
Bioethics Outlook

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Valuable additions to the *Code*:

CHA publishes Supplementary Papers

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Even though it is nearly 15 years old, the *Code of Ethical Standards for Catholic Health and Aged Care Services in Australia* continues to be in high demand. Catholic Health Australia says that it is its 'best seller'. That is gratifying for those of us who were fortunate enough to be invited to participate in its creation.

Fourteen Catholics bioethicists came together, abled chaired by the late Bishop Michael Putney, as a steering committee, with four of us constituting a drafting group, and for several years we met at regular intervals and worked to create the *Code*. (Here at the Plunkett Centre, we have a photo (of inferior quality!) of the Steering Group.) Of course, we did not invent the wheel: we drew on similar documents from the United States and from Canada, and on previous work done in Australia. In addition, we consulted carefully and thoroughly, seeking comment from Australian and overseas doctors, nurses, administrators, patients, residents, families. It was a challenge and a privilege to be 'there at the creation'.

In this issue

Steve Matthews addresses a lively topic in the philosophy of mind: the role that memory plays in our understanding of ourselves. He debates the view according to which loss of episodic memory seems to suggest loss of 'personhood'. He advances a more sophisticated understanding of the way that memory is related to personal identity. As he says, the view that he advances potentially comes as philosophical 'good news' for those who fear that some current 'memory-based' accounts of personhood may imply loss of respect for the sick, the disabled, the young or the old.

Some ten years after its initial publication - in September 2011 - a group of directors of Catholic bioethics centres met to discuss the continuing relevance of the *Code*. Did it need to be revised? Updated? Improved in any other way? The directors decided that the *Code* retained its currency, that there was nothing outdated or mistaken in its provisions, and that it continued to provide substantial guidance for those working in, managing and directing Catholic health care institutions. However, the directors thought that the usefulness of the *Code* could be augmented by the compilation of a set of 'supplementary papers'.

These *Supplementary Papers* were launched by Catholic Health Australia on Easter Tuesday, 2016. Let me give two examples of how the Supplementary Papers support and amplify the *Code*.

Advance Care Planning

In 2001, the expression 'advance care planning' was not much in vogue (and you will not find it in that most useful part of the *Code*, its index). But the complex reality to which it refers most certainly was, and the *Code* is full of ideas and principles which reveal why advance care planning is not only a good idea but is, in the words of Daniel Sulmasy, an extension of an absolutely central idea in our Catholic Christian history and that is the tradition of forgoing extraordinary means of care.

What is the 'complex reality' of advance care planning? Its main elements can usefully be seen as falling into two categories.

First, there is the array of idea about decision-making:

- the responsibility of guarding and maintaining one's health so far as that is possible belongs to each person in his or her own right;
- illness can reduce or eliminate a person's capacity to make his or her own decisions... so other people may need to assist the person by participating in the decision-making process;
- medical interventions should normally be oriented to therapeutic goals (to provide diagnostic or prognostic information, to save a life, to improve or maintain a patient's health by curing an illness or slowing the course of an illness or stabilising the patient in a reasonably satisfactory condition, to relieve pain or other symptoms or illness, to nourish and sustain the patient);
- treatment may legitimately be forgone if it is either therapeutically futile (ie makes no significant contribution to cure or improvement) or overly-burdensome (ie the benefits hoped for do not justify the foreseeable burdens of treatment);
- patients have the moral right to refuse any treatment which they judge to be futile, overly-burdensome or morally unacceptable and such refusals must be respected; and

- patients should be encouraged to talk with their family, doctors and other relevant people about their hopes for, and fears of, treatment, and to communicate to them their wishes about treatment should a situation arise in which they are unable to make their wishes known, etc.

Second, there is a group of ideas about the difference between (on the one hand) relieving pain, breathlessness, agitation, anxiety, constipation and other symptoms of illness (with the foreseeable side-effect of inadvertently hastening death) and (on the other) the deliberate hastening of death, whether by act or by omission.

All of these ideas are found in the *Code*. Together they reveal why the contemporary vogue for advance care planning reflects an idea that has long been a part of our tradition. The *Supplementary Papers* augments those parts of the *Code* not only by including an article which specifically explains and defends the wisdom of advance care planning in the context of 21st Century health and aged care (and notes the possible abuses of this idea by those who think that euthanasia and assisted-suicide ought to be legal and available in Australia) but also by providing a model document to assist the process of that planning.

