

CHAPTER 5

THE FAILURE OF THEORIES OF PERSONHOOD¹

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1. INTRODUCTION

What it is to be a person is a principal topic of metaphysics. Ideally, a pure metaphysical theory expresses a moral detached interest in how to distinguish persons from nonpersons. However, the metaphysics of persons has often been put to work to defend a preferred moral outcome, placing metaphysics in the service of ethics. Metaphysics is invoked to inquire whether individuals have rights and whether the theory of persons can address practical problems of abortion, reproductive technology, infanticide, refusal of treatment, senile dementia, euthanasia, the definition of death, and experimentation upon animals.

In light of the different objectives of theories of persons, clarification can be introduced by a distinction between metaphysical and moral concepts of persons.² As I draw the distinction, metaphysical personhood is comprised entirely of a set of person-distinguishing psychological properties such as intentionality, self-consciousness, free will, language acquisition, pain reception, and emotion. The metaphysical goal is to identify a set of psychological properties possessed by all and only persons. Moral personhood, by contrast, indicates individuals who possess properties or capacities such as moral agency and moral motivation. Such properties or capacities distinguish moral persons from all nonmoral entities. In principle, an entity could satisfy all the properties requisite for metaphysical personhood and lack all the properties requisite for moral personhood.

However, most published theories of persons are not clearly distinguishable into these types or even attentive to the distinction between metaphysical and moral personhood. Proponents of these theories have generally not approached the subject through these distinctions. Their goal has primarily been to delineate the distinctive properties of personhood – moral or nonmoral – that are necessary for and confer moral standing upon an individual. For three decades, and arguably for several centuries,³ the dominant trend in the literature on persons has been to delineate nonmoral, usually *cognitive*, properties of individuals in a metaphysical account, from which conclusions can be drawn about moral

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² Other philosophers have used this or a similar distinction, but not as I analyze the distinction (Dennett 1976:176-178; Feinberg and Levenbook 1993; Sapontzis, 1987:47).

³ A respectable case can be made that Aristotle, Boethius, Descartes, Locke, Hume, and Kant either presupposed or argued for this position. However, Kant's apparent inclusion of moral autonomy renders him a borderline case, and other qualifications would need to be made for some of these figures.

standing. A typical example is Michael Tooley's well known analysis moving from metaphysical premises to moral conclusions:

What properties must something have in order to be a person, i.e., to have a serious right to life? The claim I wish to defend is this: An organism possesses a serious right to life only if it possesses the concept of a self as a continuing subject of experiences and other mental states, and believes that it is itself a continuing entity (1972, sec. 3).

Tooley explicitly observes that

[I]t seems advisable to treat the term "person" as a purely descriptive term, rather than as one whose definition involves moral concepts. For this appears to be the way the term "person" is ordinarily construed (1983, 51).¹

In this account, "person" has purely descriptive content ("an entity that possesses either self-consciousness or rationality"), and the person-making properties in this metaphysical account endow their possessors with moral rights or other moral protections.

The belief persists in philosophy, religion, science, and popular culture that some special cognitive property or properties of persons like self-consciousness confers a unique moral standing and perhaps forms the exclusive basis of moral standing.² I believe, however, that no cognitive property or set of such properties confers moral standing and that metaphysical personhood of this sort is not sufficient for either moral personhood or moral standing (though some conditions of metaphysical personhood may be *necessary* conditions of moral personhood).³ I also believe that moral personhood is not the sole basis of moral standing. I will argue, then, that metaphysical personhood does not entail moral personhood or moral standing and that personhood of either type is not the only basis of moral standing.

¹ Tooley's clarification of the distinction between the descriptive and the normative functions of "person" is useful. For a concise and persuasive account of the descriptive (factual) and normative (implying rights and duties) uses of the concept of person and the philosophical importance of the distinction, see Biernbacher (1996, p. 143). However, neither account captures the notion of *moral personhood*, which is more descriptive than normative. The normative dimension is best understood in terms of the moral standing of persons, irrespective of whether that standing is attributed upon the basis of metaphysical or moral personhood. This point seems generally overlooked in the relevant literature (Gervais 1986, 181).

