

**'PERSON' AS A FAMILY RESEMBLANCE CONCEPT**  
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Advised by Professor Cohen  
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## The Question of the Chinese Person

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In the past twenty years, the concept person has been a central figure in moral and ethical arguments, especially in the realm of medical ethics. The questions of personhood focus on the being of, for the lack of a less loaded term, a human in all of the different stages and states of existence, and the 'rights' due to it. The prominent questions concerning personhood are: Is an embryo and the fetus that develops from it? Is it a person? Is an newborn a person? Is a human being in persistent vegetative state, a condition while the lower brain continues to function, a person? Is an old human being who has lost most mental capabilities a person? Is a patient with terminal cancer a person? These questions are the buzz of debates in

**"Some thirty inches from my nose  
The frontier of my Person goes,  
And all the untilled air between  
Is private pagus or demesne."  
W.H. Auden**

**"May you live in interesting times."  
Ancient Chinese curse**

This paper is dedicated to Katherine Stephens, who has been my constant strength and soundboard for all of my ideas.

Howard Stern presents the problem through the following case:

A certain government's Committee on Research Review is meeting to examine the ethical ramifications of a proposal submitted by the prestigious Institute of Embryology at Y University. The Institute has long been concerned with the plight of women who are prone to spontaneous abortion. While new techniques for care of premature newborns allow medicine to save infants born with birth weights as low as one thousand two-hundred grams, many women cannot carry a fetus even that long and thus are deprived of the opportunity to have children. The Institute is therefore interested in the development of an artificial placenta, which might sustain infants as low as 300 gram birth weight. To perfect this technique, using human fetuses is necessary; all possible work in animals has already been done.

The Institute proposes to obtain the fetuses voluntarily aborted by hysterotomy (surgical removal of the fetus from the uterus) under the country's abortion laws which allow abortion up to the 24th week of gestation. At first, the research team feels that

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In the past twenty years, the concept person has been a central figure in moral and ethical arguments, especially in the realm of medical ethics. The questions of personhood focus on the being of, for the lack of a less loaded term, a human in all of the different stages and states of existence, and the 'rights' due of that being in each stage and state. The prominent questions concerning personhood are: what is the status of the human embryo and the fetus that develops from it? Is it a person? Is an anencephalic newborn a person? Is a human being in persistent vegetative state, a condition where higher brain function is damaged while the lower brain continues to function, a person? Is an old human being who has lost most mental capabilities a person? Is a patient with terminal cancer a person? These questions are the buzz of debates in medical ethics hinging on personhood.

Howard Brody presents the problem through the following case:

A certain government's Committee on Research Review is meeting to examine the ethical ramifications of a proposal submitted by the prestigious Institute of Embryology at Y University. The Institute has long been concerned with the plight of women who are prone to spontaneous abortion. While new techniques for care of premature newborns allow medicine to save infants born with birth weights as low as one thousand two-hundred grams, many women cannot carry a fetus even that long and thus are deprived of the opportunity to have children. The Institute is therefore interested in the development of an artificial placenta, which might sustain infants as low as 300 grams birth weight. To perfect this technique, using human fetuses is necessary; all possible work in animals has already been done.

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they would be able to maintain vital signs in such fetuses for only a few minutes or hours. As the techniques are gradually perfected, survival time will gradually increase.

Because it cannot be known what types of long-range damage the fetus may suffer as a result of these techniques (e.g., brain damage), the Institute wishes to keep fetuses alive for no longer than a two-week period at this point. The institute cannot venture to say what it will do as the techniques are perfected to allow maintaining the fetus to a full-term stage of development, since it has no data present.<sup>1</sup>

This case presents clearly the question of the status of the fetus at different points of development. How are we to regard the fetus at different developmental stages? If the fetus is a person at any stage, then arguments from personhood maintain that the fetus then must be treated in a certain way.

For all of the writing and debate concerning personhood, the meaning of the concept person has been left unstudied. Modern ethical writing on personhood seldom asks the question “what is a person?” and instead asks “is this thing an example of a person? Is that thing an example of a person?” Many writers will use the concept person in different ways, assuming different meanings. One assumed meaning of personhood follows:

The person view goes on to maintain that personhood, and the special moral status it involves, cannot be based on anything so arbitrary as species membership, but must instead be defined in terms of the possession of certain psychological and cognitive capabilities, including consciousness, self-consciousness, reasoning, self-motivated activity, and language.<sup>2</sup>

Usually, views of personhood are directed toward certain psychological and cognitive properties,

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<sup>1</sup>Brody, Howard, Ethical Decisions in Medicine 174

<sup>2</sup>Bonnie Stienbock, “The Morality of Abortion.” Ethical Issues in Modern Medicine. Ed. John D. Arras and Bonnie Stienbock (Mountain View: Mayfield Publishing, 1995) 332.

but the specific properties vary from argument to argument, changing what qualifies as a person. The question concerning whether or not a thing is a person is important, but to answer the question, the concept 'person' must be understood. To understand the concept person, we must understand why one would choose to have certain psychological and cognitive capabilities as the criteria for personhood.