Surrogacy

Another example of useful ‘supplementation’ is found in what is said about surrogacy. All that the *Code* says is: ‘*Catholic healthcare facilities should not use sperm, ova or embryos derived from third parties, nor assist in conception with a view to a surrogacy arrangement.*’

That may have been sufficient in 2001.

But in 2016 the *Supplementary Papers* include, as ‘member guidelines’ approved by the Australian Catholic Bishops Conference, a set of principles for inclusion in a Catholic Hospital’s institutional Surrogacy Policy.

This material adds to what is in the *Code* by providing advice about the principles which institutions need to incorporate into their policies in circumstances in which surrogacy arrangements are increasingly accepted in the wider community as providing alternative ways of bringing children into the world and are thus attracting legal protection.¹

There is plenty more to be found in this new publication. As a ‘supplement’ to the the *Code* it will, no doubt, add to the *Code*’s usefulness and longevity. I recommend it to our readers.

¹ To this might also be added Section 42 of the *US Ethical and Religious Directives for Catholic Health Care Services* which says: ‘*Because of the dignity of the child and of marriage, and because of the uniqueness of the mother-child relationship, participation in contracts or arrangements for surrogate motherhood is not permitted (sc. in Catholic hospitals). Moreover, the commercialization of such surrogacy denigrates the dignity of women, especially the poor.*’

Remembering Myself

Steve Matthews

Memory seems especially important to who we are. When you remember an experience you had in the past, you remember *yourself* within the experience. You remember a walk along a lonely mountain path, a trip to the theatre, or time spent with friends; you remember writing an article, wandering through a London street, or watching a storm paint a picture on an ocean horizon – and what you remember is the writing, the wandering, the watching, as done by *you*. Our remembering links us to the past in this intimate way, and in so doing provides the connections that give us a sense of being the same person over this time.

Philosophers have been interested in memory for a very long time, and they are interested in both what it is, and what it provides in terms of our personal identity. Its role in personal identity is the subject of this essay, and in particular I want to ask what memories must be like in this role. It seems to be that memory allows us to unite our various experiences into the shape of a meaningful life. But it seems also that we need a sense of ourselves before this can happen. And that is puzzling; it seems like we need to put the cart before the horse in order to get the horse going. So I will try to say a little bit

in order to explain why this is puzzling, and do so by shedding some light on the relation between memory and identity.

In order to motivate this interest I ask the reader to consider cases in which memory goes missing. In dementia, and in various amnesic conditions, the memory system stops functioning the way it should, and when it does there are sometimes grave implications not just for rationality and planning but for our identities as such. It is not uncommon for the loved ones of late stage dementia sufferers to begin the grieving process prior to death, and that is because the damage to memory not only undermines a person's capacity to function in everyday settings, but the damage seems also to cause the sufferer a loss of their sense of themselves. Memory loss of such global magnitude can also result in losses to the capacity for sufferers to recognise close family members and friends. Clearly, then, the losses to memory result in losses to the self, and to relationships; and so what is it about memory, and the links it provides, which would prevent such losses?

So, let us begin with a statement of the problem of personal identity. Suppose you and a friend gaze at a photograph that was taken many years ago. The person in the photograph is you, but a much

younger you and a much younger looking you. In fact because so much time has passed, the person in the photograph does not look much like you now at all. How do you convince your friend that this person *is* you? You could present some evidence of course, and if you did you might convince your friend of the identity. But that would solve the epistemic problem, the problem of how we might *know* whether the person in the photo is you. Philosophers ask a deeper question about the concept that would underpin this evidence. Philosophers are interested in *what makes it the case* that there is an identity between the person in the photograph and the person viewing the photograph. And by ‘identity’ they do not mean what similar qualities there are between these two. After all, if you have an identical twin, there might be an equally similar appearance. Your friend wants to know that the person in the photograph is one and the same person as *you*, not your twin. This is really a question about unity, and time then. What must be true of persons at different points in time that allows us to make claims of (numerical) personal identity?

Traditionally philosophers have offered two broad answers to the question. One answer is simplicity itself: what would make it the case is, in a sense, nothing; once you’ve got the person at a certain time, it is a simple, unanalysable fact whether or not that person persists through to a later time. This is a fact that is independent of certain more specific facts about persons, such as the mental and physical events that make up a life.

