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THE MORAL AND METAPHYSICAL
ASPECTS OF PERSONHOOD

By

Michael Francis Goodman

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ABSTRACT

THE MORAL AND METAPHYSICAL
ASPECTS OF PERSONHOOD

By

Michael Francis Goodman

Holding that there is a distinction between persons in the metaphysical sense and persons in the moral sense, I show that the conditions for personhood is inadequate to capture the notion of the person in the moral sense. The proposed conditions for personhood are: consciousness, rationality, self-consciousness, the ability to adopt and reciprocate a personal attitude toward another being, complex communication, self-motivated activity, and free will.

A person in the metaphysical sense is defined as an intelligent, conscious, feeling agent. The problem I find is that this set of conditions has been taken to be adequate for moral as well as metaphysical personhood. A person in the moral sense is defined as a being with both rights and responsibilities. The question, "What must a being be like to have rights and responsibilities?" is not answered by laying out the above list. If we run through each of the proposed conditions, we find that none point to any connection between possessing the characteristic and being held morally responsible for the actions we commit.

Michael Francis Goodman

Even if we consider the sum of all the conditions, we can come up with an individual who possesses each of them and is still not to be considered a moral person. It is the sociopath, one who is self-conscious, rational, free, and so on, but cannot make out the difference between right and wrong, who is unable to understand the concept of doing something because it would be morally right to do it, or not do it because it would be morally wrong; in short, the individual who simply has no idea what those concepts mean and entail.

It is just here, in my characterization of the sociopath, that I argue for a necessary and sufficient condition for moral personhood, i.e., the moral consciousness lacking in the sociopath. It is argued that no being can be held morally responsible for any action where that being is, in principle, unable to recognize the action as valuable or disvaluable, good or bad, moral or immoral. Moral personhood, then, requires moral consciousness. It is also shown that having moral consciousness entails having many, if not all, of the other conditions for personhood.

Dedicated
to the Memory of
Pauline Josephine Polhemus
My Beloved Grandmother

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Chapter 1

Introduction

The Question and Its Significance

Philosophical discussion and debate concerning the nature and scope of human life has continued for centuries, and the problems associated with this ongoing conversation are still with us today. Lucretius, for example, contends that human life is inexorably bound up with conscious experience; that a person's history is to be viewed from this essential consideration. Kant, on the other hand, while failing to outline detailed ontological criteria for humanness, makes the moral claim that all rational beings should be treated, never as mere means, but always as ends in themselves. We may suppose, however, that Kant was attributing rationality to humans, and assume also, I think, that rationality serves for Kant as an indicator of moral agency, taken in its broadest sense. Both consciousness and rationality, qua conditions of moral agency, will play a critical role in much of the discussion to follow. However, it is not only in connection with the various moral issues that can and do arise that we are interested in these apparently natural human qualities, but also in a wholly metaphysical sense, since consciousness and rationality are two of the primary, at least necessary, if not sufficient, conditions many important writers on the concepts of humanness and personhood feel crucial to the entire issue.

More recently than Lucretius and Kant—and I think this is the primary reason for the question "What is a person?" being so seriously considered today—the term "human" has come under fire from a number of individuals advocating a distinction between 'human' and 'person'. Whereas humans have, in the past, been considered as possessing certain moral rights, specifically the right to life, the deepening concerns of anti-abortionists, to take a clear example, have awakened many analytic philosophers to the need for a more perspicuous account of what is meant by these terms. As we know, ascriptions of humanhood can and have ranged from the aged to the infant, from the full-term fetus to even the zygote, the question remaining throughout, "What must a being be like to be human?"

It will be shown that answers to this question have come in many and various forms, with each writer picking out some one, two, or three characteristics deemed essential for humanness. What is most striking to this writer is the recent fascination with the term "person". Most of us have always used 'person', and still do, though perhaps with a bit more caution, to refer to some being we know, or recognize on the street, or whatever. We say things like, "Yes, I know that person", and "Will the person who owns the green Chevy please remove it from the driveway?" And though we seem to be referring to humans in utterances such as these, it would sound exceedingly odd to replace 'person' with 'human being' in like contexts, yielding something such as, "I am the human being who

phoned about the carpet." That is, 'person' has more often come to be used in a general rather than particular sense.

On the other hand, there seem to be perfectly ordinary statements and contexts in which 'person' and 'human being' are apparently interchangeable, e.g., "John is sure a good ...", where either term fits nicely into the space. It is not at all clear to me that many writers have intended to draw much of a distinction between these terms in their published work, though there is increasing care being taken to accomplish this of late, especially in the writings of such people as Richard Rorty, Peter Singer, Michael Tooley and Mary Anne Warren. And if there is to be a distinction between 'human' and 'person', we must ask what it is to consist in. The answer will no doubt provide us with different answers to the questions, "What is a human being?" and "What is a person?"

Consider the following argument:

'A' is composed of human parts.

'A' is a living being.

Hence, 'A' is a living human being.<1>

Surely there is an equivocation here on the term "human". There may even be an element of the Fallacy of Composition at the core of this argument. Now, as Becker points out, a conceptus is of the human species and it is also a living being. But this does not justify the inference that the conceptus is a human being. And though it

may well be the case that a conceptus really is a human being, the argument above does not show it. What it does show, I think, is that there just might be a difference between being human and being a human being. For instance, human sperm cells are, strictly by hypothesis, human, but they are not human beings, at least not in the ordinary usage of that term. This is to say, at very least, that even if someone feels a strong need to continue to refer to conceptuses, or human sperm cells, as human beings, it must be admitted that they are not identifiable as being anything but biologically similar to those beings we encounter in libraries, grocery stores, concert halls, and so on.

One plausible response to the query about what a being must be like to be human is to point out that most of the humans we are at all acquainted with have desires, beliefs, frustrations, fears, and the like. These seem to be, so far as we have yet determined/discovered, uniquely human qualities. But just as it would be questionable, prima facie, to deny humanhood to a being (born to human parents) who did not display one or more of these qualities, so it is equally questionable to ascribe humanhood to a being (not born to human parents) who does display one or more of these qualities, i.e., if these qualities do indeed account for at least part of the criteria for being considered a human being. Again, the natural questions to ask are, "What are the criteria for humanhood?" and, "Are the criteria, or any one criterion, or specific combination, necessary and/or sufficient for conferring humanhood upon a being?"

It will appear somewhat far-fetched to many people, I believe, that a fictional character such as Frankenstein's miscreant might seriously be the object of debate over ascriptions of humanness.<2> Human beings, for the most part, have rights, obligations, and privileges, and are subject to various positive and negative social and legal sanctions, such as taxation, punishment, and so on. Surely, it might be argued (to anticipate Richard Rorty's argument) only human beings are taken to be part of the "fellowship of mankind". Anyone can see, just by the utterly primitive nature of his ability to act in accord with the laws of the community, that the "monster" is not a member of our community. But consider, for instance, the more realistic case of Charles Manson and his followers. Their acts of slaughter are intolerable---some would even say inhuman. Does that make Manson nonhuman? It does not, for now an important further distinction can be drawn, viz., between the biological and social senses of being human.<3>

To make this bifurcation have much force, what one needs are clear-cut examples of beings who fit into one category but fail to fit into the other. That is, we need to find a being who is biologically but not socially human, and a being who is socially but not biologically human. However, before these examples can be enumerated, if there indeed are any, one needs to set out, very carefully, the criteria for belonging to one or the other category. This amounts to defining the terms "biologically human" and "socially human", and indicating how these terms can have different referents.

Let us follow John Noonan momentarily and say that a biological human being is a being with a genetic code of a certain kind.<4> The sort of code required, then, for biological humanness will consist in one which is generically identical with that of Homo sapiens. Thus, any being not in possession of genetic coding of this nature will be nonhuman. We see that Manson is probably biologically human on this criterion. But, then, so are sperm cells and patches of skin tissue taken from members of our own species. It is clear that this criterion will not suffice for defining 'human being', but may serve perhaps only for designating what is of the human species. Perhaps, however, this is all that we mean when we use the term "biologically human". I have a strong inclination to say that this is what we mean.

Thus far there has been no indication that biological humanness is a sufficient condition for what I earlier imputed to most humans, namely, rights, duties, privileges, etc. In fact, individuals imprisoned in the United States for felonious crimes lose many of the rights they previously enjoyed, even though they continue to be humans in what we have called the biological sense. They do not lose all of their rights, however. They retain rights not to be tortured, to be given adequate daily portions of nourishing food, clean air, shelter, warm clothing, facilities for maintaining bodily cleanliness, and so forth. On the other hand, an individual sentenced to capital punishment is in a much different position. While it is true that all of the aforementioned rights remain in

force during the individual's "last days", there is a sense in which those rights are only temporary and seem completely absent at a specific moment on the day of execution. Seen in this light, we have a case where a living biological human being has no rights, in the legal sense, including the right to life.<5>

If 'biologically human' is reasonably clear and for the most part acceptable, at least for the present purposes, the next task is to explicate the meaning of 'socially human'. Let us say that a being is socially human just in case that being is a recognized member of the community which includes, but is not necessarily limited to, biological humans. As members of this public society, the individual must behave in certain "social" ways, or, at least have the ability to behave in these ways. The recluse, for example, while not living much of the time in society, still retains the title "socially human". My suspicion is that this is due, in large measure, to the fact that the recluse is recognized as biologically human and hence, as having the capacity to engage in social interaction of the requisite sort. But, quite the opposite is true of the fetus, and perhaps also true of those in a state of irreversible coma. While they must without doubt be considered biologically human, it seems clear to me that they are not socially human. They cannot communicate, which is a necessary condition for social agency. I think this is the sole significant difference between those to be considered socially human and those not to be considered as such.

Notice that on our definition of 'socially human' there is no presumption of biological humanness. The important stipulation is that the social human behave in certain ways. Having some specific attributes, such as rationality, free will, an ability for complex communication, and the capacity for self-motivated activity would make it possible for a being to "fit in" and function within the society. So, for the sake of argument, it would be at least plausible to welcome creatures like Richard Rorty's Antipodeans into our own community.<6> In fact, given Rorty's description of this race of intelligent beings, the onus probandi would presumably lie with anyone unwilling to accept them as at least socially human.

There arises a problem now with the adequacy of the locution "socially human", and here again as will be seen, this is one of the ways in which the term "person" becomes of major importance; in fact, important enough to raise the question, What is a person?, as a distinct question from the question, What is a human being? As mentioned, there is no logical necessity that a being who fits into that category will possess a genetic code defining biological humanness. Hence, there is no necessity that a being who is socially human be, at the same time, biologically human. The term "human" then, in 'socially human', is somewhat misleading. If perchance beings from different regions of our universe were discovered and accepted into the fellowship of our community, even though they were of a quite distinct species with radically different genetic coding from our own, and even from each other,

then given their capacities for such things as rationality, self-consciousness, and complex communication, they would fall within the scope of the category "socially human". However, this seems to me to be a very dubious application of the term, though not the category. I think it would be impossible for us to refer to these beings as human, though we would not, I believe, be much bothered in calling them persons. Oddly enough, this is precisely the epithet Rorty employs in describing his Antipodeans. If they had sensory organs in some sense similar to our own, we would accompany them to the theater. If the workings of their "minds" appeared to us to be similar to our own, then we would admit them into our universities as students as well as professors. We would brake our automobiles when they were in crosswalks, and so on. In short, I suggest that we would begin to treat them like we now treat each other, i.e., as having a common bond by virtue of living in the same community. Each would be "one of us".

With the introduction of the term "person" here, through an admittedly exotic example, we begin to see the outlines of a problem that simply won't go away. How is 'person' to be defined? What are the criteria for personhood? Recall the mention of the dilemma over the status of the Frankenstein creature. At that point, the question was, What are the criteria for humanhood? Now if the latter question is translated into, When is a being biologically human?, the answer is fairly clear, i.e., on the condition that we accept some suitably complex genetic code criterion. However, in

many writings of the last twenty years employing the term "human", that term can be replaced with 'person' at all occurrences and lose very little in the translation. And it seems implicitly agreed that 'person' can best be applied to beings who have, as Tooley says, a serious moral right to life.<7> We know that persons possess more than merely the right to live; for instance, persons have certain moral, legal, and social and cultural responsibilities. Chapter 4 will address, in part, the inadequacy of a solely rights-based morality. But, for now, since the literature is dominated by conceptions of this view, we will take our lead from Tooley.

The problem that won't disappear becomes now the problem of who has a serious moral right to live. And the answer to this question will provide us with sufficient material for answering the question, "What are the criteria for personhood?" This is so because, if we take the majority of writers on personhood at all seriously, the conditions for personhood are sufficient for ascribing the right to live, in addition to other perhaps less serious moral rights, such as the right to provide informed consent.

In most papers concerned with the concept of personhood, each author attempts to give some evidence for and against various attributes/characteristics/qualities as relevant for personhood and/or humanhood. Some of the requirements cited are quite unique, e.g., Daniel Dennett's verbal communication and Harry Frankfurt's second-order volitions. Other qualities suggested as necessary for personhood, however, are more common, viz., the capacity for

rationality, awareness of self, and the ability for self-motivated activity. One thread running throughout recent thinking about personhood is the attempt being made to settle the question about who will/should be accepted into the community of human beings qua persons, with all the rights and privileges appertaining to the membership of that community. Dogs, for instance, have not been accepted into our community as persons, and are designated nonhuman nonpersons. The species Canis familiaris has, however, had certain rights conferred upon it, or, better, we have in some cases obligated ourselves to treat members of that species in certain ways and to refrain from treating them in other ways. The standard for such treatment seems to be covered by reference to the term "cruelty". Dogs ought not be tortured, deprived of food and water, or be exposed to excessive doses of heat or cold. The list could continue. Nonhuman nonpersons are accorded a due measure of concern by us for their well-being, but this does not include, at least for now, the right to live, or the claim that heroic measures ought to be taken for their benefit. This concern is not moral concern except perhaps in so far as a principle of general utility might require its being so taken in certain circumstances, or in cases where there is cause for concern over inflicting unnecessary pain.

Human persons, on the other hand, do have the right to live, at least prima facie, the important question being, What is the extension of 'human person'? We are at a distinct advantage here, as there are some clear-cut cases of human persons, e.g., Mickey

Mantle, Margaret Thatcher, Alexander Solzhenitsyn, Ella Fitzgerald, me, you, and the common "man on the street". Two troublesome cases are fetuses and those in a state of irreversible coma---biologically human, no doubt, but persons? We will encounter a number of proposals for placing these cases in what might be called the human nonperson category. This will amount to something analogous to nonhuman nonperson status in that life-rights will be denied though a great deal of moral concern will be expected of us toward those individuals seen as appropriately categorized in this way.

I think the human nonperson category will be thought by many to be strictly empty, something impossible. For many people, the terms "human" and "person" are singularly interchangeable. This may be due to the fact that, at least in Western cultures, humans and persons have been thought to be locally coextensive. However, something of a revolution (in the Kuhnian sense) in the thinking about personhood has been taking shape over the past decade which disallows the synonymy of these terms.<8> One line of argument here might be that though the fetus is human, with a human genetic code, since it does not possess any of the conditions for being a person, here and now, such as self-consciousness and rationality, it cannot be considered a person with a serious right to life. Hence, a seemingly clear-cut case of a human nonperson. An analogous argument is made regarding those individuals in irreversible coma, the paradigm instance being that of Karen Quinlan.<9> In my judgment, the argument for the nonpersonhood of the irreversibly

comatose is stronger by far than the similar argument as applied to the fetus. This is so, since it is important to point out that those in the former set never will [again] possess the conditions for personhood, whereas it seems that what is truly problematic in the case of the status of the fetus is the potential it possesses for acquiring the attributes requisite for personhood. Chapter 5 will treat this subject matter and argument in detail.

But the "human nonperson" is not the only "shocking" category derivable from the various combinations of 'human' and 'person'. Let us consider the dolphin (Delphinidae). Studies are lending more credence to the belief that this cetaceous mammal is quite intelligent, and it is not inconceivable that the mental capacities of one of these adult creatures are greater and more sophisticated than a normal adolescent human person. If the dolphin were shown to have the capacity for rationality, self-consciousness, the adoption and reciprocation of an attitude of moral concern for another being, in short, if the dolphin were shown to possess all of the relevant conditions for personhood, i.e., all the qualities we consider relevant for ascribing personhood to ourselves, we would be open to the charge of speciesism and/or self-contradiction if we intentionally failed to recognize them as persons. And so our fourth category, that of nonhuman persons, not only becomes initially plausible, but something over which our thoughts might linger for a richer understanding of how we view some of the "lower" forms of animal life.

It is not difficult to understand how a person immersed in Western culture could find the concepts of human nonpersons and nonhuman persons unnatural and quite confusing. As we are weaned on the ideas that pain is to be avoided for the most part, and that human life is precious, our thoughts rarely stray, outside philosophy, from the seeming interchangeability of 'human' and 'person'. Humans are persons and persons are humans; that's the way it is and that's the way it will be. Unless, of course, we change things. And that is what much of this dissertation explores.

The significance of the primary question with which this project is concerned, i.e., "What is a person?", does not lie with the fact that the topic of personhood is currently in vogue. Nor does it lie with the fact that many important philosophers, theologians, legalists, physicians, and even scientists have and are addressing the question. Its fundamental importance seems to me to be that the entire notion of what it is to be a person is presupposed in the area of moral philosophy.

The common treatise on ethics generally examines a number of essential questions, e.g., "Under what conditions is an agent said to be morally responsible?" Each writer will have her/his own answers to questions such as this, and will, more often than not, provide an answer that either avoids direct considerations of the conditions of moral agency, or speaks to the issue in some wholly ad hoc manner. This may seem to be a very minor infraction if we take

the view that it is pretty clear to us who are considered/ought to be considered moral agents. People are moral agents, we say, and there are clear-cut examples of people, as I mentioned. We just seem to know who are persons. We see them when we go walking, when we get out into the world, when we look in mirrors. But, in fact, this is precisely what is in question---our conception of just who the person is, our conception of what a being must be like if we are to recognize her/him/it as a member of our moral community. We take more seriously these days the idea that underlying the notions of praise and blame, of rights and responsibilities, there are entities to which those concepts apply and entities to which they do not apply. In short, the importance of this project, as I see it, lies in the fact that it attempts to get clear on the concept of who is to count as a person, a concept which serves as a foundation for all ethical theories.

Chapter 2 will comprise a discussion of conditions of personhood that have been previously entertained as necessary and/or sufficient. These conditions are the qualities, attributes, or characteristics a being must possess in order to be considered a person. Among the writers I shall have cause to examine are Harry Frankfurt, Daniel Dennett, Baruch Brody, Michael Tooley, Peter French, and Daniel Callahan.

'Person', as I shall use the term throughout this dissertation, has moral connotations. There is no escaping, however, the metaphysical side of the question. And it seems to me just here,

where the conditions of personhood are centered upon, that the moral and metaphysical features of being a person converge and become nearly indistinguishable. For example, Frankfurt posits "second-order volitions" as an essential trait of persons. This is, without doubt, an ontological claim, intended, at least in part, to draw a line between creatures that do and creatures that do not have certain rights, where 'rights' is a moral and not a legal term.

The important question, as I see it, is whether any of the ontological claims made by writers concerned with the conditions of personhood have some sort of logical relation to the concept of being a person in the moral sense of the term. My initial guess is that some do and some do not; that while, for instance, Dennett's criterion of "verbal communication" is neither necessary nor sufficient for our conferring personhood upon a being, Tooley's special requirement of self-consciousness does seem essential for moral personhood. And again, while the ability for self-control, as treated by Joseph Fletcher,<10> does seem quite important, time-consciousness and a sense of the past (memory) appear less convincing and somewhat problematic regarding their significance for moral personhood.

In Chapter 3 I will treat the question whether personhood is to be discovered or rather decided upon. That is, is X a person because X possesses certain specific characteristics that determine personhood independent of any decision that those, and not others, are the relevant characteristics? Or, rather, is X a person because

we (whoever 'we' turns out to pick out) have decided that X is a person? Again, are the criteria for personhood objective or subjective; rigid and fixed once for all, or dependent upon the mood, will, and whim of those currently regarded as persons? Are the conditions of personhood open to serious modification?

I shall contend that the conditions of moral personhood are not open to alteration on the basis of mere decision (arbitrary), but that, as more is learned through science, and perhaps technology, as well as through research in the humanities and the behavioural and social sciences, informed, reflective and critical decisions (based upon these discoveries) will be necessary. Still, the question remains as to who is to make these decisions.

My major focus in this chapter will center on the views of Virgil Aldrich and Richard Rorty. Their claims add up to this; that certain creatures just don't have the right sort of face for being considered persons, don't have the right sort for Talking, and that humans have humanoid faces. I view this as a paradigm of arbitrary decision making regarding this most important issue. Rorty further states that there is a sort of community feeling uniting us with anything humanoid. Pigs don't writhe in just the right way, when their throats are slit, to make us uncomfortable, to get us to imagine them asking for help. But koala bears have faces more resembling our own. Hence, we slaughter the former and protect the latter. Aldrich notes that there can be no speculation in the lion's eyes. The face isn't right for that—the jaw and mouth

protrude much too far out front and seemed designed for killing and eating. I expect to take liberal exception to these views.

Essentially, I shall oppose the view, to paraphrase Dennett, that "those who are persons are all and only those who can get themselves considered persons by others who consider themselves persons." I shall further argue that Rorty's position leads to ethical relativism in the pejorative sense.

In Chapter 4 I will present and defend my own position on who is to count as a person. I shall weave the moral and metaphysical aspects of personhood into a whole. The position to be defended is this: consciousness, rationality, free will, and self-consciousness (not a brand so complex as Tooley's) will be taken to be necessary conditions for personhood. The capacity for moral consciousness will be defended as a necessary and sufficient condition for moral personhood. The sufficient condition will be seen to embody and define each of the necessary conditions. Seen in this light, a metaphysically prior condition (consciousness) is conjoined with a moral feature of personhood (being conscious of rights and responsibilities, right and wrong, etc., in however rudimentary a fashion). This sufficient condition for personhood is not to be found, so far as I can tell, in the current literature. I shall be defending my position, therefore, without the benefit of having established arguments or authorities to which I can appeal for support.

The subject of Chapter 5 will be the problem of potential

persons. Some writers have maintained that fetuses, for example, and infants up to a certain age, are merely potential persons and, hence, are not bearers of the right to life. The major proponent of this view is Michael Tooley. Daniel Callahan, however, stresses the importance of "potentialities and capacities" for any adequate definition of human life, although one never finds him speaking out for the fetus as a person.

Then we come to the extreme conservatives, such as John Noonan and Robert Joyce, who, though they in many cases appear to mean 'person' when using 'human', seem to identify having a right to life and being a person, while at the same time assert that potential persons do have a right to live. Something is surely out of sorts here, for if a person is a being with a right to life, and if a fetus is a potential person, then ex hypothesi, fetuses are not persons and have no (clear) right to live. We see here the importance of distinguishing 'human' and 'person' in some, if not all, instances, for it certainly is not the case that Joyce, say, would refer to the fetus as a potential human.

By far, the topic most associated with potential and personhood is abortion and the status of the fetus, with infanticide now enjoying an increasing amount of attention, as is the status of mental retardation with regard to personhood. I propose, in this chapter, to argue that while the fetus is not a person strictly, there is as good a reason to protect its life as there is the strict person's life. I shall draw an analogy between the fetus (and also

the neonate) and a sleeping adult human being, i.e., one who is a person but is not currently displaying any of the characteristics so prized for personhood. I shall maintain that there is an essential element of potential linked to the capacity a sleeping person has for waking and displaying the traits of personhood. I shall maintain further that the potential a fetus possesses for becoming a strict person is quite indistinguishable from the potential of a sleeping person. This will apply, mutatis mutandis, to the neonate and infant.

Further, I will sketch out a program for the consideration of a duty-based morality in cooperation with the rights-based morality usually applied to fetuses and neonates. This will yield the conclusion that even if we feel forced to consider the fetus, say, as neither a person nor a bearer of any rights, we may still have the duty to protect their lives because of the kinds of creatures they are and will become. This may be an alternative way of looking at sleeping adult humans as well, since it will be maintained that there is no morally significant distinction between a sleeping "person" and a fetus.

Chapter 2

Perspectives on the Conditions of Personhood

The topic of this chapter has to do with the many and various conditions for personhood that have been advanced by some of the most important writers on this topic. These views will be exposed and, at times, critically discussed. It will be noticed that certain practical moral issues will be addressed in what follows. The purpose of this chapter is neither to provide alternate solutions to these problems, nor is it to categorize the authors mentioned as belonging to any one of the many camps associated with solutions to the problems.