² Throughout the histories of philosophy and law, there has been little resistance to the postulate that animals have no moral or legal standing because they lack the properties that confer standing. Animals have been given almost no legal standing in British and American systems of law, but questions of their moral standing are far from decided (Frey 1988, esp. 196-97, Chapter 4; DeGrazia 1997).

³ I do not deny the possibility of a theory of metaphysical personhood. My objections do not apply to some of the early and influential metaphysical accounts of contemporary philosophy, such as Strawson (1959) and Puccetti (1969). Locke, as cited earlier, is another example.

2. THE CONCEPT OF METAPHYSICAL PERSONHOOD

The common sense concept of person is, roughly speaking, identical with the concept of human being. Human psychological properties also continue to play a pivotal role in philosophical controversies over personhood. However, there is no warrant for the assumption that only properties distinctive of membership in the human species qualify humans more readily than the members of other species, these properties are only contingently connected to being human. It just so happens, if it is so at all, that individuals possessing these properties are of a particular natural species. The properties could be possessed by members of nonhuman species or by entities outside the sphere of natural species such as computers, robots, and genetically manipulated species.¹

Fortunately, a metaphysical account of persons need have no reference to properties possessed only by humans. In the cognitivist theories mentioned previously (e.g., Tooley's), an entity is a person if and only if it possesses certain *cognitive* rather than singularly *human* properties. Cognitive conditions of metaphysical personhood similar to the following have been promoted by several classical and contemporary writers:² (1) self-consciousness (of oneself as existing over time); (2) capacity to act upon reasons; (3) capacity to communicate with others by command of a language; (4) capacity to act freely; and (5) rationality.

These characteristics presumably distinguish persons from nonpersons irrespective of species, origin, or type. For example, it is an open question whether a robot, a computer, an ape, or God would qualify for metaphysical personhood. Methodologically, the properties of personhood are presumed to be determinable a priori by consulting our shared concept of person; a theory does not require empirical discovery. The only empirical question is whether an entity in fact satisfies the conceptual conditions. A classical example of this method is found in John Locke's (1975, 2.27.9; see also 2.27.24-26) analysis of a person as a "thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing in different times and places." Locke pointed out that despite the close association between "man" and "person," the two concepts are distinct, a claim he defended by presenting cases to show that the same man need not be the same person.

Sometimes it is said by those who defend criteria resembling 1-5 that only one of these criteria must be satisfied for metaphysical personhood – for example, self-consciousness, rationality, or linguistic capacity. Other writers suggest that each condition must be satisfied; the five conditions are jointly necessary and sufficient. The typical view seems to be that some subset of these five conditions is both necessary and sufficient.

¹ On the relevance and plausibility of robots and physical-mental systems that imitate human traits, see Pollock (1989) and Matras (1993).

² See Tooley (1972; 1983); also see Tooley (1984); Warren (1973, esp. sec. 2; 1991, esp. pp. 310-13); Engelhardt (1996, Chapters 4, 6); Lomasky (1987). See too articles and bibliography in Goodman (1988).

3. PROBLEMS IN THEORIES OF METAPHYSICAL PERSONHOOD

These cognitive theories all fail to capture the depth of commitments embedded in the language of "person," and they sometimes promote deep confusion by moving from a purely metaphysical claim to a claim about either moral personhood or moral standing. By themselves these cognitive properties have no moral implications. Such implications occur only if an analysis assumes or incorporates an independent moral principle, such as "respect for persons." Such a principle, being independent of a metaphysical theory, would have to be defended independently (and given some suitable content).

To illustrate this point, suppose that some being is rational, acts purposively, and is self-conscious. How is moral personhood or any form of moral standing established by this fact? Do moral conclusions follow from the presence of these properties? An entity of this description need not be capable of moral agency or able to differentiate right from wrong; it may lack moral motives and all sense of accountability. It may perform no actions that we can judge morally. It might be a computer, a dangerous predator, or an evil demon. No matter how elevated our respect for this entity's cognitive capacities may be, these capacities will not amount to moral personhood (and certainly will not establish any form of moral standing). Capacities of language, rationality, self-consciousness, and the like simply lack an intrinsic connection to moral properties such as moral agency and moral motivation.