This view, the *Non-Reductionist View*, has not proved popular in recent times.² According to the Non-Reductionist, it seems there must be some irreducible substance that *grounds* the fact of identity. What might this be? In the literature the candidate for this role has been either a *Cartesian Ego* (a “soul”), or less specifically, a *Subject of Experiences*. Now, though a substance-based ontology of this nature would greatly simplify the question of personal identity – since survival would consist quite neatly in the persistence of the hypothesized substance – unfortunately such a picture is generally considered scientifically implausible. Still, even if we reject the old Cartesian account, it continues to reverberate in what passes for common sense. Most ordinary folk believe this view. Most philosophers and scientists deny this view.

Consider the second broad answer to the problem of personal identity over time. To explain this *Reductionist* view philosophers use the notion of a person-stage. A person-stage is just a person at a time. The question of what makes you now and you in the photograph the same person can now be put by asking what unites those person-stages so as to make them stages of the same person. A popular answer is that they would be so unified if linked by the right kinds of psychological connections. Most modern

² Proponents of Non-Reductionism include Butler (1736), Chisholm (1976), Reid (1785), and Swinburne (1984). Parfit (1973) originally labelled Non-Reductionism ‘The Simple View’ in his “Later Selves and Moral Principles”, adopting the term ‘Non-Reductionism’ in *Reasons and Persons* (1984).

philosophers adhere to some version of this *Psychological Continuity* view. The view inherits a lot from work done by some early modern philosophers of an empiricist persuasion around the seventeenth century. The central link was said to be something akin to our modern notion of memory.

So why might memory be an important ingredient in personal identity? And is this simple story to explain the unity of persons *enough*? Are you the same person as the person in the photograph because you can remember a time when it was taken? If this idea is right then there is something about memory that is very important. But what? A good test is to take it out of the equation and see where that leads. So let's test this idea by imagining how things would be were our memories lost. Could you survive permanent global loss of memory, a complete amnesia? Your body would continue to exist and to function, but would *you*? If we think the loss of memory is sufficient for the loss of identity then we think that a person must possess, at various important stages of her life, a functioning memory system. But what kind of system, and what kind of memory system counts as one that enables planning, valuing, reasoning, and self-reflection, the things that constitute our personal identity over time?

Memory theorists of personal identity are usually thought to emphasise so-called experience-memories (or in psychology 'episodic memories'). These are usually distinguished from semantic memories which may involve rememberings of facts

and events whose content is not same-self-involving, for example, remembering the date the Magna Carta was signed. (No one living today witnessed this event in 1215!) Episodic memories are also distinguished from so-called rememberings how, in which a certain skill or capacity is retained, such as remembering how to ride a bike. Thus, although a sophisticated memory theory might include these other senses of memory, they are not taken as central. Experience-memories provide building blocks for personal identity because, as a familiar metaphor nicely has it, they enable a person to mentally time travel back to a personal past. And as John Locke famously thought, this 'continuity of consciousness' is necessary in service to the idea that 'person' is a forensic term. He was focused on the idea that personal identity and personal responsibility go hand in hand, and this is of course the conceptual link that is made in consideration of the assignment of guilt. *Mens rea*, that state of mind indicating culpability, requires "ownership" of a crime, and that ownership seems best served by the possibility that an accused *remembers* committing the crime. On the other hand, we think it necessary that, were a person convicted of a crime which another person in fact committed, such a conviction is unsound and a great injustice results. It is vitally important that law enforcement avoid the error of convicting 'the wrong man'. Personal identity is thus central to morality and the law.

The view we have been discussing places episodic remembering at the centre of a

theory of personal identity. Let us call this the *Naïve Memory* view. Unfortunately this view, though both intuitive and elegant in its simplicity, has three problems. First, its focus on memory leaves out other important parts of human psychology that feature across time, such as intentions, beliefs, desires, or habits. Second, an older person has hardly any memories of their very young self; the naïve view therefore seems bound to claim that older and younger selves often cannot form a unity, but this cannot be right. (If a WW2 war criminal can't remember what he did, this theory appears to exonerate him.) And third, famously (or infamously) memory theorists face the problem of circularity, i.e., the problem that in defining 'memory' one finds it impossible to do so without also at the same time *presupposing* a personal identity between a remembering person and the person earlier who had the experience being remembered. This circularity is a problem because it drains the memory theory of much informational significance, for it seems like we need the concept of personal identity in order to understand memory, but personal identity was the very concept we were trying to understand.

