

## CHAPTER 2

### PERSONS

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#### 1. INTRODUCTION

Ethics calls upon us to have regard, to show respect, to treat beings, all beings, in accordance with their deserts. The deserts of beings, I have argued, arise from and indeed are the measure of their being, that is, their conatus, the dynamic of their project as they affirm, define, express and carry forward their program or plan (Goodman 1991; 1996; 1998). All beings have a conatus but not all have a plan in the subjective sense that brings the act of valuing to the threshold of self-consciousness, self-criticism, and regard for other beings. In all beings *prima facie* deserts are their very claims; legitimate deserts are those claims equilibrated against the conflicting and complementary claims of all the rest. With beings in general deserts are proportioned to ontic standing. Recognition should respect what beings are. With persons this rule takes a special form.

The most basic deserts of persons are not relative. They are not to be compromised, bartered or sold. They trump the deserts of lesser beings, not making these nugatory, since consideration is always due in behalf of all deserts, other things being equal, but outbidding them systematically, so that persons are called upon to accommodate other beings and their claims but are never rightly sacrificed to those claims. This is a good part of what Genesis seems to mean when it portrays God as giving mastery over the earth to the race of Adam. The mandate is not for destructive exploitation but for understanding and use, understanding symbolized by the prerogative of naming, and use by the divine blessing/natural imperative – "be fruitful and multiply, populate the earth, and master it, rule over the fish of the sea, the fowl of the sky, and all the living things that teem upon the earth" (Genesis 1:28). Like all the characterizations of humanity in Genesis, this one assigns normative force to a *de facto* feature of the human condition: Humans do have charge of nature. We choose, and by our choices shape and tend or distend the face of nature. The power entails responsibility, and the responsibility imparts a special worth and weight to every human choice, and a bespeaks a special dignity in the choice makers.

Our powers as actors, the magnitude of our projects as self-consciously self-choosing subjects, set the basic claims of persons on a moral plateau. In dealing with other beings we make judgments as to our priorities and how the subordinations and super-ordinations of interests shall be made. In this respect the earth is still a garden and we are still the caretakers. But with persons we lack the license to draw up the vexed hierarchies of interests that we must make or find in our interactions with the rest of nature. The claims of better

humans or of superior species, should they be found, or should we be tempted to regard ourselves as such, do not outweigh the claims of lesser persons. Morally speaking, among persons there are no lesser beings. This is what is meant by speaking of a moral plateau. Here the rising ground of scaled deserts levels off into existential equality.

This is not empiric equality. Indeed, the notional affirmation or empiric discovery of inequalities of strength or wisdom, creativity or productivity, only accentuates the underlying sameness of dignity. Basic existential deserts are not overridden even when empiric differences are real. The Gandhis and Mother Teresas of the world already know this. That is why they seem humble, even in the midst of their moral strength. They know that no social standing (*a fortiori*, no moral or intellectual superiority) imparts privileged weight to any basic existential claim of one person over another.<sup>1</sup> Even King Fahd has no right to take (or buy) another person's kidney. Even the President has no *droit de seigneur*. Even the wisest of space aliens has no right to commandeer our government or subvert our way of life, not even in our own interest. Neither scientists nor technicians have the right to engineer one human being from the cloned cells of another. If ethics commands respect for all beings, indeed, in reverence for what they are, then it commands the recognition that persons are not for use. Persons are the beings that determine their own ends; they are not to be made the tools or materials of one another's gratification or use. As existential subjects, all humans stand upon a plane. Genesis pointedly intimates this idea near the start of its story of humankind. It draws into its narrative the dramatic irony of Lamech's boasts of the disproportionate retribution in store for those who offer him harm (Gen. 4:23-24). The subtext: Despite the machismo of his boasts to his two wives, Lamech's deserts rise no higher than those of any other human being.

My purpose in this chapter is twofold: I want to defend my claim that the deserts of persons are based upon their subjecthood, although they exceed the immediate claims of subjecthood itself. The deserts of persons, I will propose, being objective claims, include and exceed the familiar repertoire of positive and negative human rights. Subjecthood makes demands beyond those of subjectivity. The dignity it imparts protects the body, the privacy, the intellectual integrity, even the name and honor of persons. And the idea of the deserts of subjecthood carries pointed entailments for therapeutic work, whether its aim is bodily or mental health.