For the purposes of this paper, the question of the concept 'person' is directed toward the use of 'person' that concerns "having or not having rights." I do not intend to pursue personality, identity, or any of the many other manners in which people use the concept person. The purpose of this paper is not to investigate or describe how we should treat persons. I intend to provide an examination of the concept person developing the concept as Wittgenstein developed family resemblance concepts, and then briefly examine the implications of such a view. I intend to use the controversy concerning abortion to illustrate the concept 'person.'

## Family Resemblances

Before we discuss the concept person in depth, discussing Wittgenstein's idea of family resemblances will be fruitful. Beginning in section 65 of the Philosophical Investigations, Wittgenstein discusses an idea he titles 'family resemblances.' Let me explain. Family resemblances are concepts that are commonly used and agreed upon, but have some applications that are in dispute. The disputed applications are not due to an imprecise definition, but instead to the nature of the concept. Family resemblance concepts are not perfectly defined and circumscribed, but instead consist of common properties that are often present in examples of the type. Any use of the concept that is unclear is called a fringe case. Wittgenstein provides the example of the concept 'game.' He states that game can refer to board-games, chess, ball-games, and Olympic games. Looking at the group, it is tempting to say that something is common to all of the members of the group. However, by looking carefully at each individual case and moving from one case to the next, there are clearly common similarities and relationships, but no one common thing in the group. Wittgenstein explains this point:

Look for example at board-games, with their multifarious relationships. Now pass on to card-games; here you find many correspondences with the first group, but many common features drop out, and others appear. When we pass next to ball-games, much that is common is retained, but much is lost. Are they all amusing? Compare chess with naughts and crosses. Or is there always winning and losing, or competition between players? Think of patience. In ball games there is winning and losing; but when a child throws his ball at the wall and catches it again, this feature has disappeared. Look at the parts played by skill and luck; and at the difference between skill in chess and skill in tennis. Think now of games like ring-a-ring-a-roses; here is the element of amusement, but how many other characteristic features have disappeared! And

we can go through the many, many other groups of games in the same way; can see how similarities crop up and disappear. And the result of this examination is: we see a complicated network of similarities overlapping and criss-crossing: sometimes overall similarities, sometimes similarities of detail.<sup>3</sup>

Generalizing to the point where a common property is found is possible. The problem is that when a common feature is found, the feature has such a general application that anything could be a game. Some might suggest that all games are fun, and it is amusement that makes a game. Yet many professional athletes claim that their sport, the game of football for example, is no longer fun as it was in their college days. Many people claim that rock climbing is fun, but is rock climbing a game? Amusement alone does not make something a game, nor does any other single property that is common to games. The same procedure can be done with a combination of properties - no group of properties exists that will define the concept 'game'.

Someone might argue that the properties that we have been discussing are indeed properties that are common to many games, but are not properties that are crucial to the concept 'game'. A property that is crucial to the concept 'game' would be one that is essential to all games. If a thing had such a crucial property, or the crucial group of properties, the thing would be a game. The idea behind family resemblance concepts is that every time a single property is chosen as the crucial property, a case can be found where the term 'game' is applied although it is missing the alleged crucial property or group of properties. There are no crucial properties for family resemblance concepts, only properties that are usually found in the concept.

This understanding of family resemblances is important, for I argue that the concept

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<sup>3</sup>Ludwig Wittgenstein, Philosophical Investigations, trans. G.E.M. Anscombe (Englewood cliffs: Prentice Hall, 1958) 66.

'person' is a family resemblance concept. Understanding 'person' as a family resemblance concept will enable us to understand the disagreements in fetal personhood arguments. These arguments are not about the essence of the concept person, although that is what they often claim. Instead, the arguments are about the application of the concept person in a fringe area - the area of the fetus.

To understand the word personhood, we must look at the concept person, for personhood is "the quality or condition of being an individual person."<sup>4</sup> The English use of the word person is derived from the Latin word 'persona,' which is defined as "a mask used by a player, a character or personage acted." However, in moral arguments, 'person' takes on a much broader meaning than that of a mask or character in a play. A brief summary of the O.E.D. definitions for the word 'person' include "a character sustained or assumed in a drama or the like," "an individual human being," "the living body of the human being," "sophistically, the genitive," "in the general philosophical sense: a self-conscious or rational being," and "a human being (natural person) or body corporate or corporation (artificial person), having rights and duties recognized by the law."<sup>5</sup> The O.E.D. comments that "the sense mask has not come down into English; and the other senses did not arise here in logical order." The word 'person' has no core meaning among all of the different uses, and it seems that the concept 'person' is muddled in genealogy.

