



The Pensive Gaze

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Ethical issues are often transacted with passion, righteous anger, and an unhealthy imbalance between heat and light. These strong emotions can be damaging and divisive but also demand our attention and understanding, as we are not, and do not wish to be, thinking robots: we take all of ourselves everywhere.

How then is it possible to look with curiosity rather than pre-conceived positions, academic eyes rather than partisan ones, and remove from the process, at least to start with, the automatic filters of ethnic origin, religious adherence, education, social background, and political views, and the passion that is generated in their defence?

Maybe there is some inspiration to be taken from this sweeping and dramatic view of the ancient world from Marguerite Yourcenar, quoting Flaubert, in the

introduction to her biographical novel *Memoirs of Hadrian*:

The melancholy of the antique world seems to me more profound than that of the moderns, all of whom more or less imply that beyond the dark void lies immortality. But for the ancients that “black hole” is infinity itself; their dreams loom and vanish against a background of immutable ebony. No crying out, no convulsions—nothing but the fixity of the pensive gaze. With the gods gone, and Christ not yet come, there was a unique moment, from Cicero to Marcus Aurelius, when man stood alone. Nowhere else do I find that particular grandeur. (Yourcenar 2001, “Introduction”)

So here, again, the underlying issue, the stone in the shoe of existence, is death, and its fear, and it is how we respond to death that determines everything else.

So how do we cultivate this “pensive” gaze when faced with threats and uncertainty? Appealing always to the “better angels” amongst us, this journal aspires to explore, understand, and promote ethical reflection through its mission of global multidisciplinary bioethical publishing. Perhaps the best explicit example of this investigative rigour is the “veil of ignorance” proposed by John Rawls: how to see without being blinded by prior opinion or experience, indeed by ourselves. Or as Maurice Drury, friend of Ludwig Wittgenstein, urges us: there is a time to think and

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a time to look (where curiosity is the desired attribute), as in this parable he attributes to a writer called Charles Morgan:

You are sitting in a room and it is dusk. Candles have been brought in that you may see to get on with the work in hand. Then you try to look up and out to the garden that lies beyond; and all you can see is the reflection of the candles in the window. To see the garden the candles must be shaded.

Now this is what philosophy does. It prevents us from being dazzled by what we know. It is a form of thinking that ends by saying, don't think—look. (Drury 1996, 114)

And might one add, being dazzled by what we think we know or worse still where this “knowledge” (or prejudice?) is operating unconsciously?

Nowhere has this been more pronounced than in the behaviours and coverage of the pandemic, and in this issue three further papers add to our previous pandemic edition.

This journal supports sound public health measures, protection of vulnerable persons, and social solidarity both locally and globally. In applying the lens of international multidisciplinary bioethics, it aims to play its own small part to ensure that truth and reason prevail and that by applying the collective “gaze” of bioethics, unsound, unfair, and unjustifiable practices are revealed. Most of all the *Journal of Bioethical Inquiry* aims to curate an international conversation, to connect and to be a voice for understanding, through analysis and unravelling of complex issues but always heading for unity rather than dissembling or splitting. Just as we may seem to undo the rope we also aspire to rewind it, a force for the whole rather than just the strands.

However, phoney solidarity needs to be called out. One of the catch phrases of the pandemic, at least in Australia, is that “we are all in this together,” often before we are exhorted to “do the right thing.” It is often proffered as an apparently good-hearted appeal to social solidarity but also, in more coercive contexts, to promote community compliance with regulation. This writer has to ward off cynicism and worse on each hearing, as nothing could be less true. Yes, the virus can infect anyone and shows no respect for human boundaries of any sort, so at one level it is the great “leveller,” and in that sense we are all

vulnerable, although clearly not equally so. The bigger problem is that far from generating novel contingencies, the pandemic has revealed all our existing fragilities and magnified them at personal, societal, and global levels: that in a sense most of the big challenges that emerge are entirely predictable and simply revive old struggles or amplify existing disadvantage. The public health measures required to suppress transmission to manageable levels, and protect health systems until vaccine coverage is adequate, also generate regimes of truth, inequality, economic damage, and insular self-interest on a global scale. There is nothing new to see here.

In it together we are most definitely not. This is nowhere more clear than in this wealthy country where there is an overreach in otherwise sensible measures and citizens are denied return to their own country, state borders are shut as their governments play politics with the fantasy of “safety” and “beating” the virus, and of avoiding the need to “live” with the virus, unlike almost anywhere else in the world and even to the point of our large western state reviving old dreams of secession (or behaving like it). Respect for politics and politicians, coming off a low base in most countries, is not enhanced when governments overtly trade on public fears and protection illusions to use good records of disease suppression to press home the electoral incumbency card.

