

Rejoinder to Dominiak's Rejoinder to my Rejoinder to his Paper on Brain Death

21/2016

Political Dialogues

DOI: <http://dx.doi.org/10.12775/DP.2016.038>

Abstract:

This is a rejoinder to above Dominiak's rejoinder.

Keywords: philosophy, brain death, identity, bioethics

Słowa kluczowe: filozofia, śmierć mózgu, tożsamość, bioetyka

First and foremost, I am flattered that Dominiak found my rejoinder fit for his rejoinder. As usual, the said author's incisiveness is literally second to none. Dominiak is rightly distinguished for his almost animal instinct for spotting performative inconsistencies and, alas, surprise-surprise, I was the one who could not escape the said logical fallacy. I am equally delighted to have been welcomed to have my own say in turn and reply with yet another rejoinder, which I am hereby happily and promptly embarking on. On the other hand, being granted the privilege of the last word being on me, I will try to be mild and try to refrain from any ironic overtones. As they say, It's not in my nature to kick a man when he is down. Therefore, in the order corresponding to Dominiak's rejoinder, I will try to concede some points to Dominiak and still argue about the ones on which I still remain unconvinced.

1. An Alternative to Essentialist Theories

This point I basically concede. Logically, if we are to debate personal identity over time, we are at least to assume that the individual (as numerically distinguished) whose identity over time we scrutinize is at least (Dominiak rightly identifies it as a necessary condition) of the same kind, that is a person. Funnily enough, I noted it myself in my first rejoinder but then stubbornly went to deny any hint of essentialism in me. But Dominiak is on the alert and conceptually razor-sharp when he says that what I was advocating was reductionist essentialism instead of non-reductionist one. There are times, alas, that our adversaries know better what we are *really* advocating. If this case is not an exemplification of the above, what is? Concluding, I somehow learned what I knew before but – no question about that – Dominiak gave a verbally proper account of what I meant. Just in passing, and the above being granted, obviously Psychological Account remains intact because to my mind, there is no performative inconsistency (although I can scarcely believe it and I may be ultimately proved wrong!) in me saying that

the only thing I was interested in when writing a rejoinder is that there is *an* entity (*a* person) that quasi-remembers the original paper on Brain Death. Still, an entity must logically be a person, otherwise we would not talk personal identity at all.

Still, I am wondering how this concession can be critical in the light of section 2, in which Dominiak avers that my doubt cast upon essentialism may be indeed valid. If it is so generally, then how can it miraculously matter when it comes to *personal* identity? So then again, I agree, under the pain of logical inconsistency, which I am now doubly keen to avoid, that once we debate personal identity, we perforce assume that an individual is necessarily (though, not sufficiently) subsumed under the same substance. Still, how does it help in the light of the apparent vicious circle between essential properties and *genus proximum*? All in all, logically speaking, Dominiak got me – I must willy-nilly presuppose some sort of essentialism when speaking of *personal* identity over time. Still, I cannot appreciate the importance of this observation as long as the vicious-circle problem remains unsolved.

2. Throwing Doubt on Essentialism as Such and a Fortiori Essentialist Theory of Identity

The corresponding section 2 in Dominiak's rejoinder is most ingenious. Here we have the author at his best – employing his renowned and powerful weaponry, that is transcendental argumentation. Unfortunately, his exquisite transcendental reasoning probably misfires as he simply models essential properties on what is argumentatively undeniable. Then I would have to concede, yes. If

what he *stipulates* as essential properties of persons are these that are argumentatively undeniable, that is free will, self-ownership etc., then here we go. But what he suggests is a novel terminological regulation and I'm afraid this is not what I meant by essential properties in the first place. Still, let us be charitable in our interpretation and let us actually try to find out whether Dominiak's impossibility of argumentative denial can serve as the criterion for finding out the essential properties of persons (as conceived of metaphysically). Let us quote Dominiak at length now: "There can be 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: 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 argumentation etc."

The funny thing is that after all determinism can be true but oddly enough, we cannot argue for it. It makes performative contradiction slightly less formidable weapon than filtering out falsities by employing non-contradiction law. After all, non-contradiction law cannot be denied and any possible world in which the said law is suspended simply cannot be envisaged. Still, *arguendo*, let us assume Dominiak's point is correct. But then how is he to proceed when we pose a simple question: whose essential properties are these? It should give Dominiak a pause for if he answers that these properties belong to humans, this is precisely what we are out for. How can he then know that these properties are

characteristically human and what is the basis for selecting out such a category? Then, what ultimately springs to our lips is: of course they are humans because they have the said essential properties. The problem seems insuperable on the metaphysical level. Yet, Dominiak is far ahead of us as he makes his concession towards the end of this section that “[...] we would simply call some of I’s properties essential but without suggesting that they are “really” or “metaphysically” essential properties”. I do like this position. Yet, don’t we both hopelessly give up the case for natural kinds at all? If what we are left with are nominal kinds (categories which are purely stipulated definitionally), then, alas, persons’ death (and perforce personal survival over time) would simply depend on the stipulative definition, a perspective apparently most unwelcome to Dominiak! A gloomy prospect indeed. However, I do find Dominiak’s transcendental argument brilliant and truly fruitful. It certainly deserves merit and further investigation.