Although there are many uses for the word 'person,' the uses that can be applied in ethical discussions are limited. For this thesis, we will focus on 'person' as a *homo sapiens* having 'rights'. In ethical discussions of abortion and euthanasia, the term right to life is often invoked.

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<sup>4</sup>'Personhood,' *The Oxford English Dictionary*, 1989 ed.

<sup>5</sup>'Person,' *The Oxford English Dictionary*, 1989 ed.



## The Concept Person

To launch this study into the concept person, looking at The Oxford English Dictionary (O.E.D.) definitions of 'personhood' and 'person' will be helpful. By carefully looking at these definitions, we can begin to see how the concept 'person' becomes confusing in philosophical dialogue. To understand the word personhood, we must look at the concept person, for personhood is "the quality or condition of being an individual person."<sup>4</sup> The English use of the word person is derived from the Latin word 'persona,' which is defined as "a mask used by a player, a character or personage acted." However, in moral arguments, 'person' takes on a much broader meaning than that of a mask or character in a play. A brief summary of the O.E.D. definitions for the word 'person' include "a character sustained or assumed in a drama or the like," "an individual human being," "the living body of the human being," "euphemistically, the genitals," "in the general philosophical sense: a self-conscious or rational being," and "a human being (natural person) or body corporate or corporation (artificial person), having rights and duties recognized by the law."<sup>5</sup> The O.E.D. comments that "the sense mask has not come down into English; and the other senses did not arise here in logical order." The word 'person' has no core meaning among all of the different uses, and it seems that the concept 'person' is muddled in genealogy.

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Whether the person has rights by virtue of being a 'person' or should be treated a certain way will be discussed following the clarification of the concept person.

The definition of person that involves the "self-conscious or rational being" demonstrates the general impression that a 'person' must be self-conscious and rational - a belief that I will investigate later. In discussions of medical ethics focusing on personhood, there is little or no mention of the many uses of the word 'person'. In medical ethics discussions of personhood, the description of 'person' is limited to human 'rights,' and there is little or no discussion of why the person is due rights. 'Person' as a medical ethics concept is assumed to be a clearly definable concept, which will enable decision makers to make decisions quickly and precisely. However, 'person' is not a clearly defined concept. 'Person' is a family resemblance concept, with all of the blurred edges family resemblances entail. It is important to clarify the concept person so that it may be better applied to fringe cases. That person is a troublesome concept has been discussed before, as Bonnie Steinbach notes:

Just as there is ambiguity in the word 'human' between its genetic and moral senses, so there is ambiguity in the word 'person' between its descriptive and normative senses. In its descriptive sense, the word 'person' refers to a being with certain psychological traits, such as consciousness, self-consciousness, and rationality. In its normative sense, a person is someone with full moral standing, and, in particular, a right to life.<sup>6</sup>

Steinbach notices the difficulty of the different uses of "person," but the difficulties extend much deeper, as we will now discuss.

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<sup>6</sup>Bonnie Stienbock, "The Morality of Abortion." Ethical Issues in Modern Medicine. Ed. John D. Arras and Bonnie Steinbock (Mountain View: Mayfield Publishing, 1995) 333.

## Person as a Family Resemblance Concept

That we can communicate verbally and in written works about persons proves that in some sense we do understand the concept. I can posit the term on a normal adult human being without an objection by the listener. Say my friend Robert and I are walking down the street, and I happen to ask him to point to everything that is a person. He points to different adult human beings as they pass by, and a teenager, and maybe a seven-year-old. As he points to these things, I agree with him on the evaluation that these are persons. In this sense I understand the use of 'person.'

Yet when the concept 'person' is applied to a fetus, problems and disagreements arise because 'person' is a family resemblance concept. Often when the questioners are trying to create some connection between the personhood of the fetus and the personhood of an adult, they merely adapt the qualities of the adult as sufficient or necessary conditions for personhood. Dr. Robert H. Williams provides a clear example of making 'person' mean solely an adult human being; he wrote that "the fetus has not been shown to be nearer to the human being than is the unborn ape. Even the full-term infant must undergo many changes before attaining full status of humanity. Only near the end of the first year of age does a child demonstrate intellectual development, speaking ability, and other attributes that differentiate him significantly from other species."<sup>7</sup> The logical conclusion from Dr. Williams' statement is that while a fetus is clearly not a person, neither is a newborn minutes after birth, or a baby of six months, or even a child weeks

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<sup>7</sup>Clifford E. Bajema, Abortion and the Meaning of Personhood (Grand Rapids: Baker Book House, 1974) 21.

before his first birthday. Using Dr. Williams' viewpoint, one can readily justify infanticide on standard personhood arguments, for no 'person' would be killed. This confusion may result from an understanding of the concept person that is limited by the properties of an adult human being, or it may be due to the confusion over what gives a *homo sapiens* moral status.