The worst of it is that classical psychodynamic interpretations of social behaviour are so plausible: the big bad wolf is at the door, and I, the leader, will protect you from the wolf and anyone who tries to let him in. And like children obeying the parent, we all follow, until the wolf gets in, and then we turn on the leader, and those we hold responsible, including our fellow citizens (classic splitting). One only has to read some of the ghastly social media posts to see hatred of the “other” and the “big other” writ large. Funny how nasty this gets when death comes to town.

Luckily, there are better angels at work in communities, and the vast amount of social care and concern displayed around the planet is heartening and often good-humoured. Lockdown comedy, music, adaptation, advice, innovation, fashion, and banter abound as people have unrivalled technical means to share the minutiae of lived experience in hard times.

Eben Kirksey (2021) explores how stereotypes about exotic peoples and animals of the Orient shaped popular origin stories about COVID-19 in media

reports. In an article based on Edward Said's orientalism, the author shows how preconceptions about the "other" influence western perceptions of the origins, and hence blame, for the COVID pandemic, although Foucault is claimed as the major influence for this article that "gestures towards genealogies of possible viral futures."

Fenton and Chillag (2021) argue that politicization, urgency, uncertainty, and fear dominate in public health emergencies, and obscure the poverty of global public health capability.

Keri et al. (2021) writes us a letter to dispel the fear of needle stick injury from a COVID infected patient, pointing out that the fear generated by the theoretical risk can make matters worse. Here emotion can overtake reality.

Allen (2021) "uses affect theory to describe how healthcare workers' emotions are useful for formulating a reopening plan grounded in collective action and a duty to do no harm." So here passion is recruited as an ally of good action.

Four broader themes are prominent in this issue: globalism, foundational assumptions, vulnerability, and influence. Several papers remind us of our global interconnectedness in their discussion of diseases that fail to adhere to national boundaries, healthcare workers that move between healthcare systems, patients that are sent to facilities abroad, and the global influence of industry involvement in clinical research.

Much as the *Journal of Bioethical Inquiry* tries to accentuate the positive, it is woven into the lining of bioethics that reflection and frank criticism of received wisdom is also needed at every turn. A few articles encourage us to think about the unexamined and/or flawed foundations upon which our thinking is often built, including notions of the "normal" (Rost 2021), stereotypes about "exotic" others (Kirksey), unethical and un-replicated research (Lederman and Chuan 2021), and claims used to justify public funding of IVF including the infinite value of children (Harel and Bentwich 2021). Shining a light on the treatment of vulnerable populations such as the ageing, prisoners, animals, those desiring children, is also a responsibility. There is also much contemporary attention given to ideas of influence: industry influence on clinical guidelines (Hunt et al. 2021); influence of spousal relations on author attribution (Teixeira da Silva and Rivera 2021); assumptions

that influence ways of thinking including stereotypes (Kirksey 2021) and notions of normality (Rost 2021); factors that influence public health emergency decision-making (Fenton and Chillag 2021).

Teixeira da Silva and Rivera (2021) spread the net of conflict-of-interest scope to argue that spousal and kinship relationships should be declared in journal co-authorship declarations. Given that the main benefit at stake here is the authorship itself, and this is justified by contribution and gift authorship is now shunned, it is a moot point as to how relationship declarations might add to this existing rigour.

Okninski and Grieger (2021) report on the latest developments in medical assistance in dying (MAID) in Canada. As a result of changes made in the province of Quebec, the federal parliament has made changes to the national law: natural death no longer has to be foreseen (thus removing the need for speculative prognostication) and the exclusion on mental illness is removed. Canada has thus, after five years of legislated MAID, moved into a phase of rolling amendments to unwind some of the initial provisions that were required to get the legislation through parliament at the time. It is clear that, despite considerable opposition, MAID has broad support to be less restricted. Most importantly, it would appear that the Canadian parliament has had the courage to begin to address the issue of capacity at the time of death, and the need to consent immediately prior to MAID. Until there are advance directive provisions, such as in Belgium, most legislation so far enacted is inapplicable to dementia. This is major global challenge as it is not difficult to foresee that given the present trends, a majority of deaths in the future could involve significant dementia as a causal contribution, and there is widespread fear of the dementia dying process.