The trouble arises out of the very nature of the problem of personhood. "Person" is a practical as well as a theoretical term. If anyone wants to explore the meaning of the term, it will be necessary to delve not only into the lexicographical literature, but also into the practical issues in which the term figures so prominently. We will want, in part, to follow the practice of Aristotle and ask, How is 'person' used? The problem here is that the usage of the term is currently in transition. As mentioned, we have always thought that humans were persons and vice-versa, and that that was the end of the matter. This is called into serious question by some of the writers we will encounter in this chapter.

I take it that the practical issues discussed by many of the

writers are used as examples to prove their cases for and against the use of the term. And certainly many of the moral topics of today will be reworked in light of any essentially new way of using 'person'. But, before we can apply the term to these problems, we must get clear on the term itself. Even though the issues come in mid-way between asking about persons and using the term in some practical way, it is not the issues that concern me here, in any other than a peripheral manner.

In Daniel Callahan's work on abortion, we find an awareness that seems to be lacking in too many writers concerned with the aspects of personhood.<11> It is that human beings are more than biologically unique entities, endowed with certain moral value in virtue of this uniqueness. Human adults are more than merely capable of self-motivated action and complex communication, and possessed of an opposable thumb. Humans are physical, psychological, and cultural creatures, and it is the unity of these areas of our existence which ought to be shaping our thoughts and decisions when questions in medicine, law, and morality are confronted.

Callahan's initial question is: When does human life begin? But in some sense, he says, we clearly know. We really couldn't even ask such a question, using the operative terms "human" and "life", without at least knowing how we normally use these terms, and further, without at least knowing what we generally mean by

them. However, the intimation that we already know what we mean by, and how we employ, 'human' seems only as much as to say that we have some clear, perhaps obvious and paradigm, examples of human beings, viz., "fully developed men and women." "To be human," Callahan writes, "means to possess those characteristics we associate with the word 'man'".<12>

As pointed out, there is no dearth of historical material on the essence of humankind. From Aristotle to Aquinas and Descartes to Mead we have lists of the essential characteristics of H. sapiens. From more recent anthropological and zoological studies we have seen even further considered opinion on the "nature of man". What Callahan asks us to do, rather than pick out this or that feature of being human as salient, is to consider the significance of the biological, psychological, and the cultural interrelationships ever-present in every human being. To define 'human being' strictly from a psychological viewpoint, say, will yield a severely impoverished theory of "man". This will be so, moreover, no matter what single area bears the weight of the definition.<13> If it is a definition of 'human being' we seek, one that will be useful for reflecting upon moral questions relative not only to the fetus, neonate, adolescent, and the aged, but to meaningfulness and quality of life dilemmas, then only a rich, comprehensive definition resulting from consideration of the innumerable cross-disciplinary worlds in which we live and find ourselves will suffice.

In stark contrast to this wide-scooped vision of the nature of humanhood, Lawrence Becker is concerned to delimit the biological boundaries of human life. On the one hand, there is the being/becoming boundary, the example of which he points to is that a human fetus stands in roughly the same relation to a human being as a caterpillar stands to a butterfly. The fetus is not the human being it will become, he says. Rather, it is a human becoming. A second consideration Becker points to is the being/has been boundary, where,

A human organism is dead when, for whatever reason, the system of those reciprocally dependent processes which assimilate oxygen, metabolize food, eliminate waste, and keep the organism in relative homeostatis are arrested in a way which the organism itself cannot reverse.<14>

At both ends of the life spectrum, then, the determination as to when the status "human being" has been achieved and lost can be made solely on biological grounds. In what follows, I shall only concern myself with Becker's ideas on the becoming/being boundary.

Humans don't just pop into being. One becomes human through a process. In fact, the entry into the class just is the process. This, I take it, is the central thesis of Becker's paper. But now, what is this process, i.e., in what does the process consist? Briefly, what we have here is a metamorphosis from human sperm and ova to fetus by at least the sixth lunar month of gestation, at which point [approximately] the metamorphic phase of generative

development can be said to be at an end [conservatively]. The metamorphic process consists in establishing the basic structures of the organism and is complete when the organism's basic gross anatomical form is in place and when the organism possesses a complete set of histologically differentiated organs. Here, Becker is quick to point out that these criteria are much more easily confirmed conceptually than empirically, though I might add that, with continued striking advances in medical technology, our empirical knowledge might well overtake our conceptual certainty in this, and related, matters.

At the end of the metamorphic phase, then, a human being exists, while prior to its completion what we have is a creature who is a member of the human species but not, yet, a human being. This is not, however, a moral divide, says Becker. For that, we need some sort of definition of 'human being' which incorporates the concept of personhood in a way that yields "rights to life". Merely being a member of the human species does not produce that result. Nor does entry into the class of human beings. With Becker, we might ask, What morally significant distinction is captured by the completion of the metamorphic process of generative development? The rule against homicide, for example, seems to require either a victim-based or an agent-based approach, and the becoming/being boundary does not, in itself, obviously embody the critical link apparently essential for either of these approaches.

At a number of places in this dissertation, including especially the last chapter, the notion of potentiality will be discussed. However, I should like to take it up for a moment here, preliminarily to discussing Michael Tooley's position on the criteria for personhood.

Extreme anti-abortionist conservatives, of course, argue that the fetus is a person and, contra Becker, not merely a human becoming/being, from the moment of conception. They appeal, for the most part, to some sort of general principle of potentiality, such as the following, where 'c' refers to either a sufficient condition or a set of sufficient conditions for personhood:

All and only those creatures who either actually or potentially possess c (that is, who either have c now or would come to have c in the natural course of events) are moral persons now, fully protected by the rule against homicide.<15>

Neither Callahan nor Becker appear to have very much sympathy for such a rigid principle. In fact, Becker, like Tooley, would seem to be pointing to the logic of the situation by intimating that, ex hypothesi, a potential person is not a person, otherwise there is no force in differentiating the two. For all that, the less than crisp line between becoming and being a human being might make us pause and return to Callahan's essay for a moment.

He writes, "To be 'human' is not just to display, here and now,

the full range of human characteristics".<16> We might say the same, of course, for persons. Human persons are rational sometimes, irrational other times; reminiscent and forgetful; sublime and base; conscious, unconscious, subconscious, and self-conscious. A sleeping human adult, for instance, is in a state of temporary unconsciousness. But neither does this being lose membership in the class of human beings nor cease to be protected by the rule against homicide. A sleeping adult is still human and is thought to be still a person. Human life, says Callahan, is bound up with potentialities and capacities. To define "man", the entire career must be accounted for, and this includes, it seems to me, what humans have been, what we are, and what we may become.

This interest in potentialities and capacities is taken up quite forcefully in many of Michael Tooley's writings. The major thesis in his most recent paper is that fetuses and newborn infants (neonates) do not have a right to life.<17> This is so even though they have the potential to possess such a right, i.e., they are potential persons. The main thrust of Tooley's essay is that only those beings who can have desires and interests can have rights, including the right to life. His argument is that,

What is in a thing's interest is a function of its present and future desires, both those it will actually have and those it could have. In the case of an entity that is not presently capable of any desires, its interests must be based entirely upon the satisfaction of future desires. Then, since the satisfaction of future desires presupposes the continued existence of the

entity in question, anything which has an interest which is based upon the satisfaction of future desires must also have an interest in its own continued existence. Therefore something which is not presently capable of having desires at all--like a zygote--cannot have any interests at all unless it has an interest in its own continued existence.<18>

It seems clear to me that this line of argument, coupled with his polemic that a zygote cannot have an interest in its own continued existence, yields the compelling conclusion that a zygote has no right to life. But it speaks not only to the case of the zygote. It indirectly refers to the fetus, the neonate, and all those who are not, at present, capable of any desires and who have no interest in their own continued existence. This, I suggest, leaves little doubt as to the status of the potentiality principle, at least in Tooley's mind. Merely having the potentiality for having desires and interests is clearly not sufficient for possessing the right to live.

Now, if potential persons are not persons yet, who are persons, for Tooley? What attribute(s) must a being possess in order to be a person? Oddly enough, he shies away from the term "person" in "In Defense of Abortion and Infanticide". In his previous papers, however, and in his book, he makes much of the distinction between humans and persons, where he states that 'x is a person' means 'x has a serious moral right to live'. Having the right to life is conditioned by the possessing of a special sort of self-consciousness, i.e., the being must possess a concept of a self as a continuing subject of experiences and other mental states, and it

must itself be such an entity, as well as believe that it is itself such an entity.<19> The importance of the concept of a continuing self (or mental substance) for Tooley is further established by its centrality in a number of premises of the argument found in his latest essay on the necessary conditions an entity must satisfy for possession of a right to life.

The force of Tooley's arguments for abortion as well as infanticide can now be seen. Neither fetuses nor neonates have the above specified unique kind of self-consciousness. Hence, they do not possess a serious moral right to life. Hence, they are not persons. This, of course, does not bar them from membership in the species H. sapiens. What Tooley's argument seems to show is that under one possible, and perhaps plausible, interpretation, there is a real distinction between humans and persons. And it also seems to show that it is morally permissible, contrary to wide public opinion, to take the lives of at least some innocent human beings. Our use of 'human being' must be altered, on Tooley's view.

Roslyn Weiss, however, in "The Perils of Personhood",<20> is not altogether happy with the recent trend in the right-to-life debate that advocates using 'person' rather than 'human' to denote that which has such a "serious" right. One unfortunate problem with this usage, she notes, is that it leads, as in the cases of Tooley and Mary Anne Warren,<21> to taking infants as having no more life-rights than fetuses, since neither satisfy the proposed conditions of personhood. But more than this, even if the advocates of

infanticide on these grounds could somehow defend the "rights" of sleeping adult humans and those who are temporarily comatose, Weiss thinks there is no way to "save" the permanently comatose and the severely retarded. Whatever the advantages, then, of introducing the concept of personhood into the debate, there may be distinct overriding disadvantages.

If these considerations are not enough to hold back the tide carrying the new terminology into practice, Weiss' next objection may do some sandbagging. Taking "personhood" as the basis for having moral rights, we are left with a rights-based morality. But this must be recognized as insufficient to account for our conception of the importance of duties, especially in those cases where we affirm the existence of duties which do not correspond to anyone having rights. As an example, one might consider, contra Tooley, that kittens have no rights whatever. Perhaps, however, we have the duty not to cause them unnecessary pain. A morality based solely on rights would preclude any duty whatever to "lower" animal life, dead people, country, and so on. And even if fetuses are not persons, she says, their innocence might have a significant role to play in the abortion controversy, since, "It is likely that our duties toward noninnocents are not as great as those toward innocents".<22>

Harry Frankfurt's essay, "Freedom of the Will and the Concept of a Person", is one of the most influential to ever appear in print on the notion of personhood. Part of its significance lies in that

fact that Frankfurt points out a truly remarkable condition for personhood. But not only is this condition remarkable, it is prima facie plausible that it comprises a necessary, and perhaps even a sufficient, condition for being a person. Another point in its favor, from an extreme liberal point of view, is that the essay does not stipulate that only humans can be persons. While Frankfurt does indicate that the condition he has in mind does seem to be a peculiarly human characteristic, he also notes that what personhood requires is not a set of attributes which is necessarily species-specific. So, I take it that if we come to discover that the dolphin, say, is a bearer of Frankfurt's special condition, we might well want to ascribe personhood to this creature.

So, what is this condition? Simply, it is what he calls second-order volitions. Consider a drug addict who desires an injection of heroin. The bare desire for the drug (which may or may not overtly include other desires, e.g., the feel of the tourniquet on the arm, the feel of the injecting of the needle, etc.), and the accompanying state of euphoria, is what we might call a first-order desire, and may be taken in the form "A desires to X". Any desire of the second-order, however, is much more complicated, and this complexity seems to preclude many, if not all, nonhuman animals from possessing them. In a second-order desire, 'to X' directly refers to a desire of the first order. In our example, the addict has a second-order desire when he/she not only desires the drug, but, for whatever reason(s), also desires not to desire the drug. The scheme it might

take is that "A desires (or does not desire) to desire to X". It seems reasonable to admit, at this point, that no matter how we may view the value of our pet dogs, cats, goats, or horses, there is no apparent good reason to think they are possessed of second-order desires. In this case, if Frankfurt's special condition is accepted, along with Tooley's suggestion that persons are those beings with the right to life, we might look to Weiss' argument that even though rights are not assignable, duties may be.

The final point I should like to make about Frankfurt's second-order desires is that it links up with another seemingly essential condition for personhood, i.e., freedom of the will. It appears to Frankfurt that true freedom of the will is had by an agent whose second-order desires have become effective, that is, where desires of the second order move the agent "all the way to action". Where someone merely has a second-order desire, but where that desire is not sufficient to initiate action, we cannot say that the individual has true freedom of the will. Conversely, where someone has second-order desires and wants those desires to be her/his will, Frankfurt terms them "second-order volitions", which indicate motivation to act via freedom of the will. For Frankfurt, a person is a being with second-order volitions.

Daniel Dennett, in "Conditions of Personhood", speaks directly to a question we've been skirting, but never laying out fully, i.e., whether all and only humans are persons. <23> He says that infant human beings and humans who have been declared insane are denied

many crucial elements of personhood. On the other hand, he writes, while humans are the only persons we recognize right now, and while the terms "humanity" and "persons" seem to be locally coextensive, we can easily contemplate beings from other planets, who are biologically nonhuman, as persons. This might be reasonable, I take it, if these creatures displayed the sorts of attributes we count as significant, even essential, for conferring personhood upon ourselves.

Dennett lists six conditions for personhood, all of which he takes to be plausible candidates for necessary conditions on some interpretation or other. They are: rationality, consciousness, the capacity to take a personhood attitude/stance toward the being in question, the ability to reciprocate such an attitude, the ability to engage in verbal communication, and self-consciousness. He is concerned to argue for three basic theses in his essay. First, how, on his interpretation, the conditions for personhood are dependent on each other; second, in what sense they are necessary conditions; and third, the difficulty of showing that the conditions are, jointly, sufficient conditions for moral personhood.

Dennett makes one very interesting distinction in his paper. He says there are at least two interconnected notions of personhood, viz., the moral and the metaphysical. The latter is roughly the idea, "...of an intelligent, conscious, feeling agent...", while the former is the notion "...of an agent who is accountable, who has both rights and responsibilities".<24> The question arises, of

course, for Dennett, as to whether these two concepts of the person coincide. That is, what is the connection between being a person in the metaphysical sense and being one in the moral sense? Is being one a necessary and/or sufficient condition for being the other?<25>

Of the six conditions listed, three are unique. While most writers on personhood acknowledge the importance of some sort of ability to engage in complex communication, Dennett is alone in advocating verbal communication. It is not clear to me whether he would be entirely happy with interpreting this condition as requiring vocalization. The adult human, for example, whose vocal chords have been severed, but who retains all the other necessary conditions for personhood, must surely be viewed as a person, at least in the moral sense. But if vocal communication is really meant and intended by Dennett here, then perhaps this human ceases to be a person in the metaphysical sense. In that case, the moral and metaphysical senses of personhood do appear more distinct than we might otherwise believe; certainly more distinct than Dennett would have it.

The other two uncommon conditions in Dennett's set are the adopting and reciprocating a certain attitude toward an entity. I had previously construed this attribute as one involving the idea of personhood itself, whereby a person is a person in virtue of other persons treating her/him as a person. This seems to me now to be not only begging the entire question of the conditions for personhood, but just plainly contrary to fact. Think of your Aunt

Penny who sets a place for her pet Siamese cat at the dinner table. Think of the countless persons in history who were treated "like dogs". Think of the Jewish population during World War II and the practice of apartheid in South Africa today. There is a certain dignity which goes along with being a person that treating or not treating in certain ways cannot touch.

For all that, I do think Dennett hits the mark squarely in positing the ability to reciprocate such treatment (though perhaps we might entertain the notion that the treatment in question be of a morally relevant nature), as a necessary, if not a sufficient condition. I can imagine some Star Trek creature too hideous to look at. If this being could adopt a moral attitude toward fellow creatures, I think I would be willingly constrained to count it, and to treat it, as a person. In fact, as will be seen in Chapter 4, I contend that moral consciousness is a necessary and sufficient condition for personhood.

In the end, Dennett embraces a cautiously skeptical position on ever finding the necessary and sufficient conditions for personhood, even though, as he admits, the concept of the person may be, "...in some sense an ineliminable part of our conceptual scheme".<26> Why? Because the notion is inescapably normative, where any decision to include or exclude this or that sort of being into the community of persons is at least partially arbitrary. It is, finally, just impossible to discover the objectively satisfiable sufficient conditions for taking any being to be either conscious or

rational. And this is a major point, since consciousness and rationality are almost universally affirmed as at least necessary conditions for personhood.

Tristram Engelhardt's essay, "Medicine and the Concept of Person",^{<27>} takes up a number of themes previously encountered here. On the one hand, he echoes Callahan's injunction that we take human beings not merely as biological entities when he (Engelhardt) says that biological life can be distinguished from personal life. On the other hand, he seems to agree with Tooley that self-consciousness might be necessary for moral order to exist (though Tooley doesn't put it in just this way). On yet another hand, Engelhardt, like Dennett, distinguishes two senses of the concept of the person, albeit there are many more, in Engelhardt's opinion.

This latter point seems to me the essential thrust of the essay. The first sense of the person is used in reference to entities who are self-conscious and rational. It is termed, by Engelhardt, "strict" personhood, and applies to beings who are identified as moral agents, who are, "...individual, living bearers of rights and duties".^{<28>} The second sense, "social" personhood, is applied to those instances of human biological life who are treated as though they are persons when, in fact, they do not meet the conditions for strict personhood. The example used by Engelhardt is that of the mother-child relationship, where the infant, who is neither rational nor self-conscious, and hence not a person strictly, is treated as a person. The infant is socialized,

and treated as if it had wants and desires, where its cries are interpreted in ways actually appropriate only for strict persons. The social sense of the person applies equally well to those who are senile, severely retarded, and the mentally infirm, who cannot be taken to be persons in the strict, moral sense.

Notwithstanding my comments on Dennett's third condition, I concur with Engelhardt's reasons for positing the social sense of the person. While Tooley's logic for not counting fetuses and infants as persons seems impeccable, there is still an extremely uncomfortable feeling that attends accepting, even theoretically, the moral permissibility of infanticide. Our realization of the importance of the social role infants play seems essential for the retention of the moral fabric of the communities in which we find ourselves.

But more than this, as Engelhardt says, we find infants already playing the role of persons. It is true that young children do live in and through their families, at least for the most part. But it is also true that they do, at times, see themselves as themselves; not of course with the advanced self-consciousness of adults perhaps, but with the primitive mind of one who is learning to do so. Perhaps there is no longer any doubt that young children, infants, and neonates are not strict persons. But if we find the line between nonperson and person not as sharp as we would like, perhaps Engelhardt's social sense of the person has a place not only in our conceptual scheme, but in our practical lives, as strict

persons, as well. I suspect that my conception of the duties we have to nonpersons is more or less equivalent to Engelhardt's category of social personhood in that I will advocate treating some, but not all, nonpersons as if they were persons strictly. My thesis will be stronger, however, than Engelhardt's, for I will offer a prescriptive rather than descriptive account of our actions toward such beings.

W.R. Carter's paper, "Once and Future Persons",^{<29>} seems to me to take off with a notion that was only implicit in Engelhardt. An infant is a social person, according to the latter, but not a strict person. Essentially, an infant is sort of a person and sort of a nonperson, caught in the grey area of our own decidophobia. They are not, on Tooley's account, strictly protected by the rule against homicide, but, on Engelhardt's view, they deserve to be taken into our moral/social community. The focus of the essay by Carter has to do with degrees of personhood.

The basic thesis of the work is that since personhood is closely connected with the notion of having some certain capacities (perhaps rationality, self-consciousness, and second-order volitions), and certain rights (perhaps the right to life), and since it seems reasonable to say that these capacities do not all come to be had at once, and neither does any one capacity exist from its inception in its final form, we can conclude three things. First, there are no such things as essential persons. Second, the line between being and not being a person is not arbitrary. And

third, there are such things as marginal persons. Now each one of these claims can be seen to be important for our own understanding of the concept of personhood. Where nothing can be said to be an essential person, we have to rethink the notion of "I". If there was a time when Goodman did not possess the conditions for personhood, and if there will likely be a future similar time, what is Goodman? Further, if the right to live is intimately bound up with being a person, as Tooley says, and if I am not by nature a person, whatever right to live I now possess is not an inalienable right. In other words, I can still be, and be me, and possess, at the same time, no right to live.

The second point, about the arbitrariness of being or not being a person, i.e., the line to be drawn shall not be arbitrary, seems to hinge on being able to discover when an entity possesses the relevant conditions for strict personhood to a sufficient degree. This presents problems in itself, since it is not clear whether personhood is something to be actually discovered or merely decided upon by a consensus of the members of any one given community. Carter clearly sees that if being a person is to be based on arbitrary decisions, lines may/will be drawn differently in New York, Moscow, and CapeTown.

The thesis that there may be such things as marginal persons, though prima facie plausible, solves some problems and creates others. One question that won't arise is whether marginal persons are persons. They are persons, though not strict persons.

(Contrast this with the logic of the personhood of potential persons.) As persons, however, marginal persons, while they will carry at least some moral weight, will not be on a par with strict persons, in terms of moral status. Hence, in any question of who has a greater right to scarce medical resources, say, or exotic treatment in whatever mode, the claim of the strict person overrides that of the marginal person. Moreover, since marginal persons are persons, and since the obligation of persons toward persons overrides person's obligations to nonpersons, the decision to save the life of the marginal person rather than even a beloved pet dog will not be difficult to make.

The one most troublesome problem arising from positing degrees of personhood seems to me to be that of determining just who are marginal, and to what degree. The clinical situations, real and imagined, that would benefit from such a determination are innumerable. What degree of brain function, for example, is to be considered sufficient for ascribing more than marginal personhood? Was Karen Quinlan, in the last months prior to her death, who was in a state of irreversible coma, but with lower brain activity, a marginal person or a nonperson? It is not clear that there is much we can do to discover answers to these, and other, questions. But, like Carter, I shy away from the arbitrariness of merely deciding.

If Tooley can be seen to have taken on a radical position regarding personhood, allowing infanticide, and if Carter and Engelhardt are seen as no less extreme in their polemics, what

Robert Joyce has to offer in his essay, "Personhood and the Conception Event",^{<30>} matches each of these writer's immoderate stance on what sort of being will count as a person. The essential difference is that Joyce argues for the personhood of human zygotes from the moment of conception, a position known as extreme conservatism.

Most people who agree with Joyce's central thesis make use of some kind of principle of potentiality. This is not necessarily so, however, for those who advocate some version of ensoulment criterion, where an entity becomes a person at the moment of possession of a soul.^{<31>} But Joyce's thesis does not involve the notion of ensoulment. Rather, he makes use of an idea of potentiality that embodies actuality. In short, the capacity (potential) to engage in a certain practice (action) that one is not at present engaged in is an actual potential, or, a functional capacity. Since I have the ability to ride a surfboard, but am not presently doing so, we say I actually have the capacity to surf. This was not so when I was, say, two years old. At that time, I had the capacity to learn to surf rather than the capacity to surf.

But now consider various previously proposed conditions for personhood. Certainly a zygote does not possess the actual capacity for reasoning or self-consciousness. At this point Joyce makes a crucial distinction regarding capacities, citing Callahan as well as Roe vs. Wade as taking the "developmentalist" position on the beginning of the human person. This view, i.e., the

developmentalist, is that a person is an entity that has a developed capacity for such things as reasoning, willing, desiring, etc. Joyce remarks that a person is not someone who has already developed the abilities "required" for personhood, but is one who has the natural capacities, whether they are ever developed or not.

I suggest that this attitude is not without some support from other writers we have encountered, but who would not accept the personhood of the conceptus. For example, Engelhardt does say that it is perfectly plausible that one might take a fetus to be a social person at viability. And Dennett's third condition, adopting a personal attitude with respect to the being in question, seems to allow for us treating a being as a person whether it can reason at the present moment or not. Further, Joyce does not violate the logic of adopting any version of the potentiality principle by referring to the conceptus as a potential person and also as a person. As mentioned, a potential person is, strictly by hypothesis, a nonperson. Perhaps with that in mind, Joyce refers to these beings as prenatal persons and prebirth children, all the while implicitly arguing for the actual natural potentiality of the fetus to achieve the functional capacities to display the "conditions" of personhood.

With Sissela Bok's essay, "Who Shall Count as a Human Being",^{<32>} we need to shift gears. It seems to me that the notion of humanity, so used by Bok, has given way to what I want to refer to as the "current notion of the person", i.e., a being with a right

to life in the moral sense, or, in law, a being protected by the rule against homicide.