It has to be said, especially in the light of these three problems, that no philosopher these days seriously defends the kind of naïve memory view that neglects various ways in which these problems have been addressed. (Many writers though, for example Derek Parfit, have indeed addressed these problems in order to salvage what is a recognisably Lockean

position.) Still the reader might wonder about the motivation for discussing the naïve view if that view is so lacking in support. It is this: I am using the naïve memory view really as a foil against which to develop a more sophisticated understanding of the way memory is related to personal identity. The idea, roughly, is that in showing how the naïve view goes wrong – as we do so presently – we will be able to shed light on an important aspect of the real role of memory in our self-understanding. Even more roughly: memory serves as a kind of mechanism for a narrative understanding of oneself, and this understanding gets going only when our experience memories have a more sophisticated content, one that is autobiographically informative.

But back to the naïve view: I want to say a little more about why episodic memories are thought intuitively appealing when thinking about selves and the conditions under which selves persist. As mentioned it was a group of early modern empiricist philosophers who thought that the way to conceive the personal identity relation is to think about the links between our remembering selves and the selves who had the experiences remembered. Notwithstanding the three problems mentioned above, there is something very appealing about this, and again to see what it is, it is useful to consider what happens when we subtract memory from a story about personal identity. Were I to sustain a severe global amnesia – one that blocked all access to all my past experiences together with a loss in the capacity to form new memories –

intuitively something central appears lost for personal identity. Imagine this in your own case. Imagine losing the capacity to mentally travel back to times past, to days spent with family and friends, holidays at the beach, accomplishments, accolades, hard times and good. The loss is dramatic; it seems to threaten our very survival as persons, with all the social and moral import that that notion brings. So, episodic remembering appears critical to survival.

However, are these simple acts of remembering sufficiently rich for remembering ourselves in a way that properly informs personal identity? Philosopher Marya Schechtman has worried about the simplicity here. She has long criticized what might be called the naïve conception of experience memory in which the memory relation underpinning personal identity is like a rope containing many simpler strands of discrete connections that link a present person-stage to a past one.³ On this view the present remembering person-stage reaches into a storehouse of experience memories which lie dormant but fully formed, and then views the past scene like one might review some videotape. Is this how it works? No, this would seem to be a philosopher's fiction. The problem is that human psychology works differently. Memory recall is inaccurate in many ways – we *normally* make mistakes about some of the content of memory experiences, and certainly about the order in which events are thought to occur. Moreover, rather than reaching into a storehouse of

well-formed memories, the human mind *reconstructs* a past experience in the mode of remembering it, and as a consequence its content, though no doubt causally related to the past experience it represents, has to be manufactured. We have to do some psychological *work* in order to see that our memories are our own.

Now in what way should we conceive this more sophisticated relation between a person-now who performs this almost magic feat of mentally visiting a person-then? The naïve account seems unable to properly, or at least to fully, explain what goes on in this mental time travel so as to make the links between persons different in time, plausible as personal identity links. What is needed is a more sophisticated relation than that supplied by episodic memories. The idea we need is probably close to an idea in psychology, viz., autobiographical memory. In this relation episodes from the past are recalled in such a way as to supply materials from a personal past the remembering self is able to accommodate as his own. These materials include experiences that one can interpret as one's own, and so experiences that one can appropriate as one's own. Using this broader and deeper notion of an autobiographical memory system helps to address problems that the naïve view has. For instance, it was always a little unclear how the reductionist account, with its very atomistic approach to personhood, was able to glue the various atomized experiences together into a unified

³ See Marya Schechtman (1990), and (1994).

person. How were all these experiences, experiences of the same person?

Now I don't pretend that this objection is particularly new. As remarked, Marya Schechtman has persistently worried about this problem in various publications. What I want to put forward though is what I take to be a new reason for doubting that the atomized non-narrative account of personal identity can succeed. (That such a reason exists will come as potentially good news for those who might worry about reductionist accounts of personhood and implications they have for the potential loss of respect for the sick, the disabled, the young or the old.) The reason, in broad terms, is that the naive view is too theoretically impoverished to explain how it is that a creature with an episodic memory capacity can develop from being in that state to being a person in a fuller sense, as a being with reason and reflection, and with a capacity for planning and taking responsibility. The way I want to show this is to look at some literature on childhood amnesia.