The authors also follow the Australian case against Ethicon for the vaginal mesh implants that they marketed without adequate information about potential devastating adverse effects. The company's appeal was dismissed, after a major change in their defence from denying them at first instance, then admitting them and attempting to shift blame onto the surgeons. The case makes clear the heavy corporate responsibility that falls on companies that manufacture therapeutic goods with regard to safety testing and transparency about adverse effects and will be welcomed by all those who fear corporate secrecy fuelled by profit

motives leaves the public open to serious adverse effects and even large numbers of deaths as in the Purdue opioid story, when the dangers are known but withheld.

Lederman and Chuan (2021) tackles citation of unethical research, in this case an American starvation study conducted during World War Two in Minnesota using conscientious objectors. There was clearly coercion involved, quite a prolonged low calorie intake phase that must have been very hard, and there were risks of other longer-term health harms. Of course there are more extreme forms of human abuse under the guise of research, such as the Mengele twin studies experiments and others performed on concentration camp prisoners or deliberate infection of prisoners by the Japanese at Harbin during WW2—which were in effect forms of torture and murder and rank amongst the most heinous of war crimes. So should any data from unethical studies be cited? The main subject of the article is the force-feeding of prisoners on hunger strike. It is a question then of whether the force-feeding is done for the good of the prisoner, to save life, or for the incarcerating system to prevent some kind of moral victory or martyrdom. To suggest that at a given point hunger strikers lack capacity and can therefore be force-fed without consent and despite the objection of the prisoners themselves, as has been suggested by papers cited by the authors, seems objectionable. To base such practices on historical research of a highly dubious ethical nature seems doubly flawed. This journal would support the view that unethical research, and mostly certainly war crimes, should never be cited.

Jeffrey Kirby (20,210) from Dalhousie in Canada analyses uterine transplant as a treatment for infertility and applies a six point ethical checklist to compare living and post mortem donations, concluding that in high-income countries (surely the only ones that could possibly consider this sort of treatment), only post mortem donation passes the comparative test, the ethical acceptability of deceased uterus donation/transplantation being found to be roughly equivalent to that of gestational surrogacy.

Stokes and Iskander (US) (2021) tackle the ethics of healthcare worker migration. Ageing wealthy countries (termed high-resource countries-HRCs, as opposed to low-resource countries-LRCs, better terms that “developed” or “western”) have an almost insatiable need for skilled labour in their health systems,

often to do the jobs that their training systems cannot keep up with demand for, and for roles, such as aged care, that are unattractive. Nursing is the most pressing profession in terms of numbers. The tensions between the needs of public health systems in less wealthy countries and the rights of individual nurses is a hard one, balanced between the costs of training and freedom of movement. It is clear that all HRCs need to work harder on steering its citizens into the caring professions, particularly for care of the elderly where the ceiling of need is not yet known but climbing inexorably everywhere. It is obviously unfair to work hard for a professional qualification that then restricts your freedom of movement and if you do move from a LRC to a HRC, you are then exploited or discriminated against.

Harel and Bentwich (2021) apply European Principles to the public policy regarding access to assisted reproduction in Israel, where the Knesset has tried to put a ceiling on the number of attempts at IVF (noting the poor results, especially after early failures). The paper applies a philosophical analysis preferring a European sensibility that does not accord the same prominence to autonomy as some argue is the case for the “American” four principles (Beauchamp and Childress), instead emphasizing autonomy, with dignity, integrity, and vulnerability (Rendtorff 2002). The authors use this lens to examine concepts of “emotional vulnerability” and the “worthlessness of the childless.” Whatever one might say about misunderstandings of the autonomy emphasis in the Beauchamp and Childress model, and doubts that there is any such thing as a united European distinction that is more collective in its emphasis, the saddest aspect of this paper is to read about the political and religious pressure, in some quarters, to have children in Israel. Only in a pure Darwinian view of humanity could it be said that having children is our only purpose for existence and surely we can all agree that aside from the strong, although not universal, emotional desire to have children, one’s worth and rights should in no way be determined by the accidents of fertility and infertility. It is also interesting in passing, once again, to see that the concept of integrity in this so-called European model, is seen in its more etymologically correct sense of wholeness rather than some kind of amalgam of honesty, trust, and consistency.

De Vries (2021) (Belgium) highlights an emerging practice in northern Europe of sending elderly

people to residential care in less costly countries, either in eastern or southern European countries or in Asia. While this might be a surprise to many, the ethics are skewed in favour on the grounds of better care ratios, but the social losses are surely incalculable. Despite the massive distraction of the pandemic, and the enormity of climate change, aged care and ageing remain the biggest domestic social, health, and economic challenges for most countries. If the price of the modern gift of far greater longevity is to be incarceration or deportation, it is not a gift indeed.