One very interesting aspect of Bok's paper, for my purpose, is the application she makes of the reasons for protecting life to the case of prenatal life. Her reasons for protecting life are:

1. Killing can be seen as the greatest of dangers for the victim.
2. Killing brutalizes and criminalizes the killer.
3. Killing can cause grief and a sense of loss for the victim's family and others.
4. Society has a stake in the protection of life.

In applying these principles to prenatal life, we contrast the zygote, embryo, and fetus with the adult human being, a clear person. Where each of the stated reasons for protecting the lives of persons does have instances of occurrence, the case of abortion, desired by both parents, lacks certain crucial factors required for protecting the fetus' life. I think some of these factors have to do with the differences between human fetuses and human adults. As Bok points out, a zygote cannot fear its own destruction; it has not yet begun to experience its own life and it could not be conscious of any interruption of its life. We might say that there is no "for its own sake" here, no "for the victim" as there certainly is in the case where a fully conscious, knowing, human adult faces her/his own annihilation.

This is not, of course, to say that there may not be other sound reasons for protecting the lives of fetuses. We can easily see that (2), (3) and (4) above might carry some weight in certain situations, e.g., where the practice of abortion, at whatever stage of fetal development, becomes merely a method of birth control. It will be agreed, I trust, that Bok's point is well taken that even if the fetus is a human, or a person, that factor alone cannot establish a moral imperative to protect its life in every situation. Other people, and their desires, wills, and reasons, are always involved.

Baruch Brody's paper, "On the Humanity of the Fetus",^{<33>} ought to be read, perhaps, by every freshman in every course on contemporary moral issues. The problem is the humanity of the fetus and when it can be said to be a member of our moral community. As with Bok's essay, I think we could replace 'human' with 'person' and the loss would be negligible. In fact, some insight might be gained since, as I mentioned, current writers on the topic need not, and some certainly do not, take 'human' as a term denoting a being with a right to life, whereas everyone seems to take 'person' as having this normative connotation.

Brody examines the various stages of fetal development to determine when, if at all, the fetus becomes human. He lists no less than twelve arguments, each advocating a different stage for fetal humanity, from conception, when a human genetic code exists, to some time after birth, when the possibility of interaction with

other human beings exists. Finally, with all but one argument rejected, Brody fixes on "the essence of humanity", i.e., that attribute/property which no human being can lose without going out of existence—brain activity. Used as a criterion for humanity, Brody concludes that it alone is the essential feature of all living humans, including, obviously, the fetus.

The position Brody adopts here has some clear relevancies for Carter's marginal person and Engelhardt's social person. Or perhaps it's the other way around. According to Brody, it may well be the case that the six-week fetus is fully human, endowed with all the rights and privileges accompanying such status, including a claim to life equal to the claim of its mother. And that is a person in the strict, nonmarginal sense of the term.

Edward Langerak, in his essay "Abortion: Listening to the Middle",^{<34>} has a number of interesting points for us to consider. In the first place, he advocates a version of the potentiality principle that makes abortion at the very least morally problematic; not as prohibitive as Joyce would have it, of course, because Langerak does not argue for the personhood of the fetus. Rather, there is something about the fetus, as a living human being, though a potential person, that makes it morally problematic to take its life. This something is the potential a fetus has for attaining actual personhood, where an actual person is an entity possessing, "...a sufficient condition (whatever that may be) for personhood and thereby has as strong a claim to life as normal adult human beings".^{<35>}

Second, Langerak makes a number of distinctions between different kinds of persons and nonpersons. The two types of person mentioned are the actual person and those who have a capacity for personhood. As an instance of the latter, sleeping adult humans are persons, he says, in virtue of having reached a stage of development where they could display the conditions for personhood, even though they are not at present doing so. As examples of nonpersons, Langerak lists the human fetus as a potential person and a human sperm or egg as what he calls a possible person, i.e., a being that might, "under certain causally possible conditions", achieve actual personhood.<36> This distinction between potential and possible persons is indeed an important one, for Langerak goes on to argue that while the former have a claim to life, the latter do not.

This is an interesting thesis to me, that is, that a nonperson might have a claim to life, because throughout this chapter, and in the introduction, I have been making what I take to be a logical point, namely, that since potential persons are not yet persons, and since only persons can claim a right to live, potential persons cannot claim such a right. Langerak bases his argument on the notion that there is some intimate relationship between future claims of an entity and present claims. This point, he says, rests on the fact that we generally view humans in terms of their temporality, in terms of projecting ourselves into the future from the places we are at now. And the fact that we put so much stock in

these temporal projections might legitimately lead us to respect humans for their potential. This seems to me a plausible thesis for arguing that a society concerned with the future and the potential of its subjects/citizens might/ought to confer at least a prima facie claim to life on potential persons, even with the stipulation that they are actually nonpersons.

I am compelled to argue a different thesis, however, one that seems to me to be more in line with the logic of the matter. Why confer life-rights on a being that is of a different sort from those beings who possess rights by virtue of the sort of beings they are? To do so, which is what I take to be Langerak's position, seems to be an illicit ad hoc move designed to avoid some problem cases that may arise from our confuting the logic of the locution "potential person". It seems much more preferable to simply deny any and all rights to nonpersons and admit that we may/do have some moral duty to perform (or to refrain from performing) certain actions in circumstances relating to these nonpersons.

Roland Puccetti's "The Life of a Person" opens with a fascinating tale.<37> A genie appears to you and says that, if you want, he will expand your brain in such a way that you will have an IQ of 400. You will become an Einstein, a Picasso, or a Pasteur. There is, however, one drawback. At the moment of brain expansion, your conscious experience will cease forever. Your brain will be programmed to achieve great things but, as Puccetti puts it, you will be nothing more than an "automaton". The question is, Would

you accept the genie's offer? Well, perhaps as an altruistic act that might result in your discovering a long needed cure for some dread disease, one just may consider it. But, Puccetti suspects that the loss of consciousness would be the one dominant factor in many people's rejection of the proposal. (And anyway, it wouldn't really be you making the discoveries.)

I think Puccetti's central point is this; that the "I" of a person is thought to disappear with consciousness. And if I disappear, if I go out of existence, surely the person I was also ceases to exist. It seems absurd, then, the argument continues, to extend personhood to beings who have lost the capacity for consciousness. And no less absurd to confer personhood on beings who have not yet attained conscious experience. In just this way, Puccetti seeks to exclude early fetuses (because of their lack of neurological hardware) and those who are irreversibly comatose (because of their loss of personal life) from the set of persons.

Puccetti goes on to argue that many people do confuse nonpersons with persons and, like Langerak, he makes some important distinctions between possible, potential, beginning, and former persons. As we've dealt at length with the other categories, the one that might interest us here is beginning persons. 'Person' being coextensive with 'moral agent', Puccetti places human children in the class of beginning persons. He does so since children are moral objects, much like other forms of "higher" animal life, but they are only potential moral subjects. A child, then, is sort of a

marginal person, at least in the sense that it has come to be considered as part of the moral community. This is not sufficient, however, for ascribing actual/strict personhood. In the end, Puccetti admits to sharing Dennett's skepticism about ever being able to set out an exhaustive list of necessary and sufficient conditions for personhood. For all that, it seems he has given a reasoned argument that consciousness will be on that list, perhaps everyone's, somewhere.

Peter French, in "Kinds and Persons", asks the following question: Is 'person' a natural kind term?<38> The answer is a complicated "no". Briefly, natural kinds are best seen as instances of set membership based on sameness of structure and function relative to sets of natural laws. "Water", on this view, is a natural kind. So is "mallard" and "human being". However, our commonsense uses of 'person', based in large measure on a coherent set of empirical observations and generalizations, does not lead us to affirm it as a natural kind term.

French's essay is a departure from most of the others I have referred to here. He is not concerned with the decision of Roe vs. Wade, or the status of the fetus, infants, or young children. He is at pains, however, to show that the term "person" is not necessarily coextensive with the term "human being". If some "man" were to land on earth in a spaceship from a destructing planet far away, and if this being looked and acted like us, especially with respect to intentionality in the widest sense of that term, then even though

his biological structure was completely different from our own, we would, naturally, call this being a person. We would include him in our community, moral and otherwise.

But French goes beyond the conception that even various sorts of nonhuman animals might be considered persons. He makes a prima facie reasonable case, I think, for taking 'persons' as applicable to very sophisticated computers/machines, e.g., Hal in 2001: A Space Odyssey, and even business corporations. The crucial reasoning behind these ideas is that deciding that some entity is a person is, at very least, to judge that it makes sense to describe some aspects of its behavior in terms of intentionality on the part of the entity itself. Genuine intentional systems, then, whoever/whatever they turn out to be, are, for French, persons.

Robert Brungs, in "Human Life vs. Human Personhood",^{<39>} seems to me to display a certain anger and sadness that many writers on personhood share. The majority opinion in Roe vs. Wade distinguished between human life and human personhood. As a result, "In the name of reproductive freedom we have embarked on an essentially totalitarian estimate of the human being",^{<40>} with the state/society now deciding who is to be considered a person, protected by the law, and who is not. Brungs' deep sorrow and indignation stem, at least in part, from the fact that the unborn child can now be treated in an entirely arbitrary manner, since it is not considered a legal person with any rights whatever.

Due largely to striking advances in science, technology and

industry, the world has changed radically. In the past, Brungs says, the changes wrought were for our betterment, and without doubt many efforts to make human life better have been wholly successful. However, since the coming of age of the biological sciences we have embarked on an adventure that will ultimately make-over the human body and psyche in such fashion that the day will arrive when humans themselves will be the most important of artifacts. With the enormous advances in medicine, for example, that have already taken place, we can look forward to even greater achievements, not the least of which will be the possibility of "enhancing" our genetic inheritance through eugenics. And at that stage of the game, humans themselves will/could begin to change radically.

We might worry here about two things. First, we would hope that the new sciences and technologies will always have in mind the good of the species, not to mention the environment in the broadest sense. But what seems to be presupposed here is that we know what is good for ourselves—our species. For instance, we can imagine the proponent of eugenic research arguing that in the end we will have "better" human beings. We would naturally ask, Better than what, in what respects, and to what degree? The fact is, we don't pretend to know what a "good" human being is, and especially not in the sense in which the art/science of eugenics might be useful. If we don't know what a good human/person is now, how is it that we could presume to be moving into a future where somehow that will be achieved?

Second, where science and technology advance to a point of "deep" research on human beings (if this is not already happening), there is the fear that humans, and hence some persons, will become objects, used as mere means instead of ends in themselves. This will involve another radical shift, viz., in the thinking of these research scientists, as well as technologists, who are, incidently, human persons themselves. The question is, of course, What happens to the concept of the person, and the person her/himself, when humans become objects in this way?

As can be seen, the shared concerns, and the differences of view of the person, run deep. It is at once paradoxical and proper that it is persons who ask the question, What is a person? It is fitting that persons concern themselves with not only themselves but the worlds in which they are intimately a part. It is not enough anymore to merely count ourselves as essentially human, endowed with intrinsic worth, moral worth. There is a new term on the lips of philosophers, theologians, politicians, and scientists that is beginning to compete with 'human being' for a privileged place in our thinking about ourselves and others. That there is no general agreement on either the sense(s) in which 'person' can or ought to be taken, or its extension, ought not trouble us at present. As Rorty would say, the conversation has been taken up, and our greatest hope is for its continuance.

The directions the conversation will run, and the voices with

which it will be promulgated cannot be foreseen at this juncture. We can see, however, that, given the fact and nature of cultural relativism, there is much to be done in terms of getting clear, between one another, about what we mean, how we propose to use, and the extension of the word "person". The practical moral problems, e.g., abortion, suicide, eugenics, and infanticide, demand solutions now. It is only with this shared goal in mind that much can be done that matters.

Chapter 3

Deciding on Persons:

Rorty, Personhood, Relativism

I

The richness and scope of Richard Rorty's Philosophy and the Mirror of Nature^{<41>} will very likely keep the philosophic community occupied for quite some time. With its superabundance of themes, its criticisms of "traditional" philosophy and epistemology, its descent into fantasy and fiction, and its well wrought vision of the nature and future of philosophy, the reader is presented with a plethora of ideas for research programs/projects.

In what follows I will treat an issue of which Rorty makes only cursory and rare mention. The topic is the problem of personhood. The problem can be expressed, for the purposes of this chapter, by asking the specific question, What is the extension of 'person'? I have adopted Quine's definition that "The class of all entities of which a general term is true is called the extension of the term".^{<42>} Put in just this way, I am not supposing that there indeed is a class of entities in the world to be picked out as the "class of persons". In fact, this is just the point in question. Persons cannot, for Rorty, be simply picked out from among the many varieties of creatures inhabiting the world and universe. Rather, personhood is a matter of being one of us, of fitting into the

community, of being accepted as a fellow in what he calls the "conversation of mankind".

The crucial reasoning behind my devoting an entire chapter to Richard Rorty's work in this area is that underlying his conception of who is to count as a person is the notion that persons are to be decided upon rather than discovered. That is, as will become clear, it is persons who will decide what sort of beings will count as persons. It is not the case that those beings who are persons will somehow be discovered to be persons. This is an important thesis because it appears, prima facie, to leave the gate wide open for anybody of persons, that is, beings who are considered persons here and now, simply making arbitrary decisions about who is to count as a person, here and there, now and in the future.

As might be guessed, my central thesis is that Rorty's position on the question of personhood is essentially relativistic in the negative (pejorative) sense. Using the concept of a person espoused by Rorty, I will maintain that it is impossible for him to make cross-cultural moral judgments that can have any force whatever from either an historical or an anthropological perspective. The relationship between Rorty's conception of how personhood is to be determined and his moral relativism rests on my contention that one crucial feature of ethical theories in general is that we have a clear notion about who is to count as a moral agent. Moral agency is bound up, in large measure, with such things as duties, rights,

rewards and punishments, and so on, and it seems agreed on all hands that persons are moral agents and that nonpersons are not. The natural question arising from this consideration is, Who shall count as a person, if anyone?

In Section I, three ways (there are certainly more) of approaching the problem of personhood are presented. Various proponents of each approach are contrasted and Rorty's position is outlined. Section II will comprise a critical exposition of his position, concentrating on his conceptions of what a person is and how our criteria are [to be] determined. In Section III, I will explore the sense(s) of moral relativism implicit in Rorty's position.

II

Three possible ways people of differing positions might approach the problem of personhood and ask the question, What is a Person?, can themselves be presented as questions:

(1) How should persons decide who is within their (the) community of persons?

(2) What are the characteristics of a being in virtue of which we attribute moral agency to it?

(3) What are the necessary and sufficient conditions which distinguish persons from other kinds of beings?

Question (1) is roughly equivalent to asking what sort of being will be considered a person by those beings who are already considered persons. This carries with it the idea that perhaps the entire conception of the person will be/could be altered at some future time. Question (2) is roughly equivalent to asking about the moral proprieties regarding question (1). It will be noticed that I ask such a question in Chapter 5, where the notion of potentiality will be invoked to answer just this sort of question. Question (2) is also a logical question. It may be construed as rhetorical in the sense that those beings who are similar in all the relevant respects to those beings considered persons now are to be considered persons. Question (3) is roughly equivalent to directly asking what a being must be like to be a person. In this sense, it affirms what Rorty, and others, deny, i.e., that there is some determinate discoverable property, or set of properties, that is possessed by all and only persons. (3), like (2), is a logical question as well. There is, further, something mandated by (3); that who are persons is not merely a matter of arbitrary decision, but something to be discovered, perhaps by everyday experience, or in conjunction with the tools of science and technology, or whatever.

Philosophers such as Rorty and Hilary Putnam might ask (1).⁴³ The answer they would presumably give is that ascriptions of personhood are a matter of decision, not a matter of discovery. As mentioned, Rorty remarks that personhood is "...a matter of

decision rather than knowledge, an acceptance of another being into fellowship rather than a recognition of a common essence".<44>

Putnam, on the other hand, might also ask (2), given the preference he exemplifies in the following passage:

If we are to make a decision, it seems preferable to me to extend our concept so that robots are conscious—for "discrimination" based on the "softness" or "hardness" of bodily parts of a synthetic "organism" seems as silly as discriminatory treatment of humans on the basis of skin color.<45>

An argument from this in favor of asking (2) might run as follows: Given the lack of relevant reasons for discriminatory treatment of human beings solely on the basis of skin color, if it has been decided that human color-group X is comprised of persons, then members of human color-group Y should also be considered to be persons.<46> Who should count as persons, then? Clearly, any being who displays those qualities which have been relevant to our decision of who counts as a person. No doubt Rorty would add, "at least here and now".

Harry Frankfurt, in his previously mentioned excellent paper "Freedom of the Will and the Concept of a Person", is a prime example of one who would ask (2). In his talk of the person, Frankfurt is concerned to show that in its most interesting philosophical sense, the term "person" can be, but has not been, used to "distinguish the members of our own species from members of other species".<47> Recall that a person, for Frankfurt, will be a being able to form "second-order volitions". To review, in the most

simple terms, a second-order desire is a desire not to have a certain first-order desire for something. For example, if Ken wants to smoke a cigarette because, say, he thinks it will steady his nerves, then a second-order desire Ken might have is the desire to want to not smoke because, perhaps, whenever he smokes, he gets short of breath.<48>

Second-order desires are, for Frankfurt, a particularly human characteristic. As such, humans, i.e., those able to form these special volitions, are persons. Young children and wantons (see Frankfurt, p.10ff) should not be counted as persons in the full sense of the term just precisely because they are not at a suitable level of mental capacity in the first case, and simply don't care about their will/desires in the second.

Putnam and Frankfurt both start out with basic assumptions, i.e., respectively that most humans are conscious and most humans are persons. Humanity is the measure here. What we are to do is discover how like humans robots are, e.g., whether or not their behavior is indistinguishable from human behavior, or, in another case, whether dolphins have the requisite second-order volitions, and then adopt, or rather decide to adopt, the attitude to treat them accordingly. Of crucial import here is that it has already been decided who are clear-cut instances of persons. So far as I can detect, this has been done either arbitrarily or on the view that the way we see ourselves, as persons, is just "...an ineliminable part of our conceptual scheme".<49>

Those who are somewhat more dogmatic about personhood will be inclined to approach the problem by asking the third question (Who must count as a person?) I am thinking of such religious philosophers as John Noonan and Joseph Fletcher.<50> While it is the case that both these writers take humanity to be the starting point, they would argue that further ascriptions of personhood are neither matters of decision nor weak prescriptions of what actions should be taken. Fletcher argues that our "inventory of personhood" must be carried out on the basis of humaneness and rationality. On the other hand, Noonan argues for the humanity of the fetus from traditional Roman Catholic historical grounds, writing, "In the weighing, the fetus was always given a value greater than zero, always a value separate and independent from its parents".<51> There is a certain necessity here for treating the fetus as a person, and that is why I suppose Noonan and Fletcher to be approaching personhood by asking (3) rather than (1) or (2). This is so even though their criteria for, and conceptions of, personhood are so very different.

If the presentation of these ways of characterizing various approaches to the problem of personhood is to be at all fruitful, as I think it can be, then the analysis ought to shed some light on how the concept of the person is, and has been, viewed in the past. The one seemingly indispensable feature of the many ways of characterizing the problem of personhood is that the starting point, the paradigm, is humanity. This seems always to have been presumed

by previous writers, and Rorty is no deviant here. We are the ones looking at the world, describing behavior, predicting and controlling, forming societies, communities and groups. And we cannot get out of our own skins. These are simply platitudinous matters of fact. The problem is, of course, which part of humanity, which set of humans, is to serve as the paradigm of personhood? All human beings? Adult human beings? These questions illustrate a main bone of contention in the recently fired-up debate on personhood.

Where I think Rorty differs from other more recent thinkers on this point, however, is on how far we are to extend the importance of humanity as the paradigm of who will count as a person. It seems that, given personhood based on [human] decision, the decision could be made that even humans themselves, or at least the majority, are not persons strictly. The reason I feel confident making this claim is that Rorty never seriously outlines specific decision processes, and certainly not for decisions on who persons are and will be. Something called "the conversation of mankind", and its continuation, is what is sought by him. Personhood, then, will be decided upon within this ongoing conversation. But although humans, at least for now, are the "speakers" in this conversation, it does not follow with logical necessity that we will continue to be convinced of our own personhood. The existence of persons is only logically entailed by a conversation of mankind if it is logically impossible for there to be humans who are not, at the same time,

persons. Considering much of the current writing on, for example, animal rights, genetic engineering, abortion, and so forth, it seems clear that there in fact are humans who are not [considered] persons. The perfect example of this kind of being is Frankfurt's wanton. We may want to consider the sociopath in this category as well. The "conversation", then, could well continue without persons, even without presuming that all those beings now considered persons will become wantons or sociopaths.

It seems to me that Rorty's vision of the future does not necessarily include humanity as a measure of anything. I realize that he is, in part at least, attempting to give renewed credence to the sophist dictum that "man is the measure of all things". However, given the ongoing conversation, there is no logical contradiction involved in the idea that humans will, or could, cease to consider humanity as the measure. We (humanity) are part of it all, part of the constantly occurring redistribution of the world, part of that which is predicted, explained, and controlled. We are not separated from all that is. We are neither on the inside looking out, nor the outside in. Actually, the inside-outside metaphor would make no literal sense for Rorty. Rather, without becoming unjustifiably ontological, there are just things in the world; perhaps beliefs, desires, as well as libraries, dinner plates, and so on, and the conversation is about all these things, one and another, in combinations, relations, and modes. All the items of the world/universe hang together in various ways—we see

it all as hanging together in our own ways—and the conversation itself is also part of all that hangs together.<52>

The fact remains, for all that, that we are the ones who will decide who shall count as persons in Rorty's view. This is so at least for now. It would make no sense for him to ask who must be persons. And it is only in a very weak sense, I think, that we could imagine him asking who should be persons. For the sake of consistency, he might argue that if it has been decided that X is a person, then if Y is similar to X in every way which was relevant for the decision on X's personhood, then Y should count as a person as well. But again, since Rorty has not fastened onto any specific decision process, except "conversation", it is at least conceivable that rational consistency holds no special place in the conversation of the future. This is as much as to say that it is uncertain how the conversation will really continue, its direction, its bases, and its biases.

III

Throughout Philosophy and the Mirror of Nature, and in various papers recently collected to form Consequences of Pragmatism, Rorty has argued that we have no special ability to get out of ourselves for discovering the Truth about things. He follows John Dewey and William James in the thought that truth will consist in "warranted assertibility" and "what it is better for us to believe", rather than the "accurate representation of reality". It will follow,

then, on this view, that what we decide about, say, persons, will be true, but not True. 'True', with the lower case 't', will be understood to mean something such as "that which is agreed upon as true by a consensus of the informed participants of a language-game". For the Rortean pragmatic program, there would be agreement with James that "...ideas become true just insofar as they help us to get into satisfactory relation with other parts of our experience".<53>

With this conception of truth in mind, and the idea that persons are somehow "decided upon", I want to take an excursion into Rorty's notion of what a person is and how our criteria for personhood are to be determined under that notion. There are a number of passages found in various places that may bring his views to light.

We can dig in our heels and say that terms like 'person', 'belief', 'desire', and 'language' are ultimately as token-reflexive as 'here' and 'now' or 'morally right', so that in each case essential reference is made to where we are. But that will be the only way of ruling out the Galactic [as a person; as a being with beliefs, desires and a language, etc.], and thus the only way of ruling out the butterfly.<54>

Babies and the more attractive sorts of animal are credited with "having feelings" rather than (like photoelectric cells and animals which no one feels sentimental about—e.g., flounders and spiders) "merely responding to stimulus". This is to be explained on the basis of that sort of community feeling which unites us with anything humanoid. To be humanoid is to have a human face, and the most important part of that face is a mouth which we can imagine uttering sentences in synchrony with appropriate expressions of the face as a whole.<55>

Here Rorty cites an interesting paper by Virgil Aldrich, "On what it is Like to be a Man".^{<56>} Aldrich is lauding Wittgenstein's view that the human body is the best picture of the human soul, and he (Aldrich) takes up the idea that for a mouth to talk, it must be in the right place. And for such talk to be meaningful, in the full, "thick" sense, it must come from a rightly placed mouth. The following passage from Aldrich's paper is quite similar to some of Rorty's own more direct statements on personhood. Aldrich writes,

But I should say that to be looking at and listening to someone speak, in the intimacy of understanding him, is to perceive another human body-as-subject, another person. In this rapport, what the speaker feels, thinks, intends to do and why, is 'bodied forth' in the complex gesture that speaking is, including learned verbalization as the central part. This essential relation between mental and bodily performance conditions the sense that is made with the language. So, again, we run into the notion that the place of saying has to be right if a strain is not to be put on understanding what is said, in the thick or full sense of saying something. The form of the body must be right for this. A piano-shaped animal — to use James Thurber's picture — with a hole in the side, out of which come sounds that are like English words in grammatical order simply cannot be taken to 'mean what it says', since it cannot be taken to be capable of a total speech act. The form of the body — including the stuff — is wrong for that. It is not a body-as-subject. If you complain that you do understand the sentence formed out of the hole in the side of the piano-shaped animal, you can only mean that you know how to use the sentence, not that you understand what the animal-like piano means by it or what it says.