Wittgenstein's family resemblance is clearly demonstrated here: for the fetus and the adult are vastly different, both in looks and in capabilities, and yet they are both genetically human. Is it possible that although there are great differences between the adult human being and the fetus that there is a common personhood? Let us reflect on the game example from earlier. Comparing the fetus to the adult human being is similar to comparing a baseball game with the child and her ball. Say an avid sports fan made the game of baseball the measure for all games. How would the child's ball game fit in? For that matter how would poker fit in? Or better yet, solitaire? Once the game of baseball is made the measure, then only baseball could fit into the category game. If a football game was presented to this baseball fanatic, he could see some similarities and common ties, but would not include football into his category of games, for although they were similar, even very similar, football lacks some qualities of baseball. The same follows between the adult human and the fetus. If the comparison is made with the adult human being as the measure, then of course the fetus is going to fail in the match because the fetus and the adult are examples of different stages of human development.

So, if only an adult human being, or a being with the qualities of an adult human being can be a person, then what about a person in a deep coma? Or persistent vegetative state?

Jane English approaches this topic without explicit use of family resemblances as she writes:

These approaches are typical: foes of abortion propose sufficient conditions for personhood which fetuses satisfy, while friends of abortion counter with necessary conditions for personhood which fetuses lack. But these both presuppose that the concept of a person can be captured in a strait jacket of necessity and/or sufficient conditions. Rather, 'person' is a cluster of features, of which rationality, having a self concept, and being conceived of humans are only part.<sup>8</sup>

She continues with an example that builds upon family resemblance as she discusses singling out a particular property as the definitive property. She continues:

Now the point is not that this list is incomplete, or that you can find counter instances to each of its points. People typically exhibit rationality, for instance, but someone who was irrational would not thereby fail to qualify as a person. On the other hand, something could exhibit the majority of these features and still fail to be a person, as an advanced robot might. There is no single core of necessary and sufficient features which we might draw upon with the assurance that they constitute what really makes a person; there are only features that are more or less typical.<sup>9</sup>

In the two preceding quotes, the problem of using too broad a property as the determining criterion is broached. The earlier discussion, with the game baseball as the measure of the category games, can be applied to the concept person. If an attempt is made to pick a single attribute that is common to all things considered persons in the moral sense, we would rapidly find ourselves on extremely general terms. Bonnie Steinbach writes that: "If they set the requirements for personhood low enough to include newborns, they will have to acknowledge the personhood of late gestation fetuses and most animals. Infanticide will be wrong, but so will killing animals for

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<sup>8</sup>Michael Tooley, Abortion and Infanticide (Oxford: Clarendon Press, 1983) 92.

<sup>9</sup>Tbid, 93.

food.”<sup>10</sup>

Michael Tooley, in his study of personhood, begins by an analysis of the properties or characteristics that various thinkers have used as properties of personhood. He continues in the traditional manner of attempting to postulate crucial properties that will circumscribe the concept ‘person.’ At the bare minimum, he concluded, a person “must, at the very least, be capable of consciousness.”<sup>11</sup> The list of properties, however, extends far beyond consciousness. To guide the creation of the list, Tooley asked the following question: “What relatively permanent, non-potential properties, possibly in conjunction with other, less permanent features of an entity, make it intrinsically wrong to destroy an entity, and do so independently of its intrinsic value?” A person is to be defined as an entity that “possesses at least one of those enduring, non-potential properties.”<sup>12</sup> Tooley created a list of properties that either alone or in some combination have been used as properties to define the concept person.

Among the more important suggestions are the following:

- (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;

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<sup>10</sup>Bonnie Stienbock, “The Morality of Abortion.” Ethical Issues in Modern Medicine. Ed. John D. Arras and Bonnie Steinbock (Mountain View: Mayfield Publishing, 1995) 332.

<sup>11</sup>Ibid, 88.

<sup>12</sup>Ibid, 87.

(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.<sup>13</sup>

The list that Tooley has compiled contains properties drawn from human beings, persons who at one time or another have had or will have these properties. Tooley comments upon this saying that “most of our interaction is with human beings, who by and large either possess all of those properties, or will come to do so with the passage of time.”<sup>14</sup> What then is significant about the above properties? How can a list of properties that are common to persons be used to help

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<sup>13</sup>Ibid, 90.

<sup>14</sup>Ibid, 91.

determine whether or not a fetus is a person?

Undoubtedly, the list above contains properties that persons can have, and Tooley along with others argue that to be a person the being must have the morally crucial property or properties. If the fetus or the being lacks the morally crucial property or properties, then it is not a person. How can we determine if any of the above properties are morally crucial properties? While all these properties are common to most persons at one time or another, not all of them are solely properties of persons. Only a few of the properties on the list are properties solely attributed to persons, and of those attributed solely to persons, none are found always in all beings normally referred to as persons.