Staying with age care, Holmes and Ibrahim (2021) from the Australian state of Victoria discuss the unreliable nature of consent to medical treatment for the elderly. Fluctuating capacity, and difficulty in establishing health literacy for elderly people, often with dementia, is a serious challenge for all health providers, especially acute hospitals, where frail, cognitively impaired, potentially frightened and disorientated sick older people will be in unfamiliar surroundings, attended by staff who they do not know, faced with complex decisions and technical choices that they may struggle to understand, at a time of their greatest vulnerability. They point out that much more work will need to be done to ensure safe and appropriate decision-making for older persons, with much wider awareness of substitute decision-making provisions in the various jurisdictions and community awareness.

Hunt et al. (2021) from the United States, address the role of large pharmaceutical companies in driving up health costs, using type II diabetes and pre-diabetes as an example of a billion dollar industry built on guidelines where commercial influence is not systematically identified. They suggest that the issue is complex, and they are not suggesting that there are clear villains but that there is a culture of acceptance of the interweaving of commercial interests into healthcare that conflict of interest policies struggle to understand and moderate.

Czarkowski et al (2021) have surveyed Polish clinicians about the potential role for clinical ethics committees and clinical consultation in that country. They point out that outside North America, CECs have been slow to develop and ethics consultation is patchy in terms of both acceptance by clinicians and deployment. It may also be that many of the cases that lead to ethics consultation in North America tend to emerge from end-of-life care, and certainly in hospitals, these challenges tend to be dealt with by

palliative care teams rather than ethics consultation, as death itself is not an ethical issue per se. Lingering paternalism in Polish medical practice notwithstanding, the authors believe that there is a good case for the introduction of CECs in Poland, with clarity about their role being aligned to patient interests rather than institutional ones, and no doubt this trend will continue everywhere as support for difficult decision-making is increasingly understood as a benefit rather than a hinderance in modern healthcare.

Bioethics has consciously embraced animal welfare, but in environmental and animal welfare activism it is often easy to forget the human dimensions, brought to light by, for instance, seeing how wildlife rangers, for instance, are in constant danger from poachers or the local economic impact of animal conservation. Cordeiro-Rodrigues (2021) explores the links between animal activism and racism in South Africa and concludes that by looking at the problem from what he calls an Afro-communitarian normative viewpoint, then animal advocates in the South African context should also engage with racial injustice issues. Pietrzykowski (2021) from Poland shows there is still some way to go on procedural fairness for animal research committees, with particular regard for the way decisions are taken and the transparency of the process and interests at stake. It is pointed out that animal investigators still form a large proportion of such committee memberships, for instance.

Lastly, but certainly not least, we are challenged (not for the first time) by the notion of the “normal.” Most modern bioethics, and Rost (2021) here adds to this, seeks to eliminate normalization, mainly because it cannot be easily defined or intellectually defended and is a fast route to discrimination of all sorts. However, ethics has a whole branch devoted to normative approaches, and the law, for instance, very much relies on categories and standards of practice. In broader everyday life and society normalization is a fact of life that is hard to shift. This article at least urges the health system not impose normalcy on people and to ensure that it does not perpetuate discrimination based on fear of the “other,” an especially significant danger during pandemic thinking where the behaviour of others may impede our return to a collective “normal.”

There have been some significant changes to our editorial team in recent months. Firstly, we farewell Michael Robertson, Associate Editor Mental Health,

who joined us in 2009. Also departing are Neil Pickering and Grant Gillett, Editorial Board members representing Otago Bioethics Centre since the very beginning of the journal. Jan Deckers steps down as Associate Editor Research Ethics after 11 years with the journal. Finally, Bernadette Richards is stepping down from running the Recent Developments column that she took on in 2010, although she will continue with us as an Associate Editor for Law.

We welcome Christopher Mayes, Associate Editor for Continental Philosophy and Biopolitics who joins our team as a permanent member after guest editing multiple symposia over the years. Megan Prictor of Melbourne Law School, will co-coordinate Recent Developments in place of Bernadette Richards, and our new Otago representatives are Professor John Macmillan and Josie Johnston.

So we say a big thank you to those who leave us, with warm wishes for their futures, in the hope that they will continue to be part of the *JB*I community, to continue to share Flaubert's "pensive gaze" that so inspired Marguerite Yourcenar, and an equally warm welcome to those who are joining us, under the same sky so to speak, gently pointing out where our candle light might indeed be obscuring the gaze into the garden.

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