A lion's producing the same sounds may seem to put a little less strain on understanding what it says because it does have the form of an inanimate thing, and it does have a mouth. But the mouth protrudes too far out in front, leaving the eyes behind and too subservient to the function of killing and eating. There can be no speculation in eyes like that. So such notions as its 'thinking what it intends to say' collapse. The face is not right for that.^{<57>}

Recalling Rorty's decision maxim, it is we who will decide what sort of face is right for talking in the thick sense. This disturbs me somewhat.

We had a dog named Sparky once. Sometimes when the family would go camping in Yosemite or along the Northern California Redwood Coast, Sparky would come along. He did not always "get" to go. It seemed clear to us, then, that he "knew" whether or not he was going, and knew by the ways we would treat him. If he was going, we would say such things as, "Hey Spark, want to go camping?" He would jump up, twirl around---sort of act excited. What I mean is that he acted like I think I would act if I had his body and was excited about going camping, with new birds and squirrels to chase, and so on. When he wasn't going with us, we would say things like, "Sorry Sparky, not this time". He would put his head down, walk away slowly, and "mope". I now think to myself, in light of the Aldrich-Rorty view of the right sort of face for talking, that if perchance the dog had uttered, just once, the words, "I really would like to see those Redwoods again", I most certainly would not have replied, "Sparky, stop it, you don't have the right sort of face for talking". And it is questionable whether my initial astonishment would have been the result of my idea that "dogs just don't talk", or rather from the fact that Sparky could, after all, talk. Children seem to think of their pets in special ways. They are their friends and vice-versa, or so it seems. You talk to your friends and you care about them. It seems to me that

it would be much less surprising to a child than to adults that dogs might talk.

In any case, if we do in fact decide who shall count as persons, what will 'the right sort of face' mean? A human, Jeff, for example, gets his nose shot off in Vietnam, comes home and files for Social Security Disability Insurance. The government agent, Alfred, says, "Sorry Jeff, you just don't have the right sort of face for it". The agent, at this point, might take serious measures to insure that his face remains of the right sort. The fighting attitude Jeff might take in this circumstance can best be explicated by reducing it to the question, "How is what I look like relevant to what my rights are?" I suggest, hoping explanation is unnecessary, that this is certainly a rhetorical question.

When Rorty talks about being humanoid as requiring a human face, I think we can be quite misled. We most certainly do recognize humans by their bodies, including the shapes and textures of their faces. But, lest Rorty's text refute him on this point, though his Antipodeans were outwardly indistinguishable from Terrans (earthlings, humans, persons), it is not clear that they (the Antipodeans) were humanoid. He refers to them as "beings like ourselves", "featherless bipeds", "people", "persons", and "the new race of intelligent beings". He says that only members of their species were treated as persons. What he does not say is that they were human. I think a reasonable case might be made for the view that, given their existence in such a remote part of the universe,

and given that they were not some "distant" relations of the Terrans, i.e., having come from earth and traveled to their own planet, that they were of a distinct species from our own, and should be referred to as Antipodeanoid and not Humanoid. In the long run this cannot be much of a bother for Rorty, since a crucial point in his scenario is captured by the title of the chapter in which the Antipodeans make their appearance, i.e., "Persons Without Minds".^{<58>} The essential feature of their being used at all by Rorty is that they were like us in all respects except in having what we would call "minds". 'Like us in all respects' has onerous duty, for it is intended to include the idea that the Antipodeans were persons. I want to suggest that even though these Galactics were like us in all outward appearances, they were not humanoid, that is, in the sense of having sprung from human, earthling parents, with human, earthling genetic codes.^{<59>} Hence, 'to be humanoid is having a human face' is either tautologous, and is at best uninteresting, or is sheer nonsense, given the case of the Antipodeans and John Noonan's polemic on genetic coding as one crucial determinant of species.

But Rorty goes on to maintain an even more questionable position. The hint here is that even morality is to be decided upon, rather than discovered, by the "relevant community of language users", based on a unity of sentiment within the community. He writes,

The moral prohibitions are expressions of a sense of community based on the imagined possibility of conversation, and the attribution of feelings is little more than a reminder of these prohibitions. This can be seen by noticing that nobody except philosophers of mind cares whether the raw feel of pain or redness is different for koalas than for us, but we all care quite a bit about a koala when we see it writhing about. This fact does not mean that our or the koala's pain "is nothing but its behavior"; it just means that writhing is more important to our ability to imagine the koala asking us for help than what is going on inside the koala. Pigs rate much higher than koalas on intelligence tests, but pigs don't writhe in quite the right humanoid way, and the pig's face is the wrong shape for the facial expressions which go with ordinary conversation. So we send pigs to slaughter with equanimity, but form societies for the protection of koalas. This is not "irrational", any more than it is irrational to extend or deny civil rights to the moronic (or fetuses, or aboriginal tribes, or Martians). Rationality when viewed as the formation of syllogisms based on discovery of "the facts" and the application of such principles as "Pain should be minimized" or "Intelligent life is always more valuable than beautiful unintelligent beings", is a myth. Only the Platonic urge to say that every moral sentiment, and indeed every emotion of any sort, should be based on the recognition of an objective quality in the recipient makes us think that our treatment of koalas or whites or Martians is a "matter of moral principle". For the "facts" which must be discovered to apply the principles are, in the case of the koala's or the white's "feelings", not discoverable independently of sentiment. The emotions we have toward borderline cases depend on the liveliness of our imaginations and conversely.<60>

Rorty's relativism is clear, I presume, from this passage. Just what sort and how extensive it is will be discussed in the following section. What I would like to concentrate on for the moment is the idea that attributing moral rights to beings is a matter of sentiment insofar as it depends on how human-like the creature is, or, better, on how human-like we decide the creature is, based on our perception of the potential the creature has for

being "like us". I shall pick out three points which seem to me to present particular difficulties for accepting the claims Rorty makes.

(1) The Problem of Sentiment. Rorty is, at least in part, presenting a sociological account of how we go about conferring rights upon beings. According to him we don't have the same feelings for pigs as we do for koalas. Pigs don't move (writhe) in the way that makes us uncomfortable. We strain our imaginations when we try to conceive of carrying on an ordinary conversation with a pig, because the pig's face simply doesn't have the right shape for the "expressions which go with ordinary conversation". We cannot imagine the pig asking us for help, but we can imagine the koala doing so. Hence, we slaughter the former while we protect the latter. The description is certainly correct. Whoever heard of "sweet-and-sour koala", or "koala-and-Swiss on rye"? However, considered solely as a source of food, it is not clear to me that simply feeling a certain sort of [sentimental] way about an animal is sufficient to keep the product from appearing in the consumer marketplace. We are becoming increasingly aware that killing fish, cows, pigs, dolphins, sheep, etc., causes/can cause them physical pain, not to mention the possibility of stress created by the conditions under which many animals are bred and raised. Whether they writhe about in just the right sort of humanoid way when their throats are slit seems to me completely irrelevant for determining how we either should or should not treat such creatures.

Emotions have been notoriously problematic in the history of intellectual inquiry, and especially so for philosophy, theology, psychology, and sociology. The jury is still out on just what emotions are, their reliability, and how seriously to attend to them at any given time. For instance, a young couple wants to marry because they "love one another". Is love what they're feeling? Should they trust their emotions now, or wait awhile? Is love an emotion at all? These are hard questions, not to be considered lightly simply because they "feel" a certain way.

It strikes me that our feelings for, or against, certain human and nonhuman beings is much the same. In fact, rather than solving some age-old problems, an appeal to emotions seems to generate some problems of its own. For example, the murders committed by Charles Manson and his followers were grotesque; certainly for some they were inhuman. Many people have very specific feelings about Manson as a human being and would no doubt advocate punishment demanded by a capital crime, which does not, in some eyes, necessarily preclude torture. Now, at the same time as we recognize these "feelings" about Manson, we also recognize that the desired objectivity of a judge obviates the judge's having an emotional prejudice, one way or another, regarding the case to be adjudicated. If anything, we ask that the judge have a bias toward justice. We would have the judge pronounce a sentence reflective of the consensus of the community, and it is not at all clear that any community becomes united in a consensus on the basis of shared feelings rather than shared need,

or some other shared phenomena. In the case of Rorty, then, the shared feelings we have about human as well as nonhuman beings, even though perchance based on the "imagined possibility of conversation", does not yield a resolution of our dilemma concerning how we think such beings should, in the end, be treated. It can only multiply and complicate our problems when our sentiments are hypostatized in a way which determines how we should go about making decisions on moral issues.

(2) Imagined Possibility of Conversation. When Rorty writes that, "...moral prohibitions are expressions of a sense of community based on the imagined possibility of conversation...", I get the distinct feeling that he is toying with us to see if we're paying attention. Can '"don't beat that dog!'" really be an expression of our feeling of community with a dog insofar as we can imagine carrying on an ordinary conversation with it? I think not, but not because I can't imagine having a conversation with a dog, nor because I think there is no sense of community to be had with a beaten dog. In fact, the latter point seems of the utmost importance here. 'Don't beat that dog!' is uttered at least partially because we recognize that the animal is in pain. The dog is somehow a member of the community of "pain-feelers", of which we also are members. This is at once a metaphysical and a moral community. That the dog indeed is perceived by us to be a member of this community accounts, in some measure, for our sense of community with the dog.

It seems that Rorty is making a false claim when he says that our sense of community is based on our ability to imagine having a conversation with some creature. It may well be the case that being able to communicate with a being is good reason to treat it as having some rights, perhaps even for treating it as a person. But it does not logically follow that not being capable of communicating, here and now, with some being automatically precludes our treating it as a member of the/our moral community, or even as a person, if certain necessary though insufficient conditions for personhood were displayed by the creature. I think Rorty's false claim is based on false sociology. We don't set up societies for the protection of bald eagles, koala bears, whales, baby seals, and so on, because we can imagine having a conversation with them. There are other reasons for "saving" them, e.g., insuring the survival of species, seeing to it that pain is not inflicted unnecessarily, and providing continuing aesthetic pleasure for ourselves by just having them around to be with.

(3) Like Us. Rorty's main point in his polemics about personhood centers on the fact that we shall decide who shall count as persons on the basis of how like us the creatures are that we're deciding about. 'Like us' means something having to do with how these creatures move, and also about the shape(s) of their bodies. Pigs don't have the right sort of faces for talking. But koalas do? Pigs don't writhe very well. But koalas do? If we recall Aldrich's statement that there can be no speculation in the lion's

eyes, our natural question is, "Why can't there be?" Why can there be no speech from the pig's mouth? We can certainly imagine these things. What would our bedtime stories be without porridge-eating bears, house-building pigs, and wolves in grandmother's clothing, all of which talk. It is all fantasy, yes. But still we imagine it. Perhaps, finally, the eyes of the lion portray a brand of speculation forgotten by us during the long expanse of continuing conversation, or perhaps it is merely speculation of a kind wholly and perchance forever unknown to us. Perhaps, again, it is simply speculation unlike our own, or even no speculation at all. To say, however, that the face just isn't right, or isn't sufficiently like our faces for us to give serious thought to the possibility of our having moral prohibitions against "mistreating" it, seems not only speciesist on Rorty's and Aldrich's part, but inconsiderate of the facts regarding our societies for "animal" protection. The California Condor, on this view, is just not enough like us to warrant protection, and certainly not for its own sake.

I am not advocating treating condors as persons. But I am urging that we rethink our conception of personhood to allow for the possibility that even beings quite unlike ourselves may demand a measure of moral concern from us. I am also exhorting the attitude that being "like us" is not the only, or even the most appropriate, criterion for personhood we might consider. Pig-writhing, that is, the way they move when their throats are slit, which is still a common practice in slaughterhouses, should cause us concern, but not

because of how we would feel if our throats were slit, not because we can or cannot imagine the pig asking us for help, not because of the shapes of their faces, including the positions and locations of their mouths.

So far as I can determine, then, the extension of 'person', for Rorty, will be the class of human beings. There are "hard cases" though, such as fetuses, the moronic, as well as aboriginal tribes and Martians. In borderline instances, as much as in the more straightforward circumstances, e.g., the cases of koalas and whites, the discoverable "facts" concerning who shall count as a person, a) will be based on how human the creature seems, and b) are not discoverable independently of sentiment.<61>

IV

The relativism of Richard Rorty's position has been mentioned previously, and now that it is clear what his general criteria for personhood are, as well as who shall count as persons, I shall move to a discussion of this relativism, as I perceive it. My point of departure will be a passage from a paper by Richard Bernstein,<62> who attempts to clarify and defend the senses of Rorty's relativism. Bernstein writes,

If by relativism we mean that there is no truth, objectivity, and standards for judging better or worse arguments or moral positions, then Rorty is certainly not a relativist, and [Rorty] suggests that such a relativism has become something of a straw man for philosophers to attack. Rorty's aim is not to deny or denigrate "truth" and "objectivity" but to demystify these "honorific" labels. If by relativism we mean epistemological

behaviorism, that there is no other way to justify knowledge claims or claims to truth than by appealing to those social practices which have been hammered out in the course of human history and are the forms of inquiry within which we distinguish what is true and false, what is objective and idiosyncratic, then Rorty advocates such a relativism. But this does not mean that "anything goes".<63>

Let us now examine the concept of personhood in light of Bernstein's interpretation of Rorty's relativism. Given epistemological behaviorism, a person will be, for Rorty, a being which we have decided is a person, based on our social practices, appealing to our human history.

First question: What is the extension of 'we'? Where 'we' refers to the class of all humans, an immediate problem presents itself. Conflicts between, say, Europeans and South Africans on who shall count as a person will be quite irresolvable given each culture's distinct histories, social practices, and "hammerings out". If we can only resort to appeals to these diverse histories and practices to justify our conception(s) of personhood, then it is not inconceivable that slavery, say, may be right (intentional lower case "r" on 'right') in one part of the world and wrong ("w") in another. It is beyond me how Rorty can deny this relativism. Further, as mentioned at the outset, no cross-cultural moral judgments will be possible within this framework, and all that would be left is "conversation", if that.

On the other hand, if 'we' refers to Rorty's community, within which he carries on, and contributes to, his part in the conversation, then it will be equally quite impossible to make

cross-cultural value judgments, and perhaps even just as impossible to talk at all meaningfully about other practices, let alone carrying on a conversation with the people immersed in those cultures. On either interpretation of 'we', then, there could be no force whatever to our condemnations of other people's practices, beliefs, desires, and so on, such as the current practice of apartheid in the Republic of South Africa.

Second question: What can Bernstein mean by saying that it is not the case that "anything goes"? The traditional position on this would be that there are some propositions that are True, some actions that are Right and some that are Wrong, quite independent of our histories, cultures, and social practices, i.e., wholly exclusive of how we perceive the world. This is as much as to say that there are universal truths, absolute moral values, and so on. This is to lay claim to specific foundations for going about things in the Correct manner, no matter how any one individual, or culture, or nation interprets perceptions of the world. Rorty is very clear in his full rejection of this traditional stance. Again and again in Philosophy and the Mirror of Nature he denies that epistemology, philosophy, and morality have any foundations whatever, i.e., Truths to which everyone, at all times, can appeal.

A further point the foundationalist might make is that if we give up the search for that which is True, Good, and Just, we will be driven to chaos. We will have no firm ground upon which to get a foothold; our systems will be built upon loose gravel and will

topple the moment disagreement approaches; no one will be able ever to lay claim to have finally gotten it all right. This last point is just where Rorty comes in. He would say that there can be very little sense in claiming ever to have finally gotten it all right. That is not what we're about. No one ever has gotten it right, using foundations, and no one could honestly expect such results. So, let's give up the search (stop beating a dead horse?) for Truth, Beauty, and Goodness and simply admit that what we've got, here and now, is all we could reasonably expect to have, here and now. What we must do is continue the conversation, learning from one another, without appeals to the Absolute, without some permanent, neutral, ahistorical framework with which to guide ourselves.

In light of this, I suspect that 'it is not the case that anything goes' is to mean that since we know nothing better than what we have here and now, and since what we have now commends and endorses some practices and condemns and rejects other practices, there are prima facie grounds for making judgments. Part of the meaning of this is that conversation must be opened up with those whose practices we disapprove of and an attempt must be made to either educate or be educated. In this way, "normal" discourse becomes laced with "abnormal" discourse and new knowledge is acquired. In this way things change, hopefully for the better, and we change as well, since we continue the process of redescribing ourselves as we form new descriptions of the world within which the conversation is formed and takes place.

Now, what has Rorty to say about relativism? It should come as no surprise that he has quite a number of things to say. First, he denies that anyone is a relativist in the traditional sense of holding the position that "...every belief on a certain topic, or perhaps about any topic, is as good as every other".<64> But this is, in fact, exactly the sort of relativism to which my charge refers. Second, Rorty writes,

Relativism certainly is self-refuting, but there is a difference between saying that every community is as good as every other and saying that we have to work out from the networks we are, from the communities with which we presently identify.<65>

I stated my primary thesis at the outset, i.e., that Rorty's position on the question of who shall count as a person is essentially relativistic. Now, if we take his first statement in the above paragraph as true, then it logically follows that he is no relativist, at least in the "traditional" sense. However, on his view of the traditional sense of relativism, terms such as "truth", "goodness", as well as "beauty" deserve, in that sense, capital first letters, yielding 'Truth', 'Goodness', and 'Beauty'. We might, then, acquiesce in Bernstein's defense of Rorty's relativism by admitting that we really cannot get out of our own skins and somehow discover The Truth about Goodness, or Beauty, or perhaps even about [P]ersonhood. At most we can simply detail and describe the necessary and sufficient conditions for personhood as we have come to understand these concepts, here and now, from our past experiences.

And if we should discover other cultures wherein different sets of criteria for personhood are employed, then what? The answer must be that we engage the members of these communities in conversation in order that each curious member might understand each of the others. And let's say we converse with such seriousness that we reach a point where we think we understand one another, but still disagree on who shall count as a person? What then?

According to Rorty, the conversation must continue. But more than this, I think, for understanding is just not the ultimate goal of conversation; neither is it consensus or agreement between conversants. Success is not to be judged as having finally gotten it Right about personhood (not even right); success is achieved if, and only if, the conversation continues.

The pragmatists tell us that the conversation which it is our moral duty to continue is merely our project, the European intellectual's form of life. It has no metaphysical nor epistemological guarantee of success. Further, and this is the crucial point, we do not know what "success" would mean except simply "continuance." We are not conversing because we have a goal, but because Socratic conversation is an activity which is its own goal.<66>

On one point, at least, Rorty is correct, viz., we are searching, must search, for a new sort of success. However, the semi-circular success of merely continuing the conversation, while admittedly a [g]ood thing, is just not enough success. What is wanted is agreement on certain topics within the conversation: Some will want a final solution to the problems of nuclear armament,

others will seek solutions to the problem of treatment or termination of infants with birth defects, while still others will desire a final resolution to apartheid. And everyone will decry the continuation of the conversation qua [S]uccess unless these "little" successes are achieved.

This is precisely where I think Rorty's relativism is most evident, that is, though he doesn't come right out and say it, it follows from his thesis that success between conversing parties, nations, and individuals who disagree on the moral status of apartheid, say, is contingent upon only keeping the conversation going. Success wouldn't be had by the achievement of freedom or equality for Black people in South Africa (who are, incidently, part of the conversation), but by continuance. My assertion remains: Rorty cannot make cross-cultural moral judgments without violating the thesis that we cannot get out of our own skins to discover some truth about the world. The same can be said for getting out of our skins to become members of a community so vastly at variance with our own original. And since there is no such thing as the "world community", we are stuck with understanding only a minute portion of the conversation.

I cautiously embrace Bernstein's characterization of conversation as he writes, "It means turning away from the obsession 'to get things right' and turning our attention to coping with the contingencies of human life".^{<67>} One of these contingencies is that people from different cultures might vehemently disagree with

one another on vital moral questions. At most, Rorty could assert that apartheid is wrong in his community, in that sub-conversation with which he is most intimately connected. Given this, I think Rorty is relativistic, since he will be forced into the position of affirming just what he holds no one (except the cooperative freshling) affirms, viz., that every community is as good (not 'Good') as every other on the view that they have each arisen from their own unique historical backgrounds. And even if truth becomes that which it is better for us to believe, it does not logically follow that the sheer continuance of the conversation will lead necessarily in that direction. But Rorty surely can not hope for this, for this is not success. Continuance is success. And if, in the continuing conversation, the apartheidist is brought around to the belief that Black humans are persons, fine. And if not, fine. At least the conversation continues.

It is still far from clear that it is not the case that anything goes in Rorty's program. One feature of the utter openmindedness in the characterization of the conversation is that it might be possible, for example, that the South African proponent of apartheid could bring us around to apartheid. If the "facts" about personhood are to be decided upon rather than discovered, and if there are no principles that can withstand the pressure of abnormal discourse, then in fact anything may be permissible at one time or another, past, present, and future. But more than this, if we are openminded enough to seriously entertain the possibility of

our minds being changed by the apartheidist, then our closedmindedness and dogmatism will show if we condemn racial segregation and discrimination against Blacks rather than listen to and engage in ongoing conversation with the advocates of this practice.

If we cannot condemn apartheid outright, without any further conversation, then anything goes. If we cannot prohibit, on moral grounds, the clubbing of baby seals, the methods of factory farming in current use, and the many instances of discriminatory treatment of human persons, here and now, and from all time, then it seems to me that anything goes. And if we can condemn these practices here and now, but leave open the possibility of their being permissible at some future time, given further knowledge via conversation, again, our condemnations will lack the necessary force for making our world better, and anything goes.

Chapter 4

What is a Person?

I

In this chapter, I will be concerned with a number of ideas. It is intended primarily as a presentation and defense of my own conception of the person. I take the term "person" to have at least two distinct senses, viz., the metaphysical and the moral. As we have seen, Daniel Dennett delimits each of these senses by roughly equating the metaphysical notion with the notion of an intelligent, conscious, feeling agent, and by roughly equating the moral notion of 'person' with "the notion of an agent who is accountable, who has both rights and responsibilities". We will see that Locke's conception of the person encompasses overtly the metaphysical sense, covertly the moral sense, and introduces the legal sense, which may or may not be construed as involving the moral sense. The primary focus of the present chapter, however, is moral personhood.

I divide the essay into a number of brief sections. Section 1 will lay out Locke's definition of 'person' and will argue against an interpretation under which Locke is presumed to have laid the foundation for the recent and current opinions of moral personhood. In Section 2 I will show that the metaphysical sense of 'person', deriving from Locke, captures what is an essential condition for moral personhood. It will be seen that this characteristic is a

necessary as well as a sufficient condition for moral personhood. Section 3 will augment the concept of the person set out in Section 2 by showing that much of the recent literature on personhood, when 'person' is taken in the moral sense, has failed to give a comprehensive account of moral personhood in terms of the ordinary ideas we have about it.

II

John Locke is the great ancestor of all thinkers attempting to define the word "person". He writes,

This being premised to find wherein personal identity consists, we must consider what Person stands for; which, I think, is a thinking intelligent Being, that has reason and reflection, and can consider it self as it self, the same thinking thing in different times and places; which it does only by that consciousness, which is inseparable from thinking, and as it seems to me essential to it...<68>

The question might be posed, How far have we come, since Locke, in our definition(s) of 'person'? While it is true that Locke was attempting to lay out a solution to the problem of personal identity, which is not our present problem, it seems to me that we can locate in Locke's definition the core of what has been recently written about the person. On the above definition, we see that a person must be conscious, self-conscious, and rational. And these three qualities are viewed by every one of the writers surveyed in Chapter 2 as at least necessary, if not sufficient, conditions for personhood.