A property often cited in the metaphysical hunt, as we saw in Tooley's theory, is self-consciousness, that is, a conception of oneself as persisting through time and having a past and a future. If animals such as birds and bears lack self-awareness and a sense of continuity over time, they lack personhood (Buchanan and Brock 1989, 197-99; Harris 1985, 9-10; Dworkin 1988, Ch. 1). However, it is more assumed than demonstrated in these theories that nonhuman animals lack a relevant form of self-consciousness or its functional equivalent. The *prima facie* evidence of various types and degrees of animal self-awareness is so striking that the possibility of self-consciousness cannot be dismissed without careful study. Language-trained apes appear to make self-references, and many animals learn from the past and then use their knowledge to forge plans of action for hunting, stocking up reserve foods, and constructing dwellings (Griffin 1992). These animals are aware of their bodies and their interests, and they unerringly distinguish those bodies and interests from the bodies and interests of others. In play and social life, they understand assigned functions and decide for themselves what roles to play. A few appear to recognize themselves from reflections in mirrors (Gallup 1977; DeGrazia 1997, 302; Patterson and Gordon 1993; Miles 1993). There may, then, be reason to attribute at least elementary self-consciousness to these animals, and to think of this ability as admitting of degrees in the several criteria that might be used to analyze it.

One possible strategy to avoid this conclusion is to increase the demands built into the concept of self-consciousness. Harry Frankfurt's (1971) well known account, sometimes presented as a theory of autonomy, could be adapted to this end (Dworkin 1988, Ch. 1-4; Ekstrom 1993). In this theory, all and only persons have a form of self-consciousness involving distanced self-reflection. Persons reflectively judge and identify with their basic,

first-order desires through second-order desires, judgment, and volition. Second-order mental states have first-order mental states as their intentional objects, and considered preferences are formed about first-order desires and beliefs. For example, a long-distance runner may have a first-order desire to run several hours a day, but also may have a higher-order desire to decrease the hours and the level of commitment. Action from the second-order desire is autonomous and is characteristic of the person; action from the first-order desire is not autonomous and is typical of animal behavior. The capacity to rationally accept or repudiate lower-order desires or preferences – a lofty cognitive ability of distanced self-reflection – is the centerpiece of the theory.

However, several problems haunt this theory. First, there is nothing to prevent a reflective acceptance or repudiation at the second level from being caused by and assured by the strength of a first-order desire. The individual's acceptance of or identification with the first-order desire would then be no more than a casual result of the already formed structure of preferences, not a new structuring of preferences or a particularly attractive criterion of personhood. Second-order desires would not be significantly from or causally independent of first-order desires (other than being second-order). To make this second-order theory plausible as an account of either autonomy or personhood, a component theory would have to be added that distinguished influences or desires that robbed an individual of autonomy or personhood from influences or desires consistent with autonomy or personhood.

Second, the conditions of distance and reflective control are so demanding in this theory that either many human actors will be excluded as persons or their actions will be judged nonautonomous. An identification at the second level is doubtfully present in most of the actions that we perform most of the time. A potential moral price of this demanding theory is that individuals who have not reflected upon their desires and preferences at a higher level deserve no respect for actions that derive from their most deep-seated desires and preferences. The more demanding the conditions in a theory, the more it will encounter this problem and the more difficult it will become to interpret the scope and demands of moral principles such as respect for persons and respect for autonomy.¹

As the quality or level of required cognitive activity is reduced in a theory to accommodate these problems, the volume of humans who qualify will increase, but so will the volume of nonhuman animals. Less demanding conditions – understanding and self-control, say – will likely be satisfied to a greater or lesser extent. A threshold line therefore will have to be drawn in a theory that separates an adequate degree of understanding and self-control from an inadequate degree. Once again, a high threshold will exclude many humans that we normally regard as autonomous persons; a low threshold will include at least some nonhuman animals along with them.

¹ There are more demanding theories than these second-order reflection theories. Some theories demand that the autonomous individual be authentic, consistent, independent, in command, resistant to control by authorities, and the original source of values, beliefs, rational desires, and life plans (Benn 1976; 1988, 3-6, 155, 175-83; Savulescu 1994).

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