative language" from which follow "legal consequences", then Singer's proposal to legalise organ procurement from infants who he admits are not dead (since "the meaning of death of a patient is that from now onwards the patient's organs can be harvested", then the meaning of being alive should be that the patient's organs cannot be harvested, shouldn't be?), is a proposal to introduce "legal consequences" that do not follow from the pronouncement of death and therefore from what matters; I do not think that Wysocki would like to defend legalisation of what does not matter. So,

maybe the second option. Perhaps what Singer proposes is actually something different from what Wysocki suggests he proposes. It looks that Singer proposes to ignore the definition of death utterly and to stick to what matters exclusively. According to my reading of Singer this is exactly the case: let's forget about the definition of death and focus solely on what matters ("instead of changing the definition of death so as to declare legally dead anencephalic infants and infants whose cortex had been destroyed, it would be better to make it lawful to remove organs from living, precisely defined and indubitably diagnosed, anencephalic infants whose cortexes have been destroyed"<sup>5</sup>). But it cannot be done if the definition of death "contains" ethical judgment about what matters as Wysocki wants it to – "cannot" in a logical meaning. So, either "wonderfully insightful remark" is callous or the definition of death does not contain any ethical judgment. Too bad for Wysocki.

It therefore seems that Wysocki is left with two possibilities. He can say that we should change the definition of death according to our changing moral judgments about what matters. But this he is unwilling to do. That would be "bizarre in the extreme", since "the only real issue at stake is legal or ethical by nature" and "nothing changes in the reality" *etc.* Hence, he must say, following Singer, that we should forget about the definition of death and focus on what matters exclusively. That would of course require abandoning his original "mixed" understanding of the definition of death as partly descriptive and partly normative – but he is defeated in this respect anyway as we could see in the paragraph above. So, not a heavy loss

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5 P. Singer, *Rethinking...*p.52

on his part anymore. And I could even concede that setting aside the definition of death and dealing only with what matters might be a viable strategy but how could it undermine essentialism I cannot see at all. Quite to the contrary, it seems that this strategy would have to assume essentialism to be operative. Eventually, there is some “what” in what matters that must have some particular nature, even if transitive, to be at all identifiable. There must be some investitive and divestitive facts – like births or deaths, or whatever – that give rise or extinguish legal consequences.

#### **4. Rejoinder to Wysocki’s “Deflating the Idea of Personal Identity from the Practical Vantage Point”**

Wysocki writes: “How can it matter practically whether a given patient (as distinguished by the body lying in, say, the bed no.1) in a given hospital ward is the same patient over time or not? Practically speaking, the doctor deals with the spatio-temporally continuous body doing his or her best (...) In such practical cases, the question of identity seems superfluous”. Well, I think it depends on the meaning of the word “practical”. If understood as “everyday life”, then obviously, no one, maybe besides some identity geeks, would bother at all. But if understood as “ethically” or “legally”, then there could be a whole lot of difference. One thing should put an end to the issue: consent. If the patient A at t1 in a given hospital ward and the patient B at t2 were not the same patients, then consent of patient A to be operated by the doctor would not be able to extinguish doctor’s duty not to operate on patient B.

#### **5. Rejoinder to Wysocki’s “The Qualitatively Identical vs Numerically Identical”**

Wysocki’s argument that “Dominiak’s seemingly impeccable argument does not work because he does not explicitly distinguish between *the qualitatively identical* and *numerically identical*” seems to implicitly suggest that there is something wrong with implicit distinctions and that only explicit ones are valid. Besides it is another performative contradiction on the part of Wysocki who implicitly argues against implicit arguments, this is also generally difficult to understand what is wrong with implicit assumptions, provided they are correct; and obviously implicit distinction between *the qualitatively identical* and *numerically identical* is a correct one, as Wysocki himself admits.

But then he says that “it is only because Dominiak out of the blue invokes *the concept of numerical identity* that his argument apparently invalidates the hypothesis that the original person lives in a sense in three host bodies. If we take DPA seriously, we can readily imagine that the original person’s genotype radiates into three host bodies and thus we could say that the original person is somehow qualitatively (in the relevant sense) or genetically identical with *all of them*. Dominiak’s victory is too easy because when he is apparently disproving DPA in Transplantation Thought Experiment he needs to picture the scenario in which there are *at least two* host bodies because then numerical identity will kick in and save the day”. Well, I would say that it is Wysocki’s victory that is too easy because he seems not to realise what is the main thrust of the above argument. The peculiar problem of DPA in its genetic version –



contrary to other physically anchored theories of identity like e.g. the *Same Brain Account* – is that genetic splits happen all the time – again, contrary to e.g. brain divisions – and that is why “the number of host bodies makes all the difference” in DPA. On the genetic version of DPA whatever happens, e.g. you have a transplant, you lose your skin cells, you have blood transfusion *etc.*, the identity multiplication is looming on the horizon. That is, *inter alia*, why DPA is so tenuous an account and this is why an argument from numerical identity works so well against it. This is therefore true, that “Dominiak’s resorting to the concept of numerical identity would actually disprove as illogical any scenario in which the original person splits into at least two identical (in any relevant sense) copies because the numerical identity would come in handy and would invalidate *any* one-to-many relations”. But the strength of this argument is enormous against DPA and virtually negligible against other accounts.

### Conclusions

Let me first invite Wysocki to write a rejoinder to this rejoinder (to his original rejoinder). I can promise that if he does, it will be the last word in our debate – or at least as far as I am concerned. As to the present subject, I have to admit that there is a lot of valid remarks in Wysocki’s rejoinder. The problem is that it is difficult to see how these intelligent and learned ideas refer to Dominiak’s arguments. I am afraid they do not. They rather look like theoretical and argumentative snares which unfortunately for the hunter have too large nooses to catch this analytical fox.

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- Hoppe H.-H., *Economics and Ethics of Private Property*, Ludwig von Mises Institute, Auburn 2006.
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