Both law and morals have long sought to protect human dignity; and both, for that reason, provide valuable guidelines as to its extent. The biblical alloy of law and morals is especially useful here, since the dignity of persons is among its chief concerns. But I will not

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<sup>1</sup> As Kant saw, the dignity of personhood that arises from the presence of reason and the attendant presence of freedom, entail accountability as well as entitlement. That is why freedoms may be curtailed but residual rights retained in cases of malfeasance by persons. It is also why accountability is restrained in cases of diminished responsibility, that is diminished access by a person to rational self-control and the exercise of liberty. In such cases, public safety may demand restraints, but punishment in the moral sense becomes an irrelevancy (Goodman 1991:Ch.2).

be arguing from textual premises to normative conclusions. My aim, rather, is to discover the claims of personhood within the lineaments of persons themselves.

## 1. THE FOUNDATIONS OF HUMAN DIGNITY

Levinas tells us to look into one another's faces, even though the Law does not recognize faces and, even less, nature at large. There are two strengths and two weaknesses to his approach.

### 2.1. *Levinas's strengths:*

1) As moral subjects we are capable of recognizing one another as individuals, and the core of personhood lies in our individuality. As Onora O'Neill has subtly argued, to treat you as an end and not a means is to respect not just your freedom, your generic personhood or specific humanity, but (insofar as principle permits) to enter into an empathic regard for your unique and individual project (1989). To love another as oneself is to sustain and foster that project in all its individuality, insofar as is consistent with the affirmative and constructive demands of love itself. There is no clearer emblem of individuality than the face, nor a more open gateway to intersubjectivity than the eyes. By opening my face to yours and looking into your eyes I can become your partner, ally, friend, comrade, companion, fellow traveler, associate. I can effectuate the affinity that (by Spinoza's account) we inevitably share as birds of a feather. Indeed, I can be more than useful to you. I can be helpful. When the Torah commands us (Exodus 23:5) to help reload our enemy's ass—or pickup truck—it is asking us to see one another's faces and look into one another's eyes, to build trust and seek friendship (Goodman 1986: 231). Without that, there is no great or small human achievement, least of all the greatest of human achievements, those of begetting, and bearing, and rearing a child.

2) The face is the emblem of our embodiment, and our embodiment is the locus of all our active powers and passive vulnerabilities. In the face, and through the eyes, the soul peeps out and makes itself visible. It is seen in the very acts and passions, expressions of joy and pain that reach the shores of actuality only through our embodiment. To look at another's face (or, as the great artists have always understood, even to look at one's own) is to see subjecthood objectified, the for-itself made an in-itself, by age, desire, longing, hope, fear, sorrow, delight, or friendship (Schama 1999). No text can communicate a moral message with the explicitness, completeness, and authority of a face.

### 2.2. *Levinas's Weaknesses*

1) The message a face sends is inchoate, not ambiguous but incomplete. A face asks for empathy, but a face as a face does not speak. It may cry or laugh. It may beg for mercy or plead for understanding. It may register pain or grief. And it will tell us, if we recognize its

features, who it is we have to do with. But it does not spell out another person's inmost hopes and fears. It can only catalog them in the physiognomic repertoire of primate emotions.

2) Further, and critically, all that a face cries out for in us may be rejected or disowned. The pity it begs for may turn to cruelty or scorn, or simply unconcern, as ego dissociates from the other's pain or need. To look at a face, to look into a pair of eyes, should bring kindness and regard. But it need not. What if there is only one eye, or a disfigured face? Looking away may seem kinder than staring on, and it will be kinder than the next step of dissociation, a hardening gaze that turns to cruel laughter or violence as ego strikes out to separate itself from the focus of pain. Racial hatred and many other types of groundless hostility rests in the rejection of the face of the other. This rejection is the bastard child of the very appeal that a human face makes for human understanding.

Margaret Keane well knew and skillfully exploited the animal appeal of large and luminous upturned eyes, brimming perhaps with tears. Yet, we reject the adequacy of her art, partly because it is manipulative rather than authentically eye-opening. The work is Kitsch, not just because its appeal is too easy, exploitative and reflexive, but because reflexes aroused so mechanically have a way of turning into a cruel joke. Pathos begets kindness; but, in the curious dynamic of human emotions, empathy begets *Schadenfreude*, death and dismemberment. A baby's tears biologically command care and protection, but they are no guarantee against violent shaking or suffocation in a garbage bag at the bottom of a dumpster. Sentiment, as Kant plainly understood, is too contingent to ground morality.<sup>1</sup>

Kant is much closer to the mark than is any appeal to moral sentiments. He argues that the sole basis for a universal moral law is the recognition of persons as objective ends.<sup>2</sup>