Certainly Daniel Dennett would say that they are all necessary, though, given his skepticism about ever finding a/the set of sufficient conditions, he would disallow what Michael Tooley has written about self-consciousness being the sufficient condition for having a serious moral right to life, and hence, for being a person. Harry Frankfurt, on the other hand, would view these conditions as embodied in, or entailed by, his notion of second-order volitions, which is itself proposed, I think, as a sufficient condition. The one person, not on our list, who overtly speaks of self-consciousness and rationality as the relevant characteristics for personhood is Peter Singer, as when he says, "...I propose to use 'person' in the sense of a rational and self-conscious being, to capture those elements of the popular sense of 'human being' which are not covered by 'member of the species homo sapiens'."<69> What Singer calls the "popular" sense of person generally includes the idea that persons typically have the following characteristics: self-control, a sense of the future, a sense of the past, self-awareness, concern for others, curiosity, the ability to communicate, the ability to empathize with others, and so on.<70>

I want to suggest that, looking through Kant, who doesn't seem to have progressed in his conception of the person far beyond Locke, what we have experienced in 20th century thought on the nature of the person is merely a reworking of the Lockean notion of personhood applied to some contemporary moral issues. I think that taking Locke's definition of 'person' and using it the way it has been used

recently is really a type of category mistake in the Rylean vein.<71>

I've mentioned that when one is interested in the current conceptions of personhood, one usually brings up the problem of the status of the fetus as the paradigm hard case. One also thinks of the person in relation to such topics as animal rights, euthanasia, abortion, informed consent, corporate responsibility, and so on. All of these issues involve a conception of moral personhood inasmuch as they are all moral issues. Perhaps it just seems natural for us to appeal to a sense of personhood that might lend itself to solving some of the problems associated with these topics. But this is not so for Locke. 'Person', for Locke, is at once a metaphysical and a forensic term. He uses it in its metaphysical sense, for example, when he writes of the self as being identical with the person, as follows,

For since consciousness always accompanies thinking, and 'tis that, that makes every one to be, what he calls self; and thereby distinguishes himself from all other thinking things, in this alone consists personal Identity, i.e., the sameness of a rational Being; And as far as consciousness can be extended backwards to any past Action or Thought, so far reaches the Identity of that Person; it is the same self now it was then; and 'tis by the same self with this present one that now reflects on it, that that Action was done.<72>

Locke thus uses the problem of personal identity to establish the idea of "sameness of self" as one of the essential criteria for being a person. So, we see that there are very good grounds, that is, at least an historical basis, for our taking 'person' in a metaphysical sense.

But there is also the sense in which Locke uses 'person' as a legal (forensic) term that must be considered. He writes,

Person, as I take it, is the name for this self. Where-ever a Man finds, what he calls himself, there I think another may say is the same Person. It is a Forensick Term appropriating Actions and their Merit; and so belongs only to intelligent Agents capable of a Law, and Happiness and Misery. This personality extends itself beyond present existence to what is past, only by consciousness---whereby it becomes concerned and accountable.<73>

Persons are going to be those beings capable of acting under the consciousness of there being a law to which the action is applicable or inapplicable. One of its primary usages, then, is as a legal term, for Locke. A point I will speak to later is that it is not clear what sort of law we're talking about here, whether legal, moral, divine, or each of these. At this juncture, I am concerned with the legal notion of law.

We must not overlook the term "merit" in the passage above, however. For this just might be construed as a moral indicator. That is, one might well interpret Locke to mean that the merit any action has, or fails to have, is moral merit, whereby one is morally accountable for the action. I think this is an unnecessary though perhaps not a mistaken interpretation, if we concentrate merely on the word "merit". For even where he writes with an eye towards deservedness, which is in our own day primarily a moral term, he is certainly applying the notion to "Laws" as given by God, the breaking of which will deserve punishment on "the Great Day". What Locke fails to do is give an explicit statement of 'person' used in

the moral sense, unless we interpret 'person', used as forensic term, to include also the moral sense. I am inclined to think this is what Locke had in mind to do, but the fact that he doesn't causes concern. Furthermore, the merit any action has or fails to have ought, on the interpretation of 'person' as a strictly legal term, to be construed as legal merit, i.e., as action which is in accord with (applicable to), or out of accord with (inapplicable to), a legal law. We should say of Locke, then, that it is a misinterpretation to posit him as having used the term "person" in a strictly moral way in which we are accustomed to seeing it used in the literature today.

There is a sense, however, in which I think we may legitimately construe Locke's statements on persons to include the moral sense. This concerns the comment that the person (personality) "extends itself...[and] becomes concerned and accountable". The notions of concern and accountability seem to me pretty securely moral notions, whatever else they connote. We should say of any being that if it is concerned, it "fits" into the (our) moral community. Of course, it has to be moral concern, else none of this will make the least sense. At the same time, there is the useful idea of "accountability under the law", which may or may not include moral accountability, since I believe there may be legal laws that do not necessarily invoke any moral laws whatsoever. For example, there is a town in Southern California called Rancho Santa Fe. In that town, it is illegal to construct a building with any other architectural design

than Spanish. Anyone attempting to do so will be held legally accountable, but surely it would be far afield of rationality to say the person had done something immoral.

The whole trouble with distinguishing moral from legal persons is that there seems to be little, if any, difference in the notion of accountability for law and morality. The idea of "agency" in the law and in morality do not require different analyses. The contents of law and morality are clearly not identical, but that does not entail a different notion of agency, or person. I would be inclined, at this stage, to want to deny a difference between moral and legal personhood, relying on the notion of accountability to do the work in both senses. The dual ideas of person in the metaphysical and moral senses retain their importance for me, however. Locke fails to adequately distinguish the moral and metaphysical senses of personhood. He attempts to use the notion of personhood for the metaphysical issue of personal identity as well as the moral and legal issue of accountability, or personal responsibility in law and morality.

I would contend that to use Locke's definition of 'person', but mean by it something that goes beyond what Locke himself made explicit reference to, is to designate persons as members of a category in which, by the given definition, they do not obviously belong. We certainly do use 'person' in the metaphysical sense today, as can be well established by considering the recent literature on personal identity.<74> We also use 'person' as a

forensic term, as when we speculate on the legal status of such entities as business and professional corporations, ranging from relatively small medical, dental, and legal organizations to massive business conglomerates of such fame as IBM, AT&T, and Gulf Oil. In the legal sense, and perhaps in the moral sense, these corporations are persons, but in the metaphysical sense this can be denied, I think, with equanimity.

As I have said, the one sense in which I think Locke does not explicitly use the term "person" is the moral sense, although he can be interpreted as meaning as much. But this is the sense in which many of the writers today have adopted as "inescapable", as "an ineliminable part of our conceptual scheme"; and with good reason, because though it is not drawn out in extensive argumentation in Locke, we do take persons to be morally responsible (accountable) for their actions, and not simply legally responsible or responsible in the sense that justice will be meted out by a Supreme Being in some future time.

The answer to the question, How far have we come since Locke in our definition of the person?, has to be, Too far! It is a grave mistake, I think, to try to take Locke's definition of the person in the metaphysical sense as necessarily applicable to 'person' in the moral sense. Frankfurt's example of the wanton, as one who may be conscious, self-conscious, rational, and so on, but who does not have the capacity to (or chooses not to) care about her/his will, strikes me as a perfect example of a person in the metaphysical but

not the moral sense. Another example may be the oft referred to individual, the sociopath, who cannot make out the difference between right and wrong; who, in fact, is unable to understand, even after great amounts of training and instruction, the concept of doing something because it would be morally right to do it, or not do it because it would be morally wrong; in short, the individual who simply has no idea what those concepts mean and entail. This, I think is the perfect instance of amorality.

The sociopath, to take another example, may indeed be, to all outward appearances, a full, strict person, exhibiting a high degree of reasoning ability, complex communication, self-consciousness, self-control, and so on, including even some complex sort of freedom of the will. From this point of view we might locate the sociopath, like Frankfurt's wanton, in the class of metaphysical persons. But this cannot have any bearing on establishing grounds for calling this individual a "moral" person, with all the rights and responsibilities that go along with such a designation. I suggest that there are no grounds for calling a sociopath a moral person. In fact, just the opposite is true, and that is what makes the case of the sociopath so philosophically interesting and problematic.

As promised, I would say a word or two about laws, legal, moral and divine. Where human legal laws are in force, there may be disagreement as to whether any one involves the legislation of morality. And though there may or may not be such disagreement

where divine laws are said to exist, it is certainly not one of the outstanding assumptions of our century that any of the laws of nations invoke, or are intended to invoke, divine laws overtly. Even if Locke was of the opinion that where God's laws are in force, there also are moral laws in force, that does not lead to the conclusion either that all human laws are divine laws or that all human laws are moral laws. What wants establishing is that there really are such encumbrances as divine laws. In the face of our inability to prove such a thing, we lean to the idea that there are such things as moral laws as well as human (legal) laws. And though perhaps these are neither mutually exclusive nor coextensive, there are certainly many instances where we would want to say that so and so may have breached a legal sanction but be neither moral nor immoral in having done so, and vice-versa.

III

That a being might possess all the characteristics requisite for inclusion in the class of metaphysical persons, but fail to meet the requirements for moral personhood may strike some people as odd. Even those who agree with Dennett in holding that metaphysical personhood is a necessary condition for moral personhood may disagree that it is not a sufficient condition. The first two such people that come to mind are Harry Frankfurt and Michael Tooley, each of which holds that a certain metaphysical property (second-order volitions and self-consciousness, respectively) is an

essential condition for moral personhood. I think the truth of it is that metaphysical personhood is a necessary but not a sufficient condition for moral personhood, which is in close agreement with Dennett, but that moral personhood is a sufficient condition, although not a necessary condition, for metaphysical personhood. It would be well, at this point, to analyze the conditions that have been proposed for metaphysical and moral personhood, to see whether any one or more actually does entail moral personhood.

The list of conditions for personhood to be treated will be standard, I trust, most being cited by Dennett, Warren, and Frankfurt.<75> Each of the conditions is [to be] viewed as a quality or attribute or characteristic possessed by all and only those beings regarded, and those beings to be regarded, as persons, i.e., as a necessary or sufficient condition for personhood. The initial proposed conditions are: 1) consciousness, 2) rationality, 3) a personal attitude taken toward the being in question, 4) the ability to reciprocate the attitude, 5) the ability for complex communication, 6) self-consciousness. This list is certainly incomplete, for other writers have proposed other conditions that seem, prima facie, important for any study of the nature of the person. We can extend our list at least by two: 7) the ability for self-motivated activity, and 8) freedom of the will. The general consensus seems to be that this list comprises at least the overt necessary conditions for metaphysical personhood. I concur here, with the special reservation that the concept of self-motivated

activity be construed as somehow linked with the notion of having a life-plan, i.e., having an idea of what the future may or may not hold in store for oneself as well as the idea that there is possibility for influencing the events in that future that pertain to this self and its continuance. This condition must also be amended in such a way that it does not delete from personhood all those actual persons who are physically incapable of initiating any but the slightest action, to wit, quadraplegics and other severely disabled persons. The manner and mode of physical capacity seems to me completely irrelevant to the notion of moral personhood, except in the circumstance where this capacity is directly related to the individual's incapacity for moral responsibility for an action. But then, in that case, where action was in fact taken, a life-plan would have been proved.

The question that I am interested in, at this point, is, "Could any being possess any one or more, or all, of the conditions for personhood above and still not be a moral person?" My answer is affirmative. My answer is that there is one condition for moral personhood that all writers on personhood have failed to pick out explicitly, and this condition is not only necessary but sufficient.

I will take each of the proposed conditions (1)-(8) in turn. I will show that none of the conditions, taken in themselves, or taken together, embody qualities that imply moral personhood. To begin, then, if I am correct, an individual could be conscious and still not be a moral person. The typical domestic house cat is certainly

conscious, but few would take these creatures to be moral in the sense of having [many, if any] rights and being morally responsible for [many, if any, of] their actions.<76> The very concept of consciousness, in and of itself, or the having of consciousness itself, then, does not entail there being any involvement in the concept of morality. Consciousness is a necessary condition for moral personhood, but it is not a sufficient condition. In short, a conscious being is not necessarily a moral being.

But now consider an example of very complex thinking, including reasoning, on the part of another nonhuman animal. The story is retold in Dennett's "Conditions of Personhood", and goes like this. The owner of the dog is sitting in the only chair in which the dog is allowed to sleep. The dog is indicating to the owner that she "wants" to get in the chair. The owner pays no attention for awhile. Finally, the dog goes to the door, thus giving the owner the impression that she wants to go outside. The owner gets up from the chair, goes to the door to let the dog out. As the owner reaches the door, the dog goes back to the chair and climbs in. If one thinks about it, one will readily admit that this is quite sophisticated behavior for a dog. Not only is there a plan, there is, to all outward appearances, intentional deception, which involves reasoning at a level commensurate with that of perhaps a four or five year-old human child. The reasoning might have taken a form such as: "I want to get in the chair. If my owner gets out of the chair, I will be able to get in the chair. If I pretend to want

to go outside, my owner get out of the chair and will come to the door to let me outside. When my owner goes to the door, I will be able to get in the chair".

It is impossible, of course, to claim that the dog has any concept of "I", or "wanting", or "pretending". It is equally impossible to say just what form the dog's reasoning took, whether it has a concept of conditional propositions, and so on. The pattern of reasoning may have taken a form that we humans would not immediately recognize. But that there is reasoning taking place here, in whatever form and to whatever degree, seems to me too obvious to deny.

Now, the point at issue is whether a being who possesses the faculty of rationality is necessarily a moral being (as should be clear by now, I am not using the term "moral" in a commendatory sense). Put another way, is rationality itself somehow implicative of morality? From the example of the dog, the answer has to be negative. Even if the dog is acutely aware of what she intends, reasons out and actually carries out the plan, we still have no sense that there is any mindfulness, on the dog's part, that the action is either good or bad, right or wrong, valuable or disvaluable. I think, furthermore, that we would be quite unable to hold the dog morally responsible, for just this reason. The conclusion I draw from all of this is that even if it is claimed, for some being, that that being has the capacity for rationality, it does not follow that that being is thereby to be considered a moral

being in the sense of being held morally responsible for its actions. Hence, a being can possess one or more (i.e., if rationality entails both consciousness as well as self-consciousness), of the necessary conditions for metaphysical personhood, but fail to satisfy the criteria for moral personhood.

Number three on our list above amounts to this: a being who is considered to be a person by another person is a person. That is, if X is a person, and if X adopts a personal attitude toward Y, where X and Y are not identical, then Y is a person. There is a great deal to be said of this condition. First, it seems that if Z is not considered to be a person by any person in Z's community, including Z (let Z be the kind of individual who is not much given to metaphysical or moral speculation), then on this condition Z would be a nonperson. This looks quite like the thesis that "thinking makes it so". Would it follow, then, that "thinking it not so makes it not so"? That hardly seems likely, since we deny as much to the Afrikaner who might well deny the personhood of Black South Africans.

But further, both theses, i.e., "thinking makes it so" and "thinking it not so makes it not so", necessarily lead to the kind of relativism I rejected as implicit in the position of Richard Rorty in Chapter 3. This is so since if one person takes the "personhood stance" toward some individual while another person intentionally neglects to do just that, it seems we would have a person who was a nonperson. We realize that when our Aunt Penny

sets a place for her cat at the dinner table, when she speaks to her cat, asking it whether it would like fish or chicken, or saying, "what a smart little kitty you are for not crossing the street", when she speaks about her cat saying, "she just knows I don't like her to sharpen her claws on the seat of my Chippendale chair", when Penny dies and leaves one hundred shares of 3M Corporation stock to the feline, she is treating the cat as a person, or, at least, as if it were a person. Penny exhibits a great deal of care and concern for her cat. We all seem to do the same for our pets. What Penny does that we don't, certainly not everyone does anyway, is ascribe attributes of mind and action to it. What Penny does is treat her cat the way we treat persons, one of these ways involving having moral concern for her cat. But treating a being with moral concern is not to make it a person. While it is certainly true that Penny's cat does exhibit at least some of the necessary conditions for moral personhood, e.g., consciousness and being treated as an object of great moral concern by Penny, these aspects in themselves do not make it a moral person. We never affirm that, just because Penny thinks of her cat as a person, her cat is therefore necessarily a person. We may never mention it to Penny at all; we ourselves may treat her cat with kindness, and even keep our thoughts to ourselves when we're disgruntled or incredulous at having to sit at table with a cat. Our silence, however, is not to be construed as acquiescence.

Now, through all this reasoning, what is there to indicate that the personal attitude adopted by a person toward another being necessarily involves the idea that the individual is a person in the moral sense? None whatsoever. In fact, quite the contrary, for it may well be that if X adopts a personal attitude toward Y at all, the attitude might embody nothing more than taking Y to be a metaphysical person, as in the case of Aunt Penny's cat. This would not preclude taking Y as a moral person, but it also would not necessarily include it either. Hence, the mere adoption of some sort of personal attitude toward an individual does not entail the ascription of moral personhood.

The fourth item on the list of conditions for personhood, i.e., the ability to reciprocate the personal stance referred to in the third condition, seems to me also to be without moral connotations. We might characterize this fourth condition as a state of mind an individual may be in where he/she has the ability to respond to another individual as a person. I think what this condition amounts to is the ability to reciprocate an attitude toward another being as a person. The claim is that any being who can view, or treat, another being as a person is a person. But this is surely false when, as now, by 'person' we mean 'moral person'. For X might consider Y a person in a strictly legal (or metaphysical) sense of the term and not in the moral sense. X might think of Y's personhood as applying to aspects of metaphysics, or ontological qualities, and not as applying to features of morality. In short, X

just may not have any sort of moral consciousness whatever. Hence, Y might take the "personal" attitude with respect to X, qua metaphysical person, and X might be capable of reciprocating the like attitude precisely. That would not establish X, or Y for that matter, as a moral person.

It would follow, if 'person' had merely one sense, i.e., the moral, that the individual who adopted the personal stance would then be a moral person, because by the simple fact of thinking of the other individual as a moral person, the reciprocator will have engaged in a certain form of consciousness which explicitly assigns moral rights and responsibilities to the other being, and presumably, to her/himself as well. I would say that assigning moral rights and responsibilities to another being, and to oneself, would be a corollary of moral personhood. We would say, in that instance, that the reciprocator has an awareness of there being ways of treating the person that are morally acceptable and ways that are unacceptable; also ways of being treated that are moral, and others that are not. This reasoning is moot, however, for there are more than just one or two senses of 'person'. And it seems clear to me that merely and simply referring to someone as a person, or thinking of someone that he/she is a person, is quite insufficient to establish the relevant moral claim or connotation arising from that reference and/or consciousness.

The fifth proposed condition for personhood is the ability for complex communication. It does not concern me here whether the form

of communication is verbal, vocalized, written, signed, or what have you. The critical issue is whether any form of complex communication entails a moral claim, or, whether any being is a person in the moral sense solely because that being has "the capacity to communicate, by whatever means, messages of an indefinite variety of types, that is, not just with an indefinite number of possible contents, but on indefinitely many possible topics".<77>

It might be guessed that my analysis of this condition will be much like my analyses of the third and fourth conditions above. The hunch is correct, for I am persuaded that a generic interpretation of 'communication' results in our being able to think of a fair number of instances of beings, many of whom are indeed persons, who would be quite able to communicate, and hence have an at least rudimentary awareness of the concept of "meaning what one says", but who would not, from that reason alone, be described as being moral persons. For example, Alice says to Bernice, "I've balanced the checkbook, computed the amount of our ready cash, and have determined that we have just enough for the trip to Vancouver and the World's Fair". If we use our imagination, I think we could find some aspect of this example of communication that has moral connotations. For instance, by Alice including Bernice in the travel plans, we might construe her intent as somehow implying concern, i.e., moral concern, for Bernice. My intention, however, is to interpret what is communicated as strictly informative. What

is wanted, by this perspective, is an interpretation of what is communicated that will not render the example absurd.

Notwithstanding the sheer possibility of there being a different construal from mine of the Alice's intent, we have a case of fairly complex communication here (though certainly not as complex as could be had). And while we might well admit that for Alice to have made such an utterance she would have had to be conscious, rational, and able to adopt and reciprocate a personal attitude towards Bernice, it does not follow from all of this that her action connotes any explicit, or, for that matter even any implicit, moral implications. And this conclusion seems necessitated by the fact that none of the above mentioned conditions for personhood, in and of themselves, carry any moral weight. The ability for communication, or even the overt act of communicating, then, in whatever form, does not itself, or even when combined with rationality, consciousness, and the ability to adopt and reciprocate a personal stance toward another being, lead one to ascribe moral personhood to the bearer.

Self-consciousness is the sixth proposed condition for personhood. Michael Tooley writes,

In order for something to have a right to life it must now be the case, or it must have been the case at some time in the past, that the organism possesses the concept of a self as a continuing subject of experiences and other mental states, that it is such an entity, and that it believes that it is such an entity.<78>

That a person is a being with a right to life is affirmed by

Tooley. But more than merely affirmed, it is assumed. I find no argument in Tooley's writing for this identification, and perhaps none is needed, for he is, and we are, using 'person', and searching for the meaning of 'person', as a normative term.

However this may be, I find no reason to think that Tooley's overly complex definition of self-consciousness speaks directly to the normative concept of personhood. I believe I can, if I try hard enough, form a rather crude idea of myself as an enduring self, subject to many and various types of experiences, including mental experiences, such as forming an idea of myself as an enduring entity. I also believe that I believe, mostly dispositionally I think, that I am such a continuing entity. Now, subsequent to this vainglorious mental callisthenic, do I find a moral person at the core? Yes, but not solely on the account of my ability for Toolean self-consciousness. What I do find is a further aspect of myself considered as a metaphysical person, or, as a being who possesses another quality mysteriously linked to the capacity to get along in the multi-faceted world of work and play. I find that self-consciousness is another of my apparently intrinsic ontological characteristics. I also find that it is associated with my personhood as a moral agent, to presume, but not that it itself is imbued with the critical ability to render all self-conscious beings, including myself, moral persons.

It must be admitted, I think, that self-consciousness is a necessary condition for moral personhood, and hence, a necessary

condition for the possession of rights. But now what could establish it as a sufficient condition for either? There ought to be, but there isn't, some connecting idea from self-consciousness to that of rights, say, if self-consciousness is to be a sufficient condition. There ought to be some clear path from "x is self-conscious" to "x is a person in the moral sense", or to "x has rights". But there isn't. Self-consciousness entails consciousness, rationality, and, I think, the ability to adopt a personal attitude, at least with respect to oneself. But, where each of these has no necessary connection with moral personhood, the moral person, strictly a being with rights and responsibilities, does not somehow pop into existence when self-consciousness is added to the list.

What I find so difficult to accomplish here is to offer a real-life example of a being who obviously possesses self-consciousness, yet is not considered a person in the moral sense, nor is commonly considered a being with rights. The two examples I would like to point to would seem to be rather controversial for what I want to say. These examples are Frankfurt's wanton and the sociopath. Even if I could get a consensus about each of these individual's nonpersonhood, I think the onslaught of criticism would be terrifying on the point of their having no rights. But that is precisely what I would argue, i.e., that barring some quality that endows the sociopath with, say, the right not to be killed during sleep, this being does not possess that right. (This is far from

saying that there would be no wrongdoing were someone to actually kill this being during sleep, however. I will take up the issue further below in Section 3 and again in Chapter 5.)

The ability to engage in self-motivated activity is the seventh proposed condition for personhood. Mary Anne Warren places some limitations on this condition that are worth noting. She refers to self-motivated activity as "activity which is relatively independent of either genetic or direct external control".^{<79>} This idea of control echoes Joseph Fletcher's notions of two necessary conditions for personhood/humanhood, viz., self-control and the control of one's existence. He writes,

If an individual is not only not controllable by others (unless by force) but not controllable by the individual himself or herself, a low level of life is reached about on a par with that of a peramecium. If the condition cannot be rectified medically, so that means-ends behavior is out of the question, the individual is not a person, not ethically, and certainly not in the eyes of the law--just as a fetus is not legally a person.

It is of the nature of man that he is not helplessly subject to the blind workings of physical or physiological nature. He has only finite knowledge, freedom and initiative, but what he has of it is real and effective. Invincible ignorance and total helplessness are the antithesis of humanness, and to the degree that a man lacks control he is not responsible, and to be irresponsible is to be subpersonal.^{<80>}

Though Warren does not expand on the meaning of control or responsibility regarding self-motivated activity, it should be clear that there is a sense that the individual who possesses this characteristic is a moral being, but again, not in a commendatory sense. In the way Fletcher talks about control, we find that it is

a necessary condition for being held responsible for an action, but not, and this is the essential point of my analysis, a sufficient condition. I may be highly motivated to drive down to Dagwood's for dinner. Further, the motivation may not be the direct result of either genetic or extrinsic factors. And though I may very well be held responsible, and rightly so I think, for the action I take, it does not follow that any action I do take consequent to this motivation is necessarily a moral, rather than nonmoral, action. If I do take conscious, intentional moral action, then, ex hypothesi, I am morally responsible, and may and should be held accountable. It could only be under the assumption that all action is moral action that the condition of self-motivated activity could be taken to involve moral personhood as anything more than a necessary condition. Unless we are willing to embrace that assumption, and I am not, we may deny, without uneasiness, the claim that self-motivated activity is directly indicative of moral personhood.