3. A Dying Patient Thought Experiment

This section sparked probably the biggest controversy and I do feel I owe a word of explanation to our readers. Dominiak gets me here as well. Let us quote the relevant passage: “Since according to Wysocki definition of death “contains” ethical judgement about what matters (and our 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 cannot be harvested”,

then the meaning of being alive should be that the patient’s organs cannot be harvested, shouldn’t they?), is a proposal to introduce “legal consequences” that do not follow from the pronouncement of death and therefore from what matters”.

I admit I erred. Yet, one small proviso saves the day and avoids the equivocation. The said equivocation stems not from the fact that I misrepresented Singerian thought. I believe I did not underline the fact that what Singer meant by calling somebody alive in the passage referred to above is “alive” in its ordinary descriptive sense, that is being pink and breathing spontaneously. Therefore, the position I would most willingly stick to is the one that Dominiak tries to charitably attribute to me in the last paragraph of this section, that is: [...], he must say, following Singer, that we should forget about the definition of death and focus on what matters exclusively.”. Precisely! My whole point, and I still think I was following Singer, is that the predication of death is fully contingent upon what matters. Dominiak’s charge that there must be “some “what” in what matters that must have some particular nature [...]” is therefore deprived of its force. This is exactly what the celebrated “mixture of the descriptive and the normative language” predicts. After all, it is facts or properties that matter. To use common-sense analogy, profanities are the most down-to-earth example I can think of. If you call somebody names, you express an attitude (expressive function) but you also describe somebody’s factual properties. Thus, their function is two-fold. And what if the only property that matters alone is consciousness? Where is essentialism? It is widely held that consciousness is a property that runs across species (assuming species are our metaphysical *genera*). Then, substance-sortal sort of

essentialism loses its grip. We are not interested in whether a given entity can still be subsumed under the same substance but only whether the only property which matters, that is *consciousness*, is instantiated in the said entity.

4. Deflating the Idea of Personal Identity from the Practical Vantage Point

Here I concede again. My argument in this section works only against unimportant practical (in the sense of “everyday life”) cases. Oftentimes, questions of identity do not arise at all. It cannot matter a whit for example whether the car that we crashed is the same as the original car. What matters now is that the wreck should be reanimated by some skillful mechanic. Dominiak’s alluding to the question of consent is really cunning and deserves further consideration. For instance, on the grounds of Psychological Account, should the replica (body B at t2) be operated on by default once A at t1 (the original person before the replication) gave his or her consent? Is psychological connected via quasi-memories sufficient? In other words, is consent given by the original person *operative* all the time, that is at the moment of the original person’s consent, all through his or her cessation to live up to and including the moment of the emergence of replica and his or her continuing existence? Of course, that is exactly what Parfitian theory predicts but once we test the theory against the murky waters of intuitions, the answer is not so obvious to me anymore. We would be in a real maze of complications, once we admit multiple replication. Then assuming that A at t1 gave his or her consent for operation at t2, which replica (they are by definition qualitatively identical as the relation

of qualitative sameness is transitive) should be operated on? Concluding, Dominiak managed to kill two birds with a stone. First, by properly distinguishing (explicitly!) between different senses of the word ‘practical’ he successfully demonstrated that my argument is not viable in the case of practical cases (legal or ethical). Second, and more critically, he opened a room for testing Psychological Account in the area of legal relations; say, in delegating powers, moving property titles, extinguishing and creating duties etc.

5. The Qualitatively Identical vs Numerically Identical

At this point there is no controversy at all between us. Dominiak agrees that once we invoke numerical identity, it basically works against any scenarios of one-to-many relations, be it DPA or Psychological Account or whatever. Thus, Dominiak’s apparent rebuttal of DPA is not directed against DPA in particular but against any possible scenario in which one-to-many relation occurs. On the other hand, Dominiak is totally right when he says that it is *only* in DPA when one-to-many relation loom large. Dominiak says: “[...] 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”. True! It is especially DPA that is haunted by identity multiplications (one-to-many relation), as opposed to PA. No question about that.



6. Conclusions

Just to avoid a forlorn prospect of the debate coming to an end, let me express and cherish the hope that Dominiak will indeed venture a reply sooner or later. Getting to Truth with him has always been an inexhaustible source of joy for me. His recent rejoinder is no exception – it provided me with new priceless food for thought.