Very young infants are capable of (mere) episodic memories, but they lack the capacity for autobiographical memories. Ulric Neisser has elaborated this point precisely by considering the way children with an inchoate but recognisable capacity for episodic memory nevertheless fail to exhibit all the characteristics of being a person and persisting over time in the way fully fledged persons persist. The idea of "childhood amnesia" was first coined by Freud and it refers to our adult inability to

recall childhood episodes to a far greater extent than our failure to recall non-childlike memories. It is noteworthy that this idea applies to *episodic* memories, not semantic or procedural ones where the technique of remembering does not require mental time travel. Thus, what would explain our adult ability to recall with ease many of our adult experiences in contrast to our adult inability to recall early childhood experiences? The answer surely must be that those very early experiences were never given a narrative placing so as to be recalled as the experiences of a narrative person. Our adult schemata, to use Neisser's term, are misapplied to the experiences of childhood in which no developed sense of self is evident. The adult self, then, cannot recall the experiences of an infant self *as* a self, a self that is recognizable as such. Looked at another way, if we lacked childhood amnesia, we would possess schemata at both the adult and childhood ends so as to connect in the right way. This would provide a way of re-enacting in one's mind childhood experiences as though they were one's own, and in that respect to appropriate those actions as one's own. But we do not do this, and the reason appears to be that at an early age no biographical schemata are there to which we might make intelligible connections.

Autobiographical episodic memory doesn't suddenly "kick in" at a certain point during childhood; it develops. To understand that development, we must turn to the direct study of young children's memory. We know that adults

recall very little of what happened to them at age two but how much do two-year-olds themselves remember? What about three or four-year olds? As we shall see, there is one sense in which young children can be said to remember surprisingly much; in another sense, they recall little or nothing. Given specific cues, they produce clear evidence of recall; judged by the ability to produce coherent narrative, they are dismal failures.

Pre-two year old infants are capable of learning skills, or a kind of procedural memory, whereas according to Neisser one year olds “reproduce specific action sequences”. And although young children are better at generic memory – talking about “what we do in playschool” rather than “what happened today at playschool” – about two, children can engage in some episodic recall, but this needs most often to be elicited with very specific questioning. “What did you see at Disneyland?”. “I saw Mickey Mouse”. But this memory is fragmentary and limited. Neisser says:

Even 3 year olds rarely elaborate their [episodic] memories or give them narrative form. Young children seem to acquire episodic memory before they acquire narrative: they can remember life events, but lack the schemata that would enable them to recall those events in a systematic way. Talking about the past is a skill, something one must learn to do. Like other skills it develops with age, social support, and practice. (p178)

This would help explain childhood amnesia much better than, say, Freudian

repressiveness. Very young children simply lack the cognitive scaffolding to pin their episodic memory fragments into a life events “scrapbook”. Thus these fragments are cognitively extremely thin, both at the encoding point, and when cued for retrieval as an infant. Adult experiences are interpreted with a narrative significance which enables easy later appropriation as one’s own experiences because they can be made sense of as part of the same story.

What the case of childhood memory gives us is a rationale for the kinds of psychological states apt for inclusion in a theory of personal identity. Certain memory states fit better than others just because self-identity is a matter of narrative identity, and so some of these states we consider fit into our stories better. This is brought home at the other end of life when our stories start to fall apart. It is both disturbing and sad, but nevertheless commonplace, that those with advanced dementia tend to remember episodes from long ago but often forget what they said or did only minutes before. The result is gradual fragmentation and an inability to put together experiences, and remembering of experiences, as the experiences and rememberings of one person. So whereas the infant does not yet have a story, the person with dementia is losing his story. Either way, simple episodic remembering is sometimes not sufficient to generate a sense-making link for personal identity.

This essay has been addressed to the nature of memory, and to the characteristics needed for memories to

play their role in the construction of personal identity. The case of childhood amnesia is instructive: infants have episodic memories, but these are not sufficient at that early point to play the role of memory in personal identity that we see in adults. This tells us something about the role of development in personal identity, certainly, but it also suggests something about the *relation* between a person and his or her memories, for those memories to play the role that John Locke envisaged. The remembering self must be a narrative self – must have a story – in order for past experiences to be received as *her* experiences, and so to properly count as grounding personal identity. Episodic memories of the type we have as infants are not rich enough because the little persons who have them do not yet have a story. Learning to become a person by accumulating memories is something like a magic trick then. More of the same gradually leads to something different, just as the chapters of a book gradually turn into a completed story.

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