Freedom of the will is the last proposed condition of personhood to be considered here. It might be said that any being who possessed freedom of the will would necessarily be a moral person. Certainly, free will is a necessary condition for moral personhood, otherwise no one could be counted as moral or immoral, as responsible for their actions in the moral sense of being responsible. It is equally certain that having free will would entail being rational, conscious, and perhaps even self-conscious. But if the latter three are not sufficient conditions for moral

personhood, what is added by freedom of the will to reach that end? Nothing, either on the interpretation of free will as "being able to do otherwise" or on Frankfurt's construal of free will as making one's second-order volitions effective. First, one could have the concept of "doing otherwise", and actually be able to "do otherwise", and still fail to reason to the conclusion of, or be conscious of, there being value or disvalue, or goodness or evil/badness in actually "doing otherwise".

Second, on Frankfurt's characterization of second-order volitions, one could desire to not have a specific desire for any number of reasons. I might desire to want to not smoke cigarettes, for instance, because I will probably live longer if I quit. On the other hand, I might desire to want to not use cigarettes because smoke causes an unpleasant odor in my office, or because I know that smoke is harmful to the operation of my computer. None of these desires seems to me to involve, necessarily, any moral claim, which is the heart of the matter. Hence, I could have a second-order desire which had virtually nothing to do with my being a person in the moral sense. While to have a second-order intention is to have a standard for first-order intentions, I find no necessary connection between having a standard and the standard being a moral, as opposed to an aesthetic, religious, scientific, or secular standard. Hence, freedom of the will, even in Frankfurt's sense, does not, in and of itself, embody a conception of normative personhood. But that is what we're looking for in the moral person, i.e., attributes that

give the being the moral status of having rights and responsibilities.

The necessary conclusion I arrive at from this is that there just might be an individual who was conscious, self-conscious, rational, able to communicate in various complex ways, able to engage in self motivated activity, able to act freely, able to adopt a personal attitude toward a being and reciprocate the same attitude but still be unable to conceive actions, events, or other individuals from a moral perspective. But hidden in this conclusion is what I think is a necessary and sufficient condition for moral personhood. It is nothing other than having the capacity for moral consciousness, i.e., having a concept of right and wrong, or, what I would argue amounts to the same thing, the ability to act from a belief that something (or other) is right or wrong. I think it will be readily seen that none of the other conditions for personhood, nor the set of conditions together, makes any overt claim to somehow involve moral consciousness. And this is crucial, since it is only on the condition that an individual is aware that the action taken was wrong that that individual is held to be morally blameworthy. Conversely, when someone does something we deem morally praiseworthy, but we later find out that that person had certain other nonmoral reasons for doing the act, we are inclined to withhold our praise. Much like Kant, we would say perhaps that the person was acting neither morally nor immorally. It's almost as if we would exclude the person from the moral community itself in such instances.

It seems like such a simple claim to have been overlooked by so many people, that moral personhood requires moral consciousness, i.e. that moral personhood necessitates and is necessitated by moral consciousness. But what else could it be? How could one get from being rational, self-conscious, able to communicate, etc., to being morally responsible for one's actions? Only if one is conscious of one's actions as being either morally good or bad, morally valuable or disvaluable, right or wrong, can one be held morally responsible for them.

Similarly, how could one proceed from consciousness, rationality, self-consciousness, and so on, to having rights? Like Tooley, Dennett, Warren, and a host of others, I conceive self-consciousness as a necessary condition for the possession of rights. I also believe that it is not a sufficient condition. This is because I take the term "person" in a strict sense, as Dennett does, as referring to an individual who has rights and responsibilities. Conversely, any being that is not a person has neither rights nor responsibilities. I see rights and responsibilities as bound together, and the possession of moral consciousness seems to me a necessary and sufficient condition for having rights as well as responsibilities.

The argument is this: Being a person is a necessary and sufficient condition for being a being with rights and responsibilities. Moral consciousness is a necessary and sufficient condition for being a person. Hence, moral consciousness is a

necessary and sufficient condition for having rights and responsibilities.

Symbolically: $(x) (Px \longleftrightarrow Rx)$

$(x) (Mx \longleftrightarrow Px)$

$(x) (Mx \longleftrightarrow Rx)$

where 'P' = 'is a person'; 'R' = 'is a being with rights and responsibilities'; 'M' = 'has moral consciousness'. The argument itself is formally valid. And I think the premises are true.

In the long run, it won't matter that we've reasoned to the conclusion, albeit indirectly, that the young child, say, i.e., one who has no moral sense/consciousness, is a nonperson with no rights or responsibilities. We have long recognized that there are responsibilities many times where no rights exist, and I see no harm in admitting that we shouldn't cause the young child unnecessary pain. But not because he/she is the bearer of rights. Rather, because he/she is a sentient creature, as are cats, dogs, dolphins, chickens, etc. Only persons have rights and responsibilities and, hence, it is persons who must look out for all sentient nonpersons.

By characterizing persons and nonpersons as I have, it seems to me that I've applied Ockham's Razor to the problem. What I have done is shave off a horde of unnecessary entities, i.e., rights of nonpersons, with nothing having been added to the list of entities. For, before, when we were under the delusion that the cat had the right not to be tortured, for instance, we still had the

duty not to torture it. Now, however, though I say the cat has no right not to be tortured, and the young child has no right not to be caused unnecessary pain, I retain the duties we have, qua persons, not to torture cats and to refrain from causing young children unnecessary pain. Hence, from a purely practical perspective, responsibilities of persons do all the work now that the rights of nonpersons and the duties of persons did before.

From what I have said, it can be seen that moral consciousness entails certain features analogous to some of the metaphysical conditions for personhood. Being morally conscious entails being rational, being conscious and self-conscious, being able to communicate, at least with oneself, or having the concept of "meaning" applicable to intentional action. Also, Dennett's condition about adopting a personal attitude toward a being and reciprocating such an attitude is explicitly entailed by having moral consciousness. And while actual freedom to "act otherwise" is not entailed by having a moral consciousness, having a concept of acting freely, i.e., being able to do otherwise, at least, if not Frankfurt's special case of second-order volitions, is entailed. We see, then, that the proposed necessary conditions for personhood really are necessary for personhood, but only in the sense that the sufficient condition entails each of the necessary conditions. Moral consciousness, then, is the necessary and sufficient condition for moral personhood.

I think there is some hidden evidence in the literature for the

idea that there just might be such a being as a metaphysical person who is not, at the same time, a moral person. We might point to Frankfurt's wanton as one example. Another is Bernard Williams' "amoralist",^{<81>} who might possess each of the common conditions for personhood, but fail in two crucial areas, which I would characterize as fitting my idea of moral consciousness: (a) a care, or concern for others, i.e., that there are right and wrong things to do to (for) others, and (b) a willingness to generalize from oneself to others, i.e., if it's right for me it must be right for others. Williams writes,

We might ask [the amoralist] first what motivations he does have. He is indifferent to moral considerations, but there are things that he cares about, and he has some real preferences and aims. They might be, presumably, pleasure or power; or they might be something much odder, such as some passion for collecting things. Now these ends in themselves do not exclude some acknowledgement of morality; what do we have to leave out to represent him as paying no such acknowledgment? Presumably such things as his caring about other people's interests, having any inclination to tell the truth or keep promises if it does not suit him to do so, being disposed to reject courses of action on the ground that they are unfair or dishonorable or selfish. These are some of the substantial materials of morality. We should perhaps also leave out a more formal aspect of morality, namely any disposition on his part to stand back and have the thought that if it is 'all right' for him to act in these ways, it must be 'all right' for others to act similarly against him. For if he is prepared to take this stance, we might be able to take a step towards saying that he was not a man without morality, but a man with a peculiar one.^{<82>}

If the amoralist is not the perfect example of metaphysical personhood failing to coincide with moral personhood, then I fear my battle is lost on this point. The following extended list of conditions for personhood seems to me almost exhaustive. I would

argue that Williams' amoralist could well be conceived as possessing each one of these aspects of metaphysical personhood.

- (1) the capacity to experience pleasure and/or pain;
- (2) the capacity for having desires;
- (3) the capacity for remembering past events;
- (4) the capacity for having expectations with respect to future events;
- (5) an awareness of the passage of time;
- (6) the property of being a continuing, conscious self, or subject of mental states, construed, in a minimal way, as nothing more than a construct out of appropriately related mental states;
- (7) the property of being a continuing, conscious self, construed as a pure ego, that is, as an entity that is distinct from the experiences and other mental states that it has;
- (8) the capacity for self-consciousness, that is, for awareness of the fact that one is a continuing, conscious subject of mental states;
- (9) the property of having mental states that involve propositional attitudes, such as beliefs and desires;
- (10) the capacity for having thought episodes, that is, states of consciousness involving intentionality;
- (11) the capacity for reasoning;
- (12) problem solving ability;
- (13) the property of being autonomous, that is, of having the capacity for making decisions based upon an evaluation of relevant considerations;
- (14) the capacity for using language;
- (15) the ability to interact socially with others.<83>

It will be noticed that none of the above fifteen possible conditions makes mention of moral consciousness. The closest is #15, though it certainly won't fit the bill, since interacting socially is one of the things even the sociopath or the wanton might accomplish without a wisp of the awareness necessary for us to ascribe moral agency. It might look as if #4 is a suitable candidate for involving a moral claim also, but this can't be, for there are all sorts of expectations we have about future events that are completely devoid of ethical content.

If I am correct in thinking that moral consciousness is a necessary and sufficient condition for personhood, then if each of the above suggested capacities actually is at least a necessary, though certainly not a sufficient, condition for moral personhood, anyone who has this sort of consciousness must also have each of the above suggested capacities. While I think this is so, i.e., that strict moral persons do possess each of the above, to some degree or other, I don't know how to prove it. In fact, it's worse than that; I don't even know what would count as a proof. Presumably I would need to cite some extensive psychological evidence to the effect that the majority of individuals we take to be persons do, in reality, possess those capacities. However, what that would show, at best, is that some moral persons possess them. It would not show that all do, or that all must. I suppose I must embrace a kind of skepticism about this; something along the lines of Dennett's and Puccetti's doubts regarding the conditions for personhood themselves.

The essential point I want to make clear at this juncture is that when we run over the fifteen in our minds, what we come up with, when applied to some individual or other, is a person in a distinctly metaphysical sense i.e. the amoralist. Where could the individual, as moral person, be located here? As I look at them one by one, as I combine them this way and that, e.g., take numbers 2 and 8, I find qualities that a being might possess as ontological particulars, if you will. What I do not find is the moral person,

the one to be praised, say, for sharing her/his lunch with a workmate; the one to be blamed for knowingly keeping the seventy-five cents the clerk gives in over-change. Any being who possesses each of the above characteristics certainly is a highly complex information processing organism, capable of many activities in the world. However, unless this individual also has the consciousness that at least some of her/his actions may be either morally right, or morally wrong, this being lacks what is necessary as well as sufficient for being taken for a morally responsible person. To move from the metaphysical to the moral solely from the possession of metaphysical properties is surely a categorial as well as a logical mistake.

IV

We find the great majority of the literature on personhood, especially in the last fifteen to twenty years, riddled with the notion of rights. Many have written as though a person is just a bundle of rights, as is so in the case of Michael Tooley, who, identifies persons with those that have a serious moral right to live, but who also does not deny that persons have other rights as well. And we do typically think of persons as having more rights than just the right to live, e.g., the rights to freedom of speech, to practice religion as one chooses, or no religion at all, the right to privacy, and so on. In fact, if I am not mistaken, there is one thing for which many people would almost unthinkingly lay

down their lives, namely, their freedom from enslavement, which most would affirm as a primary, or perhaps even a natural, right. It is an odd occurrence that no one has proposed possession of the concept of freedom as a necessary condition for personhood. This possible "person-making quality" might be embodied in having a sense of futurity, though I don't recall any writer pointing this out explicitly. To make it a plausible necessary condition for personhood would only involve establishing that this special kind of consciousness is important for having the capacity for exercising the right to the freedom itself. It would be on a par with self-consciousness as well as moral consciousness, other special sorts of consciousness.

There are perhaps thousands of rights that have been and are claimed by various individuals in various parts of the world, some of which have been denied even by those in the same community. For example, there has been a great appeal to the people of this and other countries that the people of the starving nations around the globe have a right to a minimal daily amount of nourishing food and drink. These people, it is claimed, also have the right to medical supplies, facilities, and personnel in proportion to their need. Again, the Klamath and Hoopa Indians of the Pacific Northwest are said to have a right to retain their cultural heritages even in the rapidly changing environment in which they find themselves competing for places in schools and in the labor market. And again, the unemployed single parent of four children can claim, as a right,

food stamps and AFDC (Aid to Families with Dependent Children). We claim rights to information, health care, adequate legal defense, free trade, equal consideration, and so on and so on. And even though it has always been persons who have claimed these rights, or so it seems, they have sometimes been claimed on behalf, if we are to believe such people as Peter Singer, Mary Anne Warren, and Michael Tooley, of some nonpersons.

But, persons are more than merely bearers of rights, as Daniel Callahan has pointed out. Persons have rights, that is true, but they also have responsibilities, moral responsibilities. I will maintain, along with Singer, Warren, and Tooley, that fetuses and infants have no right to life. But much more, even, than this. I will maintain that they have no rights whatever, not even the right not to be tortured. And so with common domestic cats, dogs, turtles, parakeets, and goldfish; the severely mentally retarded, the irreversibly comatose, children up to around the age of two years old,<84> all wild animals (human as well as nonhuman), wantons, and sociopaths. In short, I maintain that any being that does not have the capacity for moral consciousness is not a bearer of rights and responsibilities. And since I think Tooley is quite mistaken that our ordinary notion of the person is simply as a bearer of rights, and especially the right to life, any of the above mentioned examples will be moral nonpersons unless they can be legitimately taken to have moral responsibilities. On the other hand, any being that does have the capacity for moral consciousness,

who can have moral responsibilities, whether a human or nonhuman, whether Terran, Antipodean, Venusian, or any other Extragalactic, I would argue to be a moral person in the full, thick, and strict sense of that term.

Roslyn Weiss is one person who has argued forcefully for the importance of duties in connection with the personhood debate.<85> We would be severely limited with only a rights-based morality with which to guide our actions. A mean must be reached between a rights-based and a duty-based (or agent-based) morality, the result of which ought to yield a morality more in line with our ordinary sensibilities. Relying solely on a rights-based morality would force us into the very uncomfortable position of saying that anyone who was not a person could be killed, or tortured, or deprived of food and water, at our own discretion. But this surely goes against at least our sentimental sensibilities, as well as our sense of rationality. Weiss, discussing the notion of rights, says,

Is it in fact only wrong to violate rights? On Tooley's view, or any view in which rights form the sole basis of morality, this is indeed the case. It must turn out that unless kittens have the right not to be tortured there is nothing wrong with torturing them, and unless fetuses, infants, kittens, the permanently comatose, the severely retarded (and others?) have the right to life, it is not wrong to kill them at will.<86>

But we do not think we can treat beings that we would typically deny inclusion in the class of persons (metaphysical, legal, or moral) in just any way. We set responsibilities for ourselves, as when we give back the seventy-five cents over-change, or as when we think

better of leaving our dog in the car on a hot day with the windows closed, or as when a physician seeks to truly inform an unconscious patient's advocates about the nature of her/his medical condition in order to determine what that individual's wishes might be for treatment, care, maintainance, etc. In each of these cases, and in thousands of others, it is not clear to me that we much consider (or need to) whether and what moral rights the individual in question possesses. We take ourselves to have certain responsibilities toward persons as well as some nonpersons, I think, irrespective of their individual rights, if we think they indeed have any. And many times we may consider their rights, if they are viewed as having any, only after we come to a confusion about what our responsibilities are in the situation.

Some will say, perhaps, that I am guilty here of committing the fallacy of hasty generalization. Whereas I may see myself as having responsibilities to many, that may not be a universal characteristic. Now, if I were merely giving a psychological account of how we generally think about our responsibilities, the charge of fallacious reasoning would surely be in order. However, this is not what I intend. What I want to establish is that we certainly do have good grounds for not treating many nonpersons any way we might like, but not because we think they have any rights whatsoever.

I knew a boy once who liked to torment the cats in our neighborhood. This same boy also had a penchant for pouring lighter

fluid on snails and setting them on fire.<87> Now, given that I do not believe that cats and snails have any rights at all, since cats are nonpersons strictly and snails lack even the minimal essential necessary conditions for personhood (metaphysical and moral), including the mental capacity for having interests,<88> I must either say that the boy does no wrong by bouncing stones off the cat's head and setting the snail on fire, or admit that these actions offend my sense of morality. I do admit it, and think it does so precisely because I think we have a duty to the cat and snail not to cause them unnecessary pain. That does not transfer into the claim that, therefore, the cat and snail have the right not to be tortured. For if they did, then what would be the reason(s) for spending so much time and effort delineating the list of metaphysical and moral conditions for personhood? There would be no practical or theoretical reasons, for the examples of the cat and the snail would have destroyed the very purpose of setting out the conditions in the first place, since we would have at least two beings on our hands which satisfied at most two or three of the conditions (capacity to feel pain, consciousness) but would be said to have rights. I conclude, then, that if it is wrong to torture cats and snails, then if they have no rights, it must be wrong because we have a responsibility to the cat and the snail to not torture them.

The entire point at issue here is with the limited criteria for judging acts as moral or immoral that has been prevalent in the

recent writing on moral personhood. Adopting a rights-based morality to the exclusion of the importance of duties would obviously leave us with problematic cases. I take it, then, that we cannot get away with the lopsided view of characterizing persons as merely bearers of rights. The only plausible alternative is to say that persons are beings that have rights and responsibilities.

I think Weiss, even in her biting attack of the Toolean program for thinking about persons, has missed this crucial point. She makes it clear that mixing the rights-based with a agent-based morality is much to be preferred to either one alone. But she doesn't draw the conclusion that persons are to be seen as possessing rights and duties and not just as bearers of rights, as we find in most of the literature. Rather, she argues that getting seriously clear about the concept of a person is not all it's cracked up to be, i.e., in terms of settling some of the moral problems we continuously encounter, such as the moral status of the fetus. 'Person' can't do such a big job by itself, she claims.

Her argument seems sound to me. In fact, my last chapter will attempt to show that whether or not the fetus is a person has no bearing on whether or not it is morally permissible to discontinue its existence. But now, if we take person to be a being with rights and responsibilities, then we're not constrained to make 'person' the deciding concept in moral disputes. Instead, we have the timeworn concepts of rights and responsibilities themselves to do the double duty. It's almost as if we're back to the beginning of

all serious moral inquiry, since we will continue to ask after the nature of these two concepts. What has been accomplished, with all the talk, from Locke, Reid, and Kant to Callahan, Noonan, and Puccetti in the present day, about the conditions or qualities or attributes a being must possess in order to be a person, is a distinct clarity about the nature of any being that claims, is claimed, can be claimed, to have rights and responsibilities. This, in itself, seems to me a wholly worthwhile endeavor to have been undertaken for so many centuries.

Chapter 5

Personhood and Potential<89>

I

This last chapter is somewhat of a departure from the subject matter of the previous four. That is, my major concern has been with the conditions of personhood and not with the various practical moral issues in which the concept of the person figures so significantly. (When I use "person", I mean "person in the moral sense" unless otherwise indicated.) But, now that I have addressed those manifold proposed conditions, and have added my own, I should like, in this chapter, to discuss a topic that is at the periphery of the conditions themselves as well as the issues, viz., the concept of potentiality as applied to persons and nonpersons alike.

I will make some brief disclamatory comments regarding a variety of beings who are seemingly at the edges of personhood. The bulk of this chapter will then be given over to a discussion of the status of the fetus, qua potential person. I conceive this treatment to be exemplary of the idea that the term "person" is not at the heart of [many of] our moral dilemmas, as I mentioned at the close of Chapter 4. And this is to be considered the primary purpose of the present chapter.

For all that, the "problem" of the status of the fetus will not be solved here, i.e., if this problem is conceived as having to do with the fetus' actual place in the moral scheme of things, or if

the problem is seen as having to do with how fetuses ought to be treated in this or that circumstance. That is not the point, or the goal. Neither will I attempt to resolve other crucial practical moral issues, such as abortion and the rights and responsibilities of the mother and father, animal rights, euthanasia, etc. At most, these topics will receive cursory mention when, in the course of the discussion, they seem to me to want attention.

II

It will be agreed all 'round, I think, that some nonpersons will become persons in time, and some nonpersons will not. Of the latter, some have been persons previously and some have not. There is a certain range of nonpersons, however, that no one seriously considers to be in the class of potential persons. These include rocks, books, clocks, and almost every other nonorganic inanimate thing. I say "almost" because there is a question concerning the "intelligence" factor applied to some computers that quite naturally leads us to think about the plausibility of actually referring to a computer as a person. I believe that some people do think it a thesis to be seriously considered and I wonder what might legitimately be said about the computer, qua person, as a bearer of responsibilities as well as rights. Unhappily, interesting as they are, the scope of this chapter will not allow for an analysis of these notions.

I will be concerned here only with animate life forms

considered as potential persons. Hence, the person who is now dead, for example, does not concern me. It is not without some puzzlement, however, that I refer to "dead persons". I take it that the person (or self, or soul, or "I") who previously inhabited the now lifeless body is not a candidate for potential personhood, unless we posit some sort of "transmigration of souls" (to use an ancient general term), or reincarnation or eternal return. But in that case, i.e., where the person isn't really dead, but still exists in some form or other not detected through empirical means, I think the personhood of the being in question would never have been lost, so that the question of potential would never arise. Hence, "past persons" is either a misnomer or a non-referring term. In either case, this subject is beyond the outline of this chapter.

Notwithstanding, there are cases at the edges of life, human and nonhuman, that give some trouble. There is a sense in which an elderly senile man, say, who slips in and out of lucid consciousness, is only a potential person when he is in a state of mind beyond that which would normally be taken to be adequate for giving informed consent for medical treatment. The potential I refer to here has to do with the man regaining lucid consciousness. But there seems to be a real problem in this instance with respect to the rights and responsibilities the man possesses, that is, if he possesses any at all. On the one hand, it would not be acceptable to many people to simply deny him any rights whatever, for it might be said that he has the right not to be subjected to any form of

treatment that he would not have consented to while in a state of lucid consciousness. On the other hand, many, including myself, will simply not agree that you have a strict person on your hands unless that being is capable, perhaps at will, where this does not contradict the example, of attaining lucid consciousness, which the man, ex hypothesi, is not.<90>

At the other end of life, we have the standard hard case, i.e., the human fetus. This is the instance of potential personhood I will take up directly here below in Section 2. For now, let me say that I see no relevant difference between the potential a normal healthy human fetus has for achieving the entire set of necessary and sufficient conditions for strict personhood and the potential the man above has for regaining lucid consciousness, with the proviso, of course, that the latter is possible.

There is a middle area, between these borders on the continuum of life, that is rather dark and unknown. Those beings whom we find here trouble us in ways largely unspoken. They are the forever children, the ones we shelter from harm, from the world at-large, from themselves and others, and even, I think, from personhood. They are the mentally retarded. I am not referring here to the severely mentally retarded, whom I think may be classed as nonpersons with no qualms, who have no potential whatsoever for possession of the moral consciousness requisite for moral personhood. Rather, I am referring to the perpetual four year old, who has the capacity to dress, eat without assistance, draw simple

pictures, apparently take delight in the world that surrounds them, and such like. Perhaps the answer here is that they are to be viewed as potential persons. It is one of the most difficult things, if it is not indeed impossible, to actually determine whether someone has the capacity for moral consciousness, no matter if that someone can use language or not. This is so when referring even to a human adult. When, on the other hand, one attempts to elicit a genuine moral response from a normal child, it's worse than getting them to eat spinach. It seems that only a being's actions can speak for their abilities in cases such as these. Taking the mentally retarded to be potential persons, then, what I will say about moral rights and responsibilities as applied to fetuses and infants will apply, mutatis mutandis, to these beings as well.

However, it may well be that if we could know that some being who was mentally retarded would never attain strict personhood, we could count that being as a latent person, if the following definition is adequate to characterize that category.

X is a latent person if and only if X has all, or almost all, of the properties of a positive sort that together would be causally sufficient to bring it about that X gives rise to a person, together with one or more properties that will block a causal process of the sort in question.<91>

Given the degree to which latent persons possess one or more, though not all, of the conditions for strict personhood, what I will say regarding potential persons will hold for them as well.

The case of nonhuman animals is not unlike that of any

creature of whom the term "person" may or may not be applicable. Some will attribute personhood to the dog that rescues its master from a burning house. Some will attribute personhood to the cat that nuzzles up close and purrs at dinner time. Some will attribute personhood to the chimpanzee that uses American Sign Language and gets a banana for giving the "correct" response. Some will attribute personhood to the bottlenosed dolphin because they play in the waves, riding in them as a surfer rides on them. The question here is, and always is whenever one contemplates the plausibility of ascribing moral personhood to some creature, Does it have the capacity for moral consciousness?

There can be no nonspeciesist reason for disallowing nonhuman beings from inclusion in the class of moral persons when and if any of them can be shown to possess the capacity for moral consciousness.<92> 'Person' cannot be taken to be applicable to only humans, any more than it can be taken to be reserved only for white humans, or white males, or white human Greek male of the middle to upper economic, social, or political class. Even if, as Dennett might say, 'human' and 'person' appear to be coextensively referenced locally, that in itself does not prove the existence of some sacred relation between the concepts which are founded on reason (human or divine), rather than on the historical parameters of our, and other's, cultures.

III

With this much said, I will now proceed to defend the following thesis: By virtue of the potential a human fetus has for becoming a person, it must be considered, for practical purposes only, as possessing as much right to life as any adult human being who is considered a person strictly. The position I shall argue for and defend is much like that which is espoused by such conservatives as John Noonan, i.e., that the right to life of a human zygote is to be considered as present from the moment of conception.<93> My position is not that the fetus actually does have a right to life, however. I cannot argue for that thesis, because I do not believe the fetus is a person, i.e., a being whom I take to have the capacity for moral consciousness and to have rights and responsibilities. The guiding principle behind the contention that we must treat the fetus as though it had a right to life is something like what Michael Tooley has called the "potentiality principle" and is well formulated, though not embraced, by Joel Feinberg as follows:

All and only those creatures who either actually or potentially possess c (that is, who either have c now or would come to have c in the natural course of events) are moral persons now, fully protected by the rule against homicide.<94>

where 'c' refers to either a sufficient condition or the set of sufficient conditions for personhood. I prefer this version of the

potentiality principle to L.E. Carrier's more strict and explicitly speciesist account that follows:

There is some unknown property P, possessed by human fetuses and infants such that: (1) There is a scientific law L to the effect that any organism with P will normally come to possess a distinctively human consciousness at some later time. (2) Given the lawlike relationship between P and a distinctively human consciousness, anything possessing both P and a basic, rudimentary consciousness has a right to life in the degree possessed by an adult human. (3) If P were not related to a distinctively human consciousness in this lawlike way, then the possession of P itself would not suffice to give anything possessing P a right to life. (4) Even granting the lawlike connection between P and a distinctively human consciousness, the possession of P alone does not suffice to grant its possessor a right to life.<95>

Feinberg's statement of the principle is, I believe, more acceptable from two further points of view; first, that it makes no existential claim regarding the infant or fetus, whereas Carrier's does just that, and explicitly. Second, it does not expressly refer to the right to life of the being with the potential in question. This may be no serious objection, given that Carrier is primarily concerned to delimit the conditions a being must satisfy for it to have a right to life, but it still piques one's interest whenever a writer fails to enjoin the concept of responsibilities with talk about rights. Feinberg, however, mentions neither rights nor responsibilities, but rather settles on the statement that the creature who possesses c is "fully protected by the rule against homicide", which may be construed from the side of the moral subject as well as from that of the moral object.<96>

Now, I see every reason to adopt Tooley's "vague characterization of the range" of potential persons, even though I disagree quite vehemently with his ultimate conclusions regarding abortion and infanticide. His definition is,

X is a potential person if and only if X has all, or almost all, of the properties of a positive sort that together would be causally sufficient to bring it about that X gives rise to a person, and there are no factors present within X that would block the causal progress in question.<97>

The argument, then, is that since all normal fetuses will come to possess one or more or perhaps all of the proposed conditions for personhood, they, i.e., the fetuses, are to be viewed as moral beings with a right to live from the moment this potentiality obtains, viz., no earlier and no later than conception. And as with all arguments, there is decisive reasoning underlying the potentiality principle. It is maintained that since it is prima facie wrong to kill a being who now actually possesses the conditions for personhood, it is prima facie wrong to kill a being who will, in time, come to possess these qualities.

There is a distinct advantage to accepting a position which espouses some form of the potentiality principle over more liberal positions which consciously avoid embracing any form of the potentiality principle. The conservative need not point to what many have forcefully argued to be arbitrary stages on the continuum from the conception of the fetus to the birth of the infant. These stages are most typically listed as: 1) implantation, 2) the

commencement of brain activity, 3) quickening, 4) viability, and 5) birth itself.<98> Various and diverse philosophers have convincingly maintained that none of these stages is clearly person-producing, i.e., it is at none of these points that the fetus acquires any of the proposed conditions for personhood. In fact, the one condition widely held to be the most significant for determining personhood, i.e., self-consciousness, is not secured by a human being until well after birth. I would argue likewise for the possession of moral consciousness.

In opting for post-birth personhood, Michael Tooley presents what may be taken as a serious problem for anyone attempting to base an argument for the personhood of the fetus (or any other potential person) on the potentiality criterion.<99> Precisely, any being who possesses the potential for possessing c does not actually possess c. The absence of c shows, on Tooley's view, the absence of personhood. In effect, potential persons are not, yet, actual persons.

By hypothesis, it is true that potential persons are not actual persons. However, as mentioned, my argument is not intended to establish the personhood of potential persons. Rather, my hope is to show why potential persons must be considered and treated as though they were persons. I am concerned to show that the absence of actual personhood need not (should not, in the case of the fetus) entail the moral permissiveness of the deprivation of its continued existence. I argue from analogy, as follows: If a potential person

(fetus X) has little or no life-rights, and the reason for this is because that being is not a strict person but merely a potential person, then since each of the conditions for personhood are only potentially present in any given actual person (adult Y), at any given time, then no potential or actual person has any of the stipulated rights conditioned by personhood except when such potential or actual person displays one or more of the conditions. This entails that actual personhood is a function of manifesting one or more of the conditions for personhood.

For example, if the concept of an enduring self is a necessary condition for personhood, and if Y at time t is not thinking of Y as an enduring self, then Y at t is not doing what a being must do in order to be a person. Moreover, it is not enough to appeal to Y's potential for thinking of itself as an enduring self, for even X has this potential. The only distinction that can be made here is that Y has had the concept of an enduring self in the past, while X has not. (As will become clear further on, it is not obvious that this distinction is relevant in just the right way to establish Y as a person and X as a nonperson.) But for now, given a healthy fetus, I suggest that the probability differential between the fetus not someday having the concept of an enduring self and that Y will not again have a like concept is not great enough to warrant the decision that Y should be while X should not be treated as a person. The distinction is seen now to rest on potential in both cases. Indulging in a slight neologism, if neither X nor Y are

personing, that is, actually manifesting one or more of the conditions for personhood, then both may be seen simply as potential persons. However, as I would have it, both must be considered persons with all the privileges appertaining to that title, including life-rights.<100>

It must be borne in mind throughout this chapter that persons are not, however else one chooses to view them, merely beings with rights. As was established in Chapter 4, persons are beings with moral responsibilities as well as moral rights. Making this distinction will be absolutely crucial for any position that refers to the concepts of being treated like or unlike a moral person and treating beings like or unlike moral persons. Since the fetus is not a moral person, there is no question of its treating some other being like or unlike a person. However, it may be treated in ways that are like and unlike ways that are morally appropriate only for strict persons. There would be no sense in asking about the fetus' moral responsibility, since it is not at a sufficient level of mental capacity to be capable of committing an act. However, the fetus can be acted on. And it is only persons who are responsible for acting on other persons and nonpersons. The whole idea of considering a fetus as a person for practical moral purposes is built on the notion that only persons can act and only persons can have responsibilities.

Tooley, in his paper "A Defense of Abortion and Infanticide",<101> seeks partially to overcome the above criticisms

regarding the conditions for actual personhood. On the surface it even looks as if he succeeds. He introduces the concept of dispositional states, not new to philosophers of language or mind. Essentially, Tooley maintains that temporarily unconscious persons, and those who have been manipulated in one way or another, who either cannot exercise free will at that moment, or who have lost self-consciousness temporarily, are, if they have been in the past, still persons with a serious moral right to life.

For instance, take a sleeping person, Don. We would want to say that even though Don is not actually manifesting any of those traits by which we judge beings to be persons, still, he has a most serious right not to be killed while sleeping. One of the reasons for this is that we take sleeping persons to be in dispositional states. If Don is awakened and asked if he has any plans for the day, the chances are good that the response will be affirmative. While he was sleeping, he had dispositions to behave in certain ways, i.e., with respect to future plans, beliefs, desires, fears, and so on.

Now let's say that Don, on January 27, 1987, has the desire, and plans, to take the family to the zoo on January 28, 1987. We want to say that during the night, the time transition between January 27th and 28th, during Don's sleep, he still has those desires and plans. In essence, he has those plans and desires even when he is not thinking about them, such as when his mind is engaged in other matters. (Perhaps a clearer example of a dispositional

state is this: I believe that two plus three is equivalent to five. I believe it all the time, and not just when I happen to bring it to mind or happen to be engaged in some action which expressly manifests that belief.)

Granting that Don, while sleeping, is to be considered a being to which the rule against homicide applies for his own protection precisely because of the dispositional state(s) he is in, I suggest that one characteristic of all dispositional states is that of the potential to behave in certain ways, which is certainly different, and distinct, from actually behaving in those ways. It will follow that since potential is a significant trait or element of dispositional states, and since those who are in such states are considered protected against homicide, then, fetuses, because of their potential, are to be considered protected against homicide as well. In one sense, we can say that, though the fetus is a nonperson strictly, it ought to be treated as if it were a person.

Let us take an example and distinguish between three levels, or orders, of the propositional attitude desires-that. Consider the proposition,

(a) Don desires that a trip to the zoo take place at time t.

This proposition is different from

(b) Don desires, at t, that a trip to the zoo take place at t₁.

This difference could be significant, since (a) is vague about just when Don is doing the desiring, and it may very well be important for Don's moral status to [be able to] distinguish when Don is doing the desiring.

At this point I am not at all sure about the significance of the arrangement, or sequence, or rank of the of the levels to be discussed, and prefer to leave that an open question, since it will have no determinable affect upon the conclusions I intend to draw from this analysis.

I should wish to say that Level Three (L-3) is generally last in chronological order. It is the manifestation of the fulfilling of the desire for a thing. For example, as per (a), if Don desires that a trip to the zoo take place, then Don is at L-3 when he is, say, driving to the zoo, or somehow bringing about the state to which the desire refers. Merely to desire that a trip to the zoo take place is not identical with getting to the zoo. Now, though in this example it happens to be the case that Don had the desire prior to its manifestation, i.e., prior to its being fulfilled, it is conceivable, conversely, for Don to have somehow gotten to the zoo without overtly wanting to go there, as if by accident, such as taking the wrong freeway exit, and then, while at the zoo, to have the desire to be there.

Level Two (L-2) of the propositional attitude desires-that may conveniently be characterized as a mental activity, involving the actual desiring itself. This is not comprised of any physical

activity, save the corresponding brain state(s), if there indeed is/are any. At Level-2 is the bare desire, i.e., the occurrent desire, presenting itself as a state of mind. This level is not dispositional insofar as there is action taking place, i.e., the act of desiring. (I trust that our general lack of knowledge concerning the actual working(s) of the mind and/or brain is sufficient to elicit sympathy in the reader for the necessity of this imprecise explication of L-2.)

Level One (L-1) is the dispositional level of desires-that. It is the level at which no actual thinking or acting occurs regarding that which is desired. It is a level of desire only in the sense that when Don is at L-1, he is disposed to behave in certain ways. This is as much as to say that he is in a state where there is the potential to attain L-2 and/or L-3. There is nothing actual about L-1, for at this level Don is neither actually desiring nor manifesting a desire by somehow bringing about the thing to which the desire refers. At L-1 Don has the potential for reaching levels two and/or three, but is at neither in any actual way.

But now what about the fetus? Certainly it is at none of the levels described above. It neither desires, acts in any intentional manner, nor is it disposed to act in any specific way. Nonetheless, like Don at L-1, the fetus has the potential to attain levels two and/or three. Hence, if Don at L-1 is considered to be protected by the rule against homicide, in virtue of his potential for attaining L-2 or L-3, then the fetus, in virtue of its potential, is to be

considered as protected by the rule against homicide as well. And if Don, at L-1, is not to be considered as protected by the rule against homicide, then it is permissible to take Don's life at L-1. But we do consider Don to be protected by this rule during sleep, during other forms of temporary unconsciousness, when brainwashed or drugged, and so on. Hence, to be consistent, we must also take the fetus to be protected at the moment of conception, when the potential for reaching L-2 and L-3 becomes actual.<102>

I would be foolish not to be cautious regarding ways of talking about the sleeping Don and the fetus as potential persons. While it seems to be becoming almost natural for many people to refer to, and think of, the fetus as a nonperson (perhaps some version of Tooley's "argument from potential" is carrying the day), it will strike the majority of people as a blatant absurdity to regard any normally functioning adult human being as a nonperson. The reason for this is clear, I think. They would ask, How can any sense be made of the concept of the person when said person slips into and out of personhood merely by going to sleep and waking up? Sense in the following way can be made of such a nonintuitive notion: Don joins the Navy and is stationed aboard the U.S.S. Coral Sea. Unbeknownst to everyone, including Don, is the fact that Don is a sleep-walker. He gets up in the middle of the night, still asleep, begins to walk the deck, and during his stroll, punches the Duty Officer in the nose. Now, the Department of the Navy will discharge Don, "for his own safety". But he will not be court-

marshalled. There will be no retribution taken for Don's laying hands on a superior officer. This is so because Don is seen, rightly, as not responsible for his actions while he's walking in his sleep. This would be so whether Don purloined the Admiral's best bottle of scotch whiskey, whether he took unauthorized shore leave, or even whether he killed someone. The point remains all the while; if persons are all and only those beings who possess rights as well as responsibilities, by virtue of their capacity for moral consciousness, then if Don is unable to either fulfill his responsibilities or act in a responsible manner, he is not, in the strict sense of the term, a person.

I think that most of us have always thought that 'person' is a stable term, i.e., a term that applies to beings as 'human' applies to beings, where it is not possible to be human at one moment and nonhuman the next, unless, say, you cease to exist. I have serious doubts that 'person' is a stable term in this sense. This may indicate a further way of arguing, as does Peter French, that "person" is not a natural kind term. Furthermore, I see no ontological reason to suspect that positing that we do not remain persons each moment of our lives is somehow violating the fragile use of our language. If the concept that adult human beings are not persons when they are in states of temporary unconsciousness, such as sleep (though not all sleep states are necessarily states of unconsciousness), is uncommon, or jolts our sense of conceptual propriety concerning 'person', or seems outrageous for any other

reason, I can only say that given the logic of the concept as analyzed here, we will simply have to get used to it.

At this point, not wanting to accept the above argumentation, Tooley and others, in an attempt to salvage whatever can be of the notion of the person as a being with the right to life, would presumably wish to use the term "capacity" to distinguish between the possibility of exercising some ability already possessed and the potential for possessing that ability. It must be admitted that in many circumstances the capacity to perform has more cash-value than merely the potential to have the capacity to perform. This is one of the reasons why employers generally have a preference for hiring people with experience rather than people who will require extensive training.

However, the very notion of "capacity" carries with it, at least in part, the idea of future action. Hence, capacity involves an element of potential, insofar as anyone who has the capacity to perform some action, and who is not actually performing that action, has the potential to perform that action. For instance, Don has the capacity to read German, but during sleep, or when he's eating breakfast, he is not engaged in that activity. We would not be troubled, I think, by saying that Don has the potential to read German. I do not deny that there is a difference between someone who knows how to read German, and who has the capacity it to go to the bookshelf, pick out and read Goethe's Die Leiden des jungen Werthers, and someone who has never studied the German language.

This difference, however, does not lie in the sort of potential each of these beings possess, but rather in the possible ways of behaving each is disposed towards. This is only significant from the perspective that the being who cannot read German cannot have the actual disposition to go to the shelf and read Werther. This would be where the various levels of propositional attitudes become of extreme importance. And if it is argued here that the potential which attaches to capacity is somehow stronger than that which attaches to coming to have that capacity, I will not object. What I have not discovered, however, is substantial proof that this stronger, "higher", level potential is somehow morally relevant for determining who has a right to live.<103>

Don, awake, has rights and responsibilities. A fetus has neither. But what could be the reasoning that establishes Don's responsibilities towards other persons only? Any argument forthcoming to this effect will entail that we have no responsibilities towards certain beings whom we have come to believe that, in our daily lives, we do have responsibilities towards. My neighbor's dog, for example, is nothing special to me. If I should cause this animal unnecessary pain, pain which will have no effect on any person (my presumption, denied by some, is that the dog is a nonperson, i.e., a being lacking the essential qualities for having rights and responsibilities) and if I have responsibilities towards persons only, then I have committed no

violation of another's rights, nor have I shirked any of my responsibilities.

This reasoning would be acceptable but for the one false statement. It is simply not true that I have no responsibility, in this case, towards the dog. In fact, I should say that the very idea of a social creature being sentient involves the idea of others acting in ways properly construed as morally responsible and irresponsible. I agree with Singer and Tooley here that the capacity for experiencing pain (and probably pleasure) is a sufficient condition for a being having interests. It is not that the dog necessarily has the capacity to be conscious of what is and is not in its own interest—regarding pain, or pleasure, or continuance or discontinuance of its existence—but rather that persons are well equipped in many cases to make these judgments. In fact, persons must determine what is in the interest, or disinterest, of any sentient nonperson to know how to act towards it. And since many of these creatures are social, we must act towards them in many different sorts of circumstances.

Knowing, believing, or determining just what is to the benefit or harm of some given sentient creature, human or nonhuman, person or nonperson, many times seems impossible. How is one to treat a troubled, runaway teenager? What treatment will benefit a manic-depressive? On the other hand, we know very well, in many cases, the benefits and harms traded-off by certain actions. Blinding rabbits to create new and ever-more effective baby shampoo is not

mysterious. Neither is the method of "factory farming" in the egg-producing industry or keeping calves penned-up so they can't move simply to provide succulent, tender, white flesh for satisfying our own tastes. Examples abound, of course, each one creating an ever stronger realization that where persons act with consciousness, self-consciousness, rationality, freedom, and a sense of morality, persons are responsible for their actions---and responsible to each party effected by those actions.

The use of the potentiality principle to gain personhood status for the fetus has been objected to from many quarters. I should like to briefly answer but one of these objections, and in my mind it is the important one. The protest runs something like this: If one posits the necessity for personal consideration of a human zygote because of its potential for possessing certain necessary and sufficient conditions for personhood, then one will be forced to look backwards in time, from conception, to the material out of which the zygote is produced, i.e., sperm and ova, and argue for their personal consideration as well.

The answer to this objection may seem overly simply stated, but has compelling force nonetheless: A sperm cell is not the kind of thing that could become a person. It has no potential whatever for personhood, since it is not equipped with the structure for possessing any of the conditions for personhood. Understanding the conception event/process will reveal that there is no such thing as

a fertilized ovum. Rather, upon fertilization, a new being comes into existence, that is, is created, with the sperm and ovum dying together.<104> There is no continuum from sperm and ovum to fetus, infant, child, adult, etc. It is clear, then, that human life begins at the moment of conception. What really matters, however, is that conscious personal life begins, so far as we can determine, sometime well after birth. But even here there is no fixed continuum, for we sometimes act in ways that would be considered blameworthy or praiseworthy if only we were capable of being praised or blamed when in fact we are not.

I grant that my arguments do not establish/prove the personhood of either those in dispositional states or fetuses. In fact, the question "Who shall count as a person?" seems as far from being settled today as at any time in the past. This is due, in part, to the "revolution" I mentioned above in Chapter 1 taking place at present with regard to our conception of personhood in general.<105> Peter Singer, for example, has opened the way for animals with certain attributes to be treated as persons, and Tooley has forcefully argued that even infants up to a certain age may not be considered persons.<106> It does seem evident to me, however, that we need to rethink our concept of how to treat potential persons to account for those times during which any given being is not actually displaying the proposed conditions for personhood. During sleep, for instance, not one of the mental activities so

prized for personhood is overtly present. This is most especially so for Harry Frankfurt's criterion of second-order volitions, or, true freedom of the will.<107> What I am hinting at is the idea that unless we acknowledge the potential a being has for thinking and acting in ways sufficient for ascribing personhood to that being, rather than merely considering the actual displaying of those attributes, we are left with the notion that perhaps no one is an actual person all of the time. And this will only be considered absurd, if we do think the sleeping adult human, for instance, is a person. I suggest that our consideration now take the form of possible action to be taken toward potential persons, whether they be fetuses, infants, the mentally retarded, or temporarily unconscious adult human beings.

This ought to be so at least on Engelhardt's account of two concepts of personhood.<108> Recall that the "strict" concept defines a person as a bearer of rights and duties; a self-conscious, rational agent. And though a sleeping adult human is neither self-conscious nor rational, this being is certainly thought to have rights, if not duties. The "social" sense of 'person', for Engelhardt, establishes rights for beings who are not persons strictly, by identifying them as having social relationships with strict persons. While this concept seems ad hoc in that its purpose is to protect infants, the mentally retarded, the seriously mentally infirm, and those who are senile, it has great intuitive appeal. Even if one were to take a hard line with the sleeping adult human

and deny strict personhood to this being, one need only confer social personhood to protect its life. This also saves us from the problems of positing slippage into and out of personhood in some random fashion; you fall asleep and you are no longer a person, you wake up and you're a person again. Further, this conception of personhood squares with the reasonableness of rejecting the maxim "once a person always a person" on the grounds that humans who are dead and perhaps those who are severely brain damaged and irreversibly comatose, though surely once persons, lose that appellation.

The other tack to follow is to take all those who now display the conditions for personhood, or who have displayed personhood in the past, as persons now and until such time as there is good evidence to show the ascription no longer fitting. Tooley takes it to be the case that a sleeping adult human is a person with a serious moral right to live because, in part, that human has been self-conscious in the past. This previous possession of self-consciousness is Tooley's major requirement for personhood. He argues that since the fetus has had no past self-consciousness, it cannot be a person, yet. However, in the first place, it is far from clear whether this condition is necessary and/or sufficient. What could establish either conclusion? Second, there does not seem to be a compelling reason for considering past self-consciousness, in and of itself, to be one of the conditions for personhood. Again, dead humans, once persons, lose that title. Hence, since

past possession of the conditions for personhood does (in the actual world) figure prominently in our ascriptions of personhood, potential for possessing these conditions must also be seriously considered as relevant to our ascriptions. And beings who now display potential for actualized personhood, such as sleeping adult humans and fetuses, must be considered persons, protected by the rule against homicide, until such time as there is good reason to believe that that potential no longer exists.

Chapter 6

Where Do We Go From Here?

Such conclusions as have been reached in the body of this project may have left the reader with a certain sense of discontentment. This must only be acknowledged if the goal of the work was conceived as having a great deal to do with the practical aspects of the question, What is a person? I have bridged the gap between the theoretical and practical questions of personhood to some extent, however. For example, Chapter 3 indirectly recommends certain courses of action relative to beings who are definitely persons (no matter whether they look like we do or not), viz., Black South Africans. Chapter 5 recommends, by implication, certain actions towards definite nonpersons (they are nonpersons simply because they are equipped with neither the hardware nor the software required for "strict" personhood). Furthermore, throughout this project I have been arguing that we treat any being as a person who possesses the characteristics deemed relevant for our own conception of ourselves as persons, whether we're correct about these characteristics being relevant or not.

I think we have gotten pretty clear about the nature of moral personhood. The question now becomes, What do we do with our conclusions? Now that we know what a being must be like to be a moral person, we should be able to point to at least a few of the practical problems that have added so much fuel to the flame of

desire to answer the questions of personhood, and also to say where we might look for solutions to some of these problems. In short, we need to deal with such practical moral problems as abortion, euthanasia, mental retardation, Alzheimer's disease, informed consent, legal rights, birth control, and infanticide in light of the concepts of rights and responsibilities as possessed by moral agents, i.e., persons.

Getting clear about what a being must be like to be a moral person will have been a crucial step in advancing solutions to these and other practical moral issues. But now the baton is passed over to those who will take on the job of discovering what rights and responsibilities themselves consist in. While we might look to Kant for some of the initial key points regarding duties, and perhaps W.D. Ross and John Rawls, much more must certainly be learned. To get a clearer picture of the notion of rights, we might appeal initially to such writers as Ronald Dworkin, Alan Gewirth, Joel Feinberg, A.I. Meldon, and Tom Regan.<109>

I would like to suggest, at this juncture, that a promising beginning might be made by invoking something like a Lakatosian research program for moving towards solutions to some of the above problems.<110> 'Person', as defined here, would be an essential component of the "hard core", while the notions of rights and responsibilities might well make up at least a significant portion of the "protective belt". Lakatos writes,

All scientific research programmes may be characterized by their 'hard core'. The negative heuristic of the programme forbids us to direct the modus tollens at this 'hard core'. Instead, we must use our ingenuity to articulate or even invent 'auxiliary hypotheses', which form a protective belt around this core, and we must redirect the modus tollens to these. It is this protective belt of the auxiliary hypotheses which has to bear the brunt of tests and get adjusted and re-adjusted, or even completely replaced, to defend the thus-hardened core. A research programme is successful if all this leads to a progressive problemshift; unsuccessful if it leads to a degenerating problemshift.<111>

There are some modifications of Lakatos' sketch of a research program that are required here. First, while this model might serve us well in attempting to work out some practical moral issues, it would be misleading to say that we would have, in the end, carried out a "scientific" research program. It seems to me that one has a scientific research program only if one applies the model to that which is prima facie "scientific", which is not the typical way of characterizing moral philosophy.<112> Whether or not it can be fruitful to treat practical moral problems scientifically I leave to the researcher. For my part, I do not intend to advocate a scientific conception of morality. This will not, I believe, effect my borrowing Lakatos' research program as a model.

Second, placing the concept of a person in the hard core seems to me of paramount importance, because we want the hard core to be immutable. As Lakatos says,

The 'core' is 'irrefutable' by the methodological decision of its protagonists; anomalies must lead to changes only in the 'protective' belt of auxiliary, 'observational' hypothesis and initial conditions....The actual hard core of a programme does

not actually emerge fully armed like Athene from the head of Zeus. It develops slowly, by a long, preliminary process of trial and error.<113>

We may rationally decide not to allow 'refutations' to transmit falsity to the hard core as long as the corroborated empirical content of the protecting belt of auxiliary hypotheses increases.<114>

If we take Dennett's view seriously, as I do, that the concept of a person may well be an eliminable part of our conceptual scheme and as inescapably normative, then the concept of a person, as a moral agent with rights as well as responsibilities, must be seen as the central concept in the hard core. We may defend this thesis by iterating the platitude that all theories of morality have at their heart, referred to implicitly or explicitly, some concept of moral agency, whether it is given the name "person", "human being", "rational being", or what have you.

I would like to diverge from Lakatos on one point here, however. With regard to the concept of a person, it is not merely a rational, methodological decision to place "person" in the hard core. Rather, it seems to me, contra Rorty, to be the only place for it in the entire scheme of the research program. If we have learned anything at all by the historical and contemporary writings on personhood, it is that we have been groping for something enduring, something we can get our hands on that won't slip away. I agree that the hard core has not come into being full-blown, but has taken centuries to refine. And as much as I would like to say that I have given the ultimate and only defensible polemic on the concept

of personhood, I cannot, in conscience, do that. I say this much more in connection with metaphysical personhood than moral personhood, though. We may find that there are more or other ontological characteristics necessitated by metaphysical personhood than we thought. This would matter to our conception of moral personhood only to the extent that the further ontological properties were somehow connected with moral agency. At this time, I do not see further advances in this area, for I do believe I have presented a conception of moral personhood that will stand up to all possible attempted revisions.

That the concepts of rights and responsibilities should belong to the "protective belt" of a research program in ethics may sound somewhat strange, given that 'person' has been defined in terms of these concepts, and the concept of the person is in the hard core. I intend this: while persons, as moral agents, are bearers of rights and responsibilities, it is often unclear just what our rights and responsibilities are in any given circumstance. With rights and responsibilities in the protective belt, they become modifiable with ever new conceptions of moral and immoral behavior. I should never want to give up the idea that persons have rights and responsibilities, but I would allow that we will learn much in the future about the when, where, how, and why of these aspects of our moral lives.

As an example of what I have learned in this regard, let me point to the issue of the moral status of sentient nonhuman animals,

considered as nonpersons. I should say that a calf has no rights or responsibilities whatsoever; that it would be no violation of its rights to keep it penned-up for months to be slaughtered for veal. Also, I should say that there could be no sense in holding a cow responsible for going into a neighbor's pasture to feed, even though doing so might be considered a violation of the neighbor's property rights. However, there is a reason that we should not keep a calf penned-up as is currently practiced. The reason is that we have a responsibility to all sentient creatures to not cause them unnecessary pain, whether it be mental or physical.

And this is a place to start on the road to discovering adequate solutions to many of our practical moral problems. And while I would be willing to defend my position on our duties to sentient nonpersons, I can remain openminded about just what those duties are, how they are to be affected, and so on, precisely because rights and responsibilities are located in the mutable protective belt of the program. This is not to say that our rights and duties ever actually change, for any given situation, but rather that our recognition of our rights and duties will change. I had thought for many years that fetuses have the right to live. I no longer find this thesis true, but I now recognize that there are moral as well as practical features of potential persons that point to certain responsibilities on the part of persons towards these beings.

Where do we go from here? To the practical moral problems

that generated the entire project of searching for a meaning of 'person' in the first place. This is, and has been, a contemporary undertaking; a project that began with the first of the technological breakthroughs in medical research; a project that has looked backward to John Locke and Immanuel Kant, and forward to the possibilities of the 21st century in science, medicine, technology, philosophy, theology, and law. There is, of course, no saying what conceptual upheavals will take place in our future. The one thing we may be confident in, however, is the continued exploration of the myriad concepts spawned by our recent infatuation with the concept of personhood.

Notes

1. Becker, Lawrence C., "Human Being: The Boundaries of the Concept", Philosophy and Public Affairs, Vol. 4, No. 4 (Summer, 1975).

2. Mary Shelley's Frankenstein has much force and depth as a work of fiction. I think one can gain certain insights into what we ordinarily mean by 'human' and 'person' by reading it with this in mind.

3. Daniel Callahan, in Abortion: Law, Choice & Morality, (Macmillan, 1970), divides the relevant criteria for the determination of human life into the genetic, the developmental, and the social. Albert S. Moraczewski, in "Human Personhood: A Study of Person-alized Biology", in Abortion and the Status of the Fetus, Bondeson, et.al., eds., (Reidel, 1983), criticizes the developmental and the social. I dispense with the developmental merely for convenience, preferring to include it in the social as an essential element in history for thinking about persons and personhood.

4. Noonan, John T. Jr., "An Almost Absolute Value in History", in The Morality of Abortion, John Noonan, ed., (Harvard, 1970).

5. Given the scope of this introduction, there is no space for a detailed discussion of the notion of rights. In much of the discussion to follow, the concept of having rights will play a major part in the human/nonhuman and person/nonperson distinctions.

6. Rorty, Richard, Philosophy and the Mirror of Nature, (Princeton, 1979). See Chapter 2, "Persons Without Minds".

7. Michael Tooley has written a number of important articles on the concept of personhood: "A Defense of Abortion and Infanticide", in The Problem of Abortion, 2nd ed., Joel Feinberg, ed., (Wadsworth, 1984), and "In Defense of Abortion of Infanticide", reprinted, in part, in Moral Issues, Jan Narveson, ed., (Oxford, 1983). My thanks are due to Professor Tooley for providing me with a copy (in manuscript) of the latter paper in full. Tooley's book, Abortion and Infanticide (Oxford, 1983), contains an interesting discussion of rights and persons.

8. Michael Tooley, *Ibid.*, and Peter Singer, in Practical Ethics (Cambridge, 1970), and in other works, are leaders in this movement away from the traditional conception of the person. I am indebted to Martin Benjamin, Michigan State University, for the idea that the essentially new ways of conceiving of the person might involve this sort of revolution.

9. New Jersey Supreme Court, "In the Matter of Karen Quinlan, an Alleged Incompetent", Court Opinion of Chief Justice Hughes, reprinted, in part, in Contemporary Issues in Bioethics, 2nd ed., Tom L. Beauchamp and LeRoy Walters, eds., (Wadsworth, 1982).

10. Fletcher, Joseph, Humanhood: Essays in Biomedical Ethics (Prometheus, 1979), Chapter 1, "Humanness".

11. Callahan, *op. cit.*, Chapter 10, "The 'Beginning' of Human Life: Philosophical Considerations".

12. *Ibid.*, 356.

13. In Michael Tooley's influential "Abortion and Infanticide",

(Philosophy and Public Affairs, Vol. 2, No. 1, 1972), we have a case of a single attribute being considered as a sufficient condition for possession of what he calls a "serious moral right to life". The attribute is self-consciousness. Harry Frankfurt opts for "second-order volitions" as sufficient for personhood in his fine paper, "Freedom of the Will and the Concept of a Person", (Journal of Philosophy, Vol. LXVIII, No. 1, January 14, 1971).

14. Becker, op. cit., 42.

15. Feinberg, Joel, "Abortion", in Matters of Life and Death, Tom Regan, ed., (Random House, 1980), 133.

16. Callahan, op. cit., 365.

17. Tooley, "In Defense of Abortion and Infanticide", op. cit.

18. Tooley, Ibid., has some further interesting things to say about various potentiality principles in Section III and also in Abortion and Infanticide, op. cit.

19. See Tooley's "A Defense of Abortion and Infanticide", Moral Issues, Jan Narveson, ed., op. cit.

20. Weiss, Roslyn, "The Perils of Personhood", Ethics, 89, October 1979).

21. See Mary Anne Warren's "On the Moral and Legal Status of Abortion", The Monist, 57, No. 1, January 1973.

22. Weiss, op. cit., 75.

23. Dennett, Daniel C., "Conditions of Personhood", The Identities of Persons, A.O. Rorty, ed., (California, 1976).

24. Ibid., 176.

25. Though Dennett does not go on to present much of a detailed account of this distinction, i.e., between the moral and metaphysical features of personhood, there are references to it throughout his essay. He does finally conclude that the two senses of person are not separate or distinct. Rather, they are "unstable resting points on the same continuum".

26. Dennett, op. cit., 176.

27. Engelhardt, H. Tristram, "Medicine and the Concept of Person", Contemporary Issues in Bioethics, Beauchamp & Walters, eds., op. cit.

28. Ibid., 97. It is worth noting at this point that Dennett's moral and metaphysical senses collapse into the "strict" sense here.

29. Carter, W.R., "Once and Future Persons", American Philosophical Quarterly, Vol. 17, No. 1, January 1980.

30. Joyce, Robert E., "Personhood and the Conception Event", The New Scholasticism, 52, Winter 1978.

31. See Noonan's "An Almost Absolute Value in History", op. cit., 34ff.

32. Bok, Sissela, "Who Shall Count as a Human Being?", Abortion: Pro and Con, Robert L. Perkins, ed., (Schenkman, 1974).

33. Brody, Baruch, "On the Humanity of the Fetus", Ibid.

34. Langerak, Edward A., "Abortion: Listening to the Middle", The Hastings Center Report, 9, October 1979.

35. Ibid., 25.

36. Robert Joyce argues that the human sperm and ova are not

possible persons because at conception a new being is created, with the sperm and egg being destroyed.

37. Puccetti, Roland, "The Life of a Person", Abortion and the Status of the Fetus, op. cit., n. 3.

38. French, Peter A., "Kinds and Persons", Philosophy and Phenomenological Research, Vol. 44, No. 2, December 1983.

39. Brungs, Robert, "Human Life vs. Human Personhood", The Human Life Review, Vol. VIII, No. 3, Summer 1982.

40. Ibid., 70.

41. Op. cit., n. 6. Hereafter PMN.

42. Quine, W.v.O., "Two Dogmas of Empiricism", in From a Logical Point of View, (Harper Torchbooks, 1963), 21.

43. See Putnam's, "Robots: Machines or Artificially Created Life", Journal of Philosophy, Vol. LXI, No. 21, November 12, 1964. While the specific question of Putnam's essay is "Are Robots Conscious?", his treatment of this question has wide implications for what is to be said about persons and personhood.

44. PMN, 38.

45. Putnam, op. cit., 691.

46. Putnam's hints in the above cited paper lead to this: If we decide that robots are conscious, then the manner in which we treat conscious beings qua conscious beings should be extended, at least for the sake of consistency, to robots. It is important to note that if it is decided that robots are conscious beings, then consciousness, e.g., desires, beliefs, etc., will be the basis of

the kind of treatment they should receive. Robots will receive treatment that "other" conscious beings receive, but not treatment that conscious beings who also display freedom of the will, desires, beliefs, goals, etc., receive. (In "Could There be a Conscious Automaton?". Michael Arthur Simon argues that consciousness is not something to be decided upon. See the American Philosophical Quarterly, Vol. 6, No. 1, January 1969.)

47. Frankfurt, op. cit., 6.

48. It is well to note here that Frankfurt's characterization of 'will' denotes that which motivates one to act. An "effective desire" is one that "moves a person all the way to action".

49. See Daniel Dennett, Brainstorms, (Cambridge, The MIT Press, 1978), 268.

50. See Noonan, op. cit., and Fletcher, op. cit.

51. Noonan, op. cit., 58.

52. See Rorty's introduction to Consequences of Pragmatism, (University of Minnesota Press, 1982), xiv, for a discussion of the Sellarsian notion that philosophy is "an attempt to see how things, in the broadest sense of the term, hang together, in the broadest sense of the term". CP will hereafter refer to this book.

53. James, William, Pragmatism, (New York: Langmans Green, 1947), 58. also see Rorty's "Method, Social Science, and Social Hope", CP.

54. Rorty, "The World Well Lost", CP, 10.

55. Rorty, PMN, 189.

56. Inquiry, Vol. 16, No. 4, Winter 1973.

57. Ibid., 364.
58. Rorty, PMN, 7-127.
59. See Noonan, op. cit., for further discussion of this point.
He writes, "A being with a human genetic code is man". (p. 57)
60. Rorty, PMN, 190.
61. Ibid., 191.
62. Bernstein, Richard J., "Philosophy in the Conversation of Mankind", Review of Metaphysics, Vol. XXXIII, No. 4, June 1980.
Anyone attempting to understand some of Rorty's more subtle distinctions in PMN will find Bernstein's article elucidating, critical in a positive sense, and quite readable, the last of which is at times not true of Rorty.
63. Ibid., 762.
64. Rorty, Richard, "Pragmatism, Relativism and Irrationalism", Proceedings and Addresses of the American Philosophical Association, Vol. 53, No. 6, 727.
65. Rorty, Richard, "Postmodernist Bourgeois Liberalism", Journal of Philosophy, Vol. LXXX, No. 10, October 1983, 589.
66. "Pragmatism, Relativism, and Irrationalism", op. cit., 734.
67. Bernstein, Richard J., Beyond Objectivism and Relativism, (Phil-adelphia: University of Pennsylvania Press, 1983), 203.
68. Locke, John, An Enquiry Concerning Human Understanding, Book II, Chapter XXVII, Section 9, (Oxford, 1975), 335.
69. Singer, Peter, Practical Ethics, op.cit., 76.
70. This list of items, which in part comprises the popular sense

of 'human being', is made up of some of Joseph Fletcher's "Indicators of Humanhood", found in Chapter 1 of Humanhood: Essays in Biomedical Ethics, op.cit.

71. Ryle, Gilbert, The Concept of Mind, (Barnes & Noble Books, 1949). See especially Chapter 1, "Descartes' Myth", wherein Ryle charges Descartes with committing a "category mistake", putting both minds and bodies in the same category of existence, which, if they exist at all, are so very different that they certainly belong in different categories.

72. Locke, John, op.cit.

73. Ibid., 346. Dennett merely assumes that Locke is using the term "person" in the moral sense when he says persons are accountable. Surely persons are accountable in other than just moral ways, e.g., legal. As I will show, one can plausibly interpret Locke as using the legal sense of person here to include a being accountable under not only human, but divine laws. And it is not at all clear that the legal sense of 'person' entails the moral sense, or vice-versa.

74. There is a vast amount of literature on the problem of personal identity, for example, Personal Identity, John Perry, ed., (University of California Press, 1975); The Identities of Persons, A.O. Rorty, ed., op. cit.; "The Concept of a Person", in The Concept of a Person and Other Essays, A.J. Ayer, (Macmillan, 1963), Individuals, P.F. Strawson, (Methuen, 1959); Problems of the Self, Bernard Williams, (Cambridge University Pr., 1973); Personal

Identity, by Sydney Shoemaker and Richard Swinburne, (Basil Blackwell, 1984).

75. See Dennett's "Conditions of Personhood", op.cit., Mary Anne Warren's "On the Moral and Legal Status of Abortion", op.cit., and Frankfurt's "Freedom of the will and the Concept of a Person", op.cit.

76. I do not wish to haggle over the rights of animals here. I will show further along that animals not having rights is perfectly consistent with treating them as members of the moral community. No one would wish to say that it is morally permissible to torture a cat. But that does not prove that cats have rights. It proves at most that we think we have some responsibilities to some sentient creatures.

77. Warren, Mary Anne, op.cit., 112.

78. "A Defense of Abortion and Infanticide", op.cit., 60-61.

79. "On the Moral and Legal Status of Abortion", op.cit., 112.

80. "Humanness", in Humanhood: Essays in Biomedical Ethics, op.cit. p. 13 and p. 15.

81. Williams, Bernard, Morality: An Introduction to Ethics (Harper & Row, 1972)

82. Ibid., p. 3.

83. Tooley, Michael, Abortion and Infanticide, op.cit., 90-91.

84. This is, of course, a rough guess. Another problem that apparently won't go away is how to tell when someone is a person. This is a different problem from determining the conditions for

personhood. Once we have done this, it still remains to locate persons in the universe. But, this seems to me to be a distinctly empirical problem and cannot have any effect on the conclusions one draws about what a being must be like to be a person.

85. "The Perils of Personhood", op.cit.

86. Ibid., 71.

87. If this example is offensive, I think I've made the point without even appealing to the reader's reasoning ability. If I can now make the logical point, I will have achieved my desired aim. This is also a good example, I think, that many children who otherwise possess many of the metaphysical conditions for personhood are not aware of the moral entailments of many of their actions. I'm not saying that many children light snails on fire, but am pointing to the various things children say and do that indicate that they are wholly unconscious of the distinct moral implications of their actions. That is, until they are taken aside and have these implications pointed out to them. And it is not so much that they are taught what is right or wrong here, rather than it is that they (children) just haven't thought about it all before.

88. See Abortion and Infanticide, op.cit., 96-99, as well as "In Defense of Abortion and Infanticide", op.cit., for Tooley's advocacy of the interest principle.

89. This is a revised and expanded version of a paper presented at the Eastern Regional Meeting of the Society of Christian Philosophers, March 9, 1984, at the University of Notre Dame. I

wish to thank all those who commented and criticised the paper as presented, and especially William Altson for asking the question I couldn't answer.

90. I have not used the term "lucid" in connection with consciousness before. The reason for my use of it at this point has to do strictly with the example of the elderly man. It is not a special sort of consciousness, like self-consciousness or moral consciousness, but it seems to be a necessary condition for each of these forms of consciousness. Hence, I should want to argue that only a being with lucid consciousness could have moral consciousness and be a moral person.

91. Tooley, Michael, Abortion and Infanticide, op. cit. 168.

92. Peter Singer, in Practical Ethics, op. cit., seems to me to argue this point quite effectively.

93. Noonan, John T., "An Almost Absolute Value in History", in The Morality of Abortion, op. cit.

94. Feinberg, Joel, "Abortion", in Matters of Life and Death, Tom Regan, ed., op. cit., p. 133. Feinberg mentions many of the more well-known writers on personhood and abortion in his paper, including Daniel C. Dennett, "Conditions of Personhood", Brainstorms, (The MIT Press, 1979); Mary Anne Warren, "On the Moral and Legal Status of the Fetus", in Contemporary Issues in Bioethics, T.L. Beauchamp and L. Walters, eds., (Dickenson, 1978); Jane English, "Abortion and the Concept of a Person", Canadian Journal of Philosophy, Vol. 5, 1975; Joseph Fletcher, "Humanness", in

Humanhood: Essays in Biomedical Ethics, op. cit.,; Stanley I. Benn, "Abortion, Infanticide, and Respect for Persons", in J. Feinberg, ed., The Problem of Abortion, op. cit., and Michael Tooley, "Abortion and Infanticide", op. cit.

95. Carrier, L.S., "Abortion and the Right to Life", Social Theory and Practice, Vol. 3, No. 4, 1975, 388-389.

96. I'm not sure whether or not Feinberg intends 'homocide' in his version of the potentiality principle to be speciesist. If so, then the principle needs to be reworked. At any rate, it looks speciesist, and that is enough.

97. Tooley, Michael, Abortion and Infanticide, op. cit., 168.

98. See Baruch Brody's paper, "On the Humanity of the Fetus", in Abortion: Pro and Con, R.L. Perkins, ed., (Schenkman Publishing Co., 1972), for a lengthy treatment of the moral implications of 12 stages in the development of the fetus.

99. Tooley, Michael, "Abortion and Infanticide", op. cit.

100. For a more lengthy discussion of the criticisms made here, see Edward Langerak's "Abortion: Listening to the Middle", op. cit.

101. Tooley, Michael, "A Defense of Abortion and Infanticide", The Problem of Abortion, Joel Feinberg, ed., op. cit. This is a revised version of "Abortion and Infanticide", op. cit.

102. See Robert E. Joyce, "Personhood and the Conception Event", The New Scholasticism, op. cit, for an insightful discussion of "actual potential".

103. An "ability already possessed" must be construed as some

action, or set of actions, the being in question has taken in the past. To take it in any other way would defeat my purpose by making abilities not subject to capacity, and hence, potential. That is, if Don is an accomplished bass fisherman, then we say that he has the ability to catch a lot of bass. When he is sleeping, however, he possesses the ability to catch a lot of bass only under the interpretation that he has the capacity to wake up and go fishing, which capacity involves potential for same.

104. See Joyce's paper, *Ibid.*, pp. 100-103.

105. This idea of a revolution in the thinking about personhood seems to me less well defined than I had previously thought. The writers concerned with the problem of personhood are not of like mind as far as the motives they each have for being concerned. The issue of abortion is at the core of these motives, and, it seems to me that one will choose one's definition of 'person' in accordance with how one feels about this. I suspect this is quite true in my own case, at least in part. I have certainly changed my mind, over the last three years about who are persons, but my thoughts have not changed on abortion, or infanticide, or euthanasia, or taking nonhuman animal life. In fact, I think my arguments for the views I hold have been much strengthened by my study of the concept of personhood. The revolution seems to me to embody an entirely new way of perceiving fetuses and infants. While the former are, at a certain stage, quite similar in appearance to adult human persons, they can be seen, in my own mind largely due to the writings of

people like Tooley, Singer, Warren, English, Fletcher, Frankfurt, and Dennett (though I don't know of any work by Dennett on the status of the fetus), to be essentially lacking in person-making qualities. On the other hand, there is the infant. This cute, innocent, helpless, inspiring creature seemingly demands a measure of sentimentality incommensurate with its nonpersonhood when rights and responsibilities are considered. And no matter how we may feel about our or other's infants, in the realm of morality, these sentiments cannot logically override its essential nonpersonhood, and without it, its failure to be the bearer of rights and responsibilities. For all that, however, the importance of the definition of 'person' has not yet "caught on" to the extent that I should have thought it would, and it has been some fifteen years since Tooley, Thomson, Singer and Frankfurt and others have been arguing their cases before the philosophic public.

106. Singer, Peter, Practical Ethics, op. cit., and Michael Tooley, Abortion and Infanticide, op. cit.

107. Frankfurt, Harry C., "Freedom of the Will and the Concept of a Person", op. cit.

108. Englehardt, H. Tristram, "Medicine and the Concept of Person", Contemporary Issues in Bioethics, op.cit., 94-101.

109. We might begin by close studies of Dworkin's Law's Empire, (Belknap/Harvard, 1986) and Taking Rights Seriously, (Harvard, 1977); Gewirth's Human Rights and Reason and Morality, (Chicago, 1982/1978); Feinberg's Doing and Deserving, (Princeton, 1970) and

Harm to Others, (Oxford, 1984); Meldon's Human Rights, (Wadsworth, 1970) and Rights and Persons, (California, 1977); and Regan's The Case for Animal Rights, (California, 1982).

110. Lakatos, Imre, "Falsification and the Methodology of Scientific Research Programmes", in Criticism and the Growth of Knowledge, edited by Lakatos and Alan Musgrave, (Cambridge University Press, 1974), 91-196.

111. Ibid., 133.

112. An interesting book along these lines is Peter Singer's The Expanding Circle: Ethics and Sociobiology, (New American Library, 1981).

113. Lakatos, op. cit., 133.

114. Ibid., 134.

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