<sup>1</sup> As Ernst Cassirer writes, Rousseau's mingling of normativity with the psychology of the sentiments "could not long withstand Kant's analytical mind. He distinguished between the is and the ought even where he seemed to be basing the latter on the former. The more keenly and clearly this distinction took shape for him, the more progress he made in his critical analysis of the pure concept of knowledge and the more definitively he separated the question of the parentage and birth of cognition from that of their value and their objective validity. Since this separation receives its first full systematic expression in Kant's (1770) dissertation *On the Form and Principles of the Sensible and the Intelligible World*, the problem of ethics is hence also given a completely new foundation. Just as there is a pure cognitive a priori, there is now a moral a priori as well. In the same way as the former is not deducible from mere sensory perceptions, but has its roots in an original spontaneity of the understanding, an *actus animi*, the latter also, conceived with respect to its content and its validity, is loosed from any dependence upon the sensory feelings of pleasure and pain, and cleansed of any contamination by them. Thus it was as early as this that Kant broke with all morality based upon eudaimonism. He turns away so brusquely that from now on among those who make happiness the principle of ethics he even numbers Shaftesbury, who uses pleasure as a moral criterion not at all in the sense of an immediate sensory feeling but in its maximum aesthetic refinement and sublimation" (1918: 236).

<sup>2</sup> I do not wish to overstate the contrast between Kant and Levinas. Onora O'Neill's work reveals the affinity between the two. As Jeffrey Bernstein puts it, "The face, for Levinas, serves as the necessary and universal condition for the possibility of relation to the other... Given that Levinas is trying to show how we have access to that which we cannot know (i.e., radical alterity), one might call Levinas' thinking on the face 'an aporetic Kantianism.'" Aporetic, where Kant seeks to be apodeictic. The face, in a way, turns us from principles to particulars. That is why judges are biblically cautioned against recognizing faces in court (Deut. 1:17)—that is, showing favoritism. Levinas's view is, thus, both an alternative to Kant's rigorism and an interpretation of it. It is more useful in the latter than in the former way, but solely in need of further nuance.

Mere things, he explains, can have only relative value, value in terms of their usefulness to us. Objectively, persons are ends, since that is what all persons conceive themselves to be.

### 2.3. *Kant's weaknesses*

1) To begin with, Kant is in error when he claims that "Beings whose existence depends not upon our will but upon nature have nonetheless, if they are non-rational beings, only a relative value as means and are consequently called *things*" (1956:95).<sup>1</sup> This readily assimilates natural beings to the artifacts that set off Kant's contrast between persons and things. The value of natural beings is in the first instance their value to themselves. Secondarily it is their value to other beings. It is only as a special case of that second branching of the tree that the value of other things is (in due measure) made relative to our uses of (or appreciation for) them. What is relative about the value of natural beings is, first, their standing in the ontic hierarchy, and second, their role in sustaining the system of nature – a role that might make a very primitive species critical instrumentally, whether from a human or a broader standpoint. It is suppositious of Kant to adopt the human standpoint by measuring the value of all things in terms of their human usefulness. For the thesis that man here is the measure is what was to be proved.

2) We cannot infer that because ends is what all persons take themselves to be that ends is what they are. In fact, not all persons take themselves to be ultimate ends in the sense that Kant intends. Many ecologists, ascetics, pietists, and mystics hold a much humbler view of their place in the universe. And, whatever people took themselves to be, if theirs were a subjective view, a mere matter of opinion, that would leave open the chance of their being in error. As with the argument *ex consensu gentium*, the premise here is controversial at best, and the inference invalid. It makes more sense to ground the (objective) worth of persons, not in the fact that they take themselves to be subjects, but in the fact that subjects is what they are. Indeed, self-consciousness is distinctive in this way. It also makes us aware of our subjecthood, not merely as opinion but as fact. That is the moral side of the Cartesian *cognito*: our consciousness as persons makes us aware not just of our existence but of our subjecthood, our role as moral choosers, and thus as bearers of the moral dignity that belongs to personhood.

### 2.4. *Kant's strengths*

1) The dignity of persons are grounded in their subjecthood. It is valuable to describe subjects as ends. Reference to the normal or normative expectations of subjects as they go about their lives, make their choices, and plan their futures, foregrounds the proper locus of the respect due to individual autonomy, which is the central liberal message. It also exposes what is invidious in exploitative behavior and sharply distinguishes it, say, from legitimate

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<sup>1</sup> Kant argues, on the same plate: "All the objects of inclination have only a conditioned value; for if there were not these inclinations and the needs grounded on them, their object would be valueless."

Personhood and Health Care

Thomasma, D.C.; Weisstub, D.N.; Hervé, C. (Eds.)

2001, XV, 451 p., Hardcover

ISBN: 978-1-4020-0098-0