Tooley disagrees with the idea that the concept 'person' is uncircumscribed, and he responds to Jane English's criticism of the impossibility of determining a property or group of properties that can serve as criteria for personhood. He writes:

Granted that there are many properties, falling into several diverse groups, that persons typically possess, how does this entail any conclusion about the possibility of isolating those properties that are in themselves morally significant with respect to what beings it is morally wrong to destroy? It seems that Jane English has not really offered any argument here... If many of the properties that persons typically have can be set aside as morally irrelevant, why should it not be possible to carry this process further, until one has a 'single core' that specifies what makes something a person?<sup>15</sup>

Tooley does not take into account that even the terms that he decides are morally crucial may not be present in all things that are persons. Tooley's objection seems strong at first, but let us examine a property that is almost without fail posited upon 'persons': consciousness and self-

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<sup>15</sup>Michael Tooley, Abortion and Infanticide (Oxford: Clarendon Press, 1983) 95.



## consciousness and Self-Consciousness

The two most common properties that are used as the crucial properties for a person are those of consciousness and self-consciousness. Some thinkers believe that to be a person, a being must be conscious and self-conscious. Self-consciousness is a property that seems to be only present in human beings, and in things that we attribute the word 'person.' John Locke discussed a view of persons in his *Human Understanding*. Locke says:

We must consider what person stands for, which, I think, is a thinking intelligent being that has reason and reflection and can consider itself, as itself, 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, a being impossible for anyone to perceive without perceiving that he does perceive.<sup>16</sup>

For Locke, experience, namely consciousness and self-consciousness, provided the identity of the person. Without a constant string of experiences, a being could not be a person.

David Hume took consciousness as the criteria for a person's existence even farther when he wrote that:

For my part, when I enter most intimately into what I call myself, I always stumble on some particular perception or other, of heat or cold, light or shade, love or hatred, pain or pleasure. I can never catch myself at any time without a perception and never can observe anything but the perception. When my perceptions are removed for any time, as by sound sleep, so long am I insensible of myself, and may truly be said not to exist.<sup>17</sup>

<sup>16</sup>John Locke, *An Essay Concerning Human Understanding* (Oxford: Clarendon Press, 1924) 188

<sup>17</sup>David Hume, *A Treatise of Human Nature* (Oxford: Clarendon Press, 1888) 352.

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<sup>16</sup>John Locke, An Essay Concerning Human Understanding (Oxford: Clarendon Press, 1924) 188.

<sup>17</sup>David Hume, A Treatise of Human Nature (Oxford: Clarendon Press, 1888) 252.

For Hume, if there were no perceptions, even in sleeping, the person would cease to exist. Yet if the self ceases to exist, then is a sleeping human a person? Does a sleeping human have the same rights as that of an awake person?

Consciousness and self-consciousness have been used as typically human attributes in discussions of properties of personhood, but they have many problems. If in order to be a person the being has to be both conscious and self conscious, and yet there are situations where what we call a person does not have either. A person who consumes a large amount of alcohol will end up in an alcohol induced coma. While in this coma, there is no consciousness or self consciousness<sup>18</sup>. Are we to say that during this time he is not a person? If a human being in such a state is not a person, then he does not have rights. The unconscious person could be robbed, and even pillaged for organs while he is in the state, for they have no rights. Committing these acts against them would be of no moral consequence. The above scenario is the result if consciousness and self-consciousness are crucial properties for personhood.

The counter argument to the one just provided that it is the capacity for consciousness and self-consciousness that is important, for while this individual is in the alcohol induced coma, they still have the capacity for consciousness. However, it seems to me that the capacity is difficult to deal with. The following discussion of capacity will aid in the evaluation of the other ten of fifteen properties that are often posited as properties of personhood. The person in the coma does not

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<sup>18</sup>Knowing whether or not a person has been conscious or self conscious presents a problem. Both are a private matter, experienced by the individual and not observable to the outside world. The reports of individuals are the sole data of consciousness. For this paper we will accept the reports at face value, since this is not a paper on skepticism.

have the exercisable capacity for consciousness no matter what attempts are made to wake the individual and make them conscious, they remain unconscious. The immediate question that arises when dealing with a capacity is the question of the measurement or the judgement of the capacity.

It is sometimes said that animals do not talk because they lack the mental capacity. And this means: 'they do not think, and that is why they do not talk.' But-- they simply do not talk. Or to put it better: they do not use language-- if we except the most primitive forms of language.-- Commanding, questioning, recounting, chatting, are as much a part of our natural history as walking, eating, drinking, playing.<sup>19</sup>

Wittgenstein states that the measurement of a capacity is through the exercise of the capacity. A capacity cannot, by itself be measured. I cannot hold a capacity, see a capacity, or describe a capacity until it is exercised. The only way that a capacity can be known is through the exercise of that capacity. I am not saying that there is no such thing as capacity and only actions, but that the capacity can only be known if it is exercised.

