

Personhood in the Bioethics Literature

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ALTHOUGH THE LITERATURE ON PERSONHOOD IS vast and continues to abound, there is little evidence that writers on this topic are approaching a consensus on the meaning of the concept or on the criteria for its correct application. The reasons for this are quite clear and not at all surprising. The first and most apparent reason for the continuing controversy over the concept of personhood and the slim likelihood of ever reaching an agreement is that the antecedent values writers embrace determine the definition or criteria they arrive at by way of conclusion. This is true no matter which values underlie an author's position, no matter which definition of personhood is adopted, and no matter what the context in which the discussion takes place. A second, less apparent reason is that even in those cases in which the arguments focus directly on conceptual issues, a methodological or epistemic bias of some sort guarantees that a disagreement will arise with respect to positions revealing a different methodological or epistemic bias. For the sake of clarity, when necessary, I will refer to the former as moral values, and to the latter as nonmoral values. Moral values are by far the most prominent in their influence on debates and controversies surrounding personhood. According to this division, religious values are sometimes moral and

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sometimes not, depending on the context, the arguments, and the specific values in question.

Because the quantity of writings devoted to personhood is so enormous, I could do little more, unless my approach were to be highly selective, than list the characteristics of articles on this topic, and state whether they appear in the medical, philosophical, religious, or legal literature. Therefore, I choose to focus on the most representative books and articles in this area, trusting that a thoroughly exhaustive survey would confirm rather than refute the many generalizations that follow. The generalizations are intended as probabilities, not universalities, so if a counterexample leaps to the reader's mind it does not falsify the general claim but stands as one of the few instances that run counter to the general trend.

An additional factor that guided the selection of materials to be analyzed is my own educational background and professional identity. Accordingly, I took a very limited look at legal writings, confident that other contributors would cover that field. And I did not survey in depth the theological literature or journals in religious studies, although quite a number of the articles and books in the bioethics literature, broadly speaking, are written by scholars who work in the religious tradition or who are theologians (Ramsey 1975; Fletcher 1972, 1974, 1979; Noonan 1976, 1978; Brody 1975, 1978; Gustafson 1973; Lebacqz 1973).

Not all authors who address the subject of personhood seek to provide definitive criteria for the concept. A number of writings are largely devoted to a critical discussion of the literature in which personhood is embedded (Callahan 1970; Wertheimer 1971; Kluge 1975; O'Connor 1968; Engelhardt 1976, 1977; English 1975). In the course of discussing the writings of others, or analyzing how the concept of a person functions in our language, writers who take this approach often reveal a bias toward one or another substantive position, but their primary aim is not to offer a set of necessary and sufficient conditions for the concept of personhood. Almost all writings in this vein are set within a particular context in bioethics in which a determination of personhood is perceived as necessary for resolving vexing moral problems. Exceptions are some of the writings of Engelhardt (1976, 1977), who undertakes a comparison of criteria for personhood in different contexts, and a book by Eike-Henner Kluge (1975), who analyzes personhood in connection with abortion, suicide, euthanasia,

infanticide, and senicide. The main contexts are those surrounding the beginning and end of life: abortion and withholding or terminating life support in a range of cases involving neurological damage, dementing illness, and comatose states.

In contrast are those bold proposals whose primary aim is to offer criteria, indicators, or paradigms of personhood. Although usually set in the context of a specific issue in bioethics (most frequently that of abortion), a notable exception can be found in several writings by Joseph Fletcher (1972, 1974, 1979), who has set forth "indicators of humanhood" intended to apply to a range of problems in bioethics.

Few of the writings on personhood exemplify either of these approaches in their pure form, so the distinction is somewhat artificial. Yet it is easy to detect tendencies toward one or the other of these approaches, tendencies that reflect, in part, the strength of an underlying value stance regarding the substantive moral issue under scrutiny. That underlying value stance is the main determinant of where along the spectrum of possibilities the personhood line will be drawn. Writers who reveal a feminist bias, arguing within the context of the abortion debate, take the stance that at no stage of development does the fetus meet criteria of personhood (Warren 1973). And writers from the religious tradition, largely if not entirely opposed to abortion, offer a standard of personhood that a zygote can meet (Ramsey 1975; Noonan 1976, 1978). For ease of reference, I shall refer to a set of criteria for personhood that allows a zygote or blastocyst to qualify as a "low standard" for personhood, and a set of criteria that enables, minimally, a neonate, but more typically an infant of beyond a few months or a year, to qualify as a "high standard" for personhood.

The prevalence of discussions of personhood conducted within the context of one significant moral dilemma or deeply felt problem in bioethics goes a long way toward explaining the intractability of debates over the definition of personhood. Whether the context is that of abortion, *in vitro* fertilization, killing defective newborns or allowing them to die, the definition of death, euthanasia, treatment of the mentally retarded or those afflicted with progressive, dementing illness, most people in our society hold strong moral positions