If a capacity must be exercised to be known, then we can only rely on two measures of capacities - observation and report. Either a capacity can be observed in an individual or an individual can report it. There is no other way that a capacity can be seen. So how can we rely on an unseen capacity to judge a moral argument? It is possible that I can miss the measurement of a capacity because I do not see it, and it is also possible that I could be tricked into accepting a capacity that does not exist.

Imagine that I ask someone if they can speak French. They smile at me and say, "*Oui, je*

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<sup>19</sup>Ludwig Wittgenstein, Philosophical Investigations, trans. G.E.M. Anscombe (Englewood cliffs: Prentice Hall, 1958) 25.

*parle Francais*,” which in English is “*Yes, I speak French.*” By their response, I assume that they have the ability to speak French. Later that day, I learn that they have learned to say “*Je parle Francais*” in response to the question “*do you speak French,*” and they do not even know the English equivalent for that French phrase. Does this person have the capacity to speak French? I doubt we would say so. This example demonstrates that it is possible to be fooled by a capacity in certain situations.

How are we to judge whether or not a person has the capacity for consciousness? One possible way would be to look at the neural structure of the brain, and if the brain is intact, to assume that the capacity for consciousness and self-consciousness are there. However, is the brain structure all that there is to self-consciousness? What neural structure contains self-consciousness? What part of the brain can be used to judge whether or not a being has the capacity for self-consciousness and therefore be a person?

In psychology, the cortex is usually associated with consciousness, but there is not an area where consciousness would lie. While the cortex is involved with consciousness, so is the brain stem. Think of Robert Kennedy who made it to the hospital alive after the assassination attempt, but could never be revived because his brain stem had been destroyed. Did he have the capacity for consciousness and self-consciousness while his cortex was intact but his brain stem was destroyed?

Judging capacities proves to be troubling, and judging them is even more difficult with the fetus. I agree that at the zygote and early embryo stage the neural development is such that brain activity is not possible. However, the judgement of capacities is again shown to be difficult when we consider that “by the 33rd day, the cerebral cortex (that part of the central nervous system that

governs motor activity as well as intellect) may be seen... Brain waves have been noted at 43 days.<sup>20</sup> What can this brain activity tell us? In light of the previous discussion of neural structures, not much. This brain activity does indicate that the neural pathways are present and functional. Is it possible that the capacities for consciousness and self-consciousness are present at 43 days? Yes, it is possible, but how are we to make judgements based upon this brain activity? The fetus cannot report to us, yet neither can the comatose patient. How are we to judge that capacity?

...ive government, for it is assumed that the moral understanding of 'person' shapes laws. The concept 'legal person' is assumed to be a rule driven representation of a person in the moral sense, what is a person in the moral sense shapes what is a person in the legal sense. By 'rule driven' I mean that a person in the legal sense is carefully defined and bounded in by laws, where gray areas are made black or white through legislative decisions.

Yet there is no difference between the legal understanding of person and the moral understanding of person. If a being is a person then there are certain legal ramifications. For example, the Fourteenth Amendment to the Constitution of the United States says: "Nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction that equal protection of the laws." On January 22, 1973, the United States Supreme court was called upon to decide the Roe v. Wade case. One central issue was whether the fetus should or should not be considered a person in the legal sense based on the Constitution. The Roe v. Wade decision was delivered by Justice Blackmun, and on the status of the fetus said that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn."<sup>21</sup> Thus made this decision based upon the context of the word 'person' in the

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<sup>20</sup>Clifford E. Bajema, Abortion and the Meaning of Personhood. (Grand Rapids: Baker Book house, 1974) 27.

## The Legal Ramifications of the Concept 'Person'

At this point it is useful to clarify the distinction between the legal and moral uses of 'person.' In the early seventies, the question of the personhood of the fetus entered the United States court system by means of the abortion controversy. A clear understanding of the status of the fetus, and judgement upon what is a person in a moral sense has become of great interest to the legislative government, for it is assumed that the moral understanding of 'person' shapes laws. The concept 'legal person' is assumed to be a rule driven representation of a person in the moral sense; what is a person in the moral sense shapes what is a person in the legal sense. By 'rule driven' I mean that a person in the legal sense is carefully defined and bounded in by laws, where gray areas are made black or white through legislative decisions.

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Constitution, for it is never specifically applied to any unborn human. Blackmun also stated that “we need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate as to the answer.”<sup>22</sup> Blackmun felt that there was no way for him to determine when a fetus was or was not a person, and that the courts should make decision least of all. I agree that the determination of the status of the fetus should not be an issue for the courts, but the application of the concept person is not something that only philosophers and the like can understand.

For the moment, let us assume that the fetus is in fact a person, although it is not a citizen, which is a person “born or naturalized in the United States.”<sup>23</sup> What can we say of this person that is not a citizen protected by the constitution? Could the situation of the fetus be similar to that of a foreigner? A foreigner is not a citizen of the United States, and yet the law protects him. If someone were to gun down an Englishman in New York, the killer would receive the same penalties as they would if they killed a citizen. So the question of whether or not the fetus is a person becomes of crucial importance to the law. Although they may not be considered citizens of the State, they still may be persons, and therefore protected by the law.

Clearly, there is a need to understand the concept ‘person’ better so that legislation can

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<sup>21</sup>Maureen Harrison and Steve Gilbert, ed. Abortion Decisions of the United States Supreme Court (Beverly Hills: Excellent Books, 1993) 26.

<sup>22</sup>Ibid, 27.

<sup>23</sup>Ibid, 27.



best represent persons. On the necessity of understanding personhood, Leon Kass wrote that “the need to determine when individuals acquire enforceable legal rights gives society an interest in the definition of human life and the time when it begins.” This discussion of the concept of will affect the decisions that create the boundaries of legal personhood. The concept person is not applied differently when discussing law and when discussing morality. In the law, a being has rights because it is a person, it is not a person because it has rights.

viewpoint, the claim would be not that the being had life due that from God. Yet God is supreme and so how could we claim for a claim against him? Rights can not be intrinsically being a person for there is no way to whom the claim can be made. It may be best to refrain from using the word 'right' when discussing persons. When we think about 'rights,' we usually think about how a person should treat another person. In the abortion controversy, the question is not of "how should we treat the fetus" instead of the term rights, we will use the term 'morally significant.' By 'morally significant,' I mean that the being should be treated a certain way.

What we call 'moral rights' is the moral status of being a person; moral rights are not part of the essence of persons. A person is 'morally significant' through an existing framework. In the same way that the framework of the medical profession defines the treatment of beings considered persons, the moral framework informs the moral regard toward a being considered a person. A person existing outside of the framework would not have moral rights just because he is a person. It is the theological or philosophical framework that decides how to treat a person, not a claim that a being can make by virtue of personhood.

There is nothing morally significant about being a person; moral significance comes from the framework.

## The Moral Ramifications of the Concept 'Person'

In arguments concerning the concept 'person,' moral rights are tied to being a person. However, moral rights do not come from being a person. Assumed in arguments concerning personhood is a belief that inherent in being a person is a set of rights. A 'right' is a claim by someone to something, for example the right to life is a claim by a person to be alive. Yet to whom is this claim addressed? Is this claim addressed to the universe in general? In a theological viewpoint, the claim would be one that the being had life due them from God. Yet God by nature is supreme and so how could someone lay a claim against him? Rights can not be inherent to being a person for there is no one to whom the claim can be made. It may be best to refrain from using the word 'right' when discussing persons. When we think about 'rights,' we usually think about how a person should treat another person. In the abortion controversy, the question is one of "how should we treat the fetus?" Instead of the term rights, we will use the term 'morally significant.' By 'morally significant' I mean that the being should be treated a certain way.

What we call 'moral rights' do not come from being a person; moral rights are not part of the essence of persons. A person is 'morally significant' through an existing framework. In the same way that the framework of the constitution informs the treatment of beings considered persons, the moral framework informs the moral regards toward a being considered a person. A person existing outside of the framework would not have moral rights just because he is a person. It is the theological or philosophical framework that describes how to treat a person, not a claim that a being can make by virtue of personhood.

There is nothing morally significant solely in being a person; moral significance comes from the framework.

## The Criminal, the Slave, and the Animal

Three topics that are particularly troublesome in the discussion of the concept person are criminals and slaves whose 'rights' have been either removed or lessened, and the animal, such as dolphins, who some would like to consider persons.

First, we will discuss the criminal and the slave. Both the criminal and the slave have been deprived of some 'rights' or all of their 'rights', their personhood appears to be almost a sub-person. The earlier discussions of the legal and moral implications is important here. The 'rights' that are being taken away are those that were claimable only through the legal framework. The criminal when he is being punished is having certain legal rights removed and certain moral rights inhibited in order for punishment. Criminal punishment does not reduce an individual's personhood, but instead limits the expression of 'rights' due the person by virtue of the framework. Things that are normally called 'rights' are not things that a 'due' the criminal because he is a person. They are things that are given to the person through the framework and from the framework. Punishment changes the way that the criminal is to be treated, and does nothing to change the personhood of the criminal.

In slavery, a human being is reduced to a servant role, being the property of another. The slave has reduced rights in the eyes of the law and the state, but this reduction does not affect the personhood of the slave. The slave may still be considered a person, but the framework that the slave is within does not grant him the same privileges as the free man. The limiting of privileges in no way changes the personhood of the slave. The case of the slave is similar to that of the criminal. The personhood of the individual does not change, but the privileges that are due the person are limited. The personhood of the individual is not changed merely due to circumstance

or situation. The change has occurred due to the framework. Just as a person is to be treated in one manner because they are a person, they may be treated in a different manner when they are claimed to be a slave. The difference lies in the makeup of the overarching framework.

Animals present a very troubling question. Following Tooley's list, many animals can be brought into the category of persons. Further, the family resemblance explanation of the concept 'person' may lead someone to over apply 'person.' Does species membership contribute to the application of the concept 'person?' In general, the concept 'person' is applied to human beings-member of the species *homo sapiens*. Is this important?

Let us reflect on the discussion of the use of family resemblances from earlier. If the properties are applied too broadly, then many things can be accepted into the group. The application of family resemblances is not a chaotic happening, but the natural use of language. For the most part, person is a word applied only to *homo sapiens*. I believe that people who desire to call certain animals persons are searching for moral rights for the animals. To this I respond that animals do not need to be persons to have moral rights, and an animal may even have the same or more moral significance than the person. The way that both 'persons' and 'animals' are to be treated depends upon the framework. Is a person the only being that has moral rights due to it? No, we often speak of cruelty to animals as unjust. We do not, however, need to include animals into the concept person in order to protect them. 'Person' is a term for *homo sapiens* that is falsely predicated upon animals.

As discussed earlier, the two criteria are sufficient for personhood.

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\*Ludwig Wittgenstein, *Philosophical Investigations*, trans. G.E.M. Anscombe (Englewood cliffs: Prentice Hall, 1953).

## What to Do With the Concept Person

To this point we have seen that the concept 'person' is a family resemblance concept, and as such is left uncircumscribed. However, the situation is not hopeless as Jane English makes it sound. Let us consider the use of the concept.

In Section 242 of the Philosophical Investigations, Wittgenstein states that "if language is to be a means of communication there must be agreement not only in definitions but also (queer as this may sound) in judgements."<sup>24</sup> For communication to occur between people using the word person, they must have the same agreements in judgement in order to understand each other. The general uses of family resemblance concepts have agreement in definitions and judgements, while the fringe cases agree in definition, but not in judgement. The concept person is a family resemblance concept: it is a word that has general uses that all people agree upon, but it also has fringe uses that are in dispute.

Both the pro-life supporters and the pro-choice groups agree upon what properties are common to things that we call persons in most cases. A normal adult human being will serve as an example here. When pro-life or pro-choice people look at the normal adult human being, they both call him a human being and ascribe the same properties to him and call him a person. Although they agree on the properties that are common to things called persons, they disagree and argue over the fringe cases. How can such an argument occur?

As discussed earlier, the two sides disagree on what are sufficient properties to be a

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<sup>24</sup>Ludwig Wittgenstein, Philosophical Investigations, trans. G.E.M. Anscombe (Englewood cliffs: Prentice Hall, 1958) 252.

person, and what are necessary properties to be a person. The question is: what property or properties are going to be decisive? The pro-life supporters pick certain properties that they feel are decisively sufficient for personhood; while the pro-choice supporters pick certain properties that they believe are decisively necessary for personhood. However, I believe that there is no room for a stipulative definition of personhood. The very concept 'person' is a family resemblance concept and is blurry at the edges, and a stipulative definition attempts to remove the ragged edges. Person is a ragged concept, that by its very nature has ragged edges; and the edges should be left ragged. A stipulative definition would serve to define what are the necessary and sufficient properties of a person. When such disagreements arise, arguments for each side can be made, and a judgement can then follow. Although convincing arguments can be stated, there can be no discovery or proof of either the sufficient or necessary conditions.

So what should be done about the personhood of the fetus? The fringe cases of family resemblance concepts are not left hopelessly useless. What is demanded, however, is a judgement on the part of the individual. Person is a family resemblance concept, and the human fetus may or may not be a person. What the ethicist must do is look at the properties that are common to persons at one time or another. Then they must look at the fetus, and learn the basic biological facts. Finally they must decide if the fetus is connected enough to the adult human being to be a person. The fetus need not meet a set number of crucial properties in order to be a person- the question to ask: does the fetus seem to be a person? Can we distinguish morally between the different stages in human development? This question is that center of the personhood argument for abortion. Is there any difference between the potentiality of a fetus to develop into a conscious and self-conscious person and the possibility for a comatose patient to regain full recovery of

mental abilities? Is it that the coma patient has at one time had these properties? Where is the magical moment of personhood in the steady development of the fetus into the adult human being?

In the end, we must rely upon our linguistic intuition to help make the judgement from the wealth of factual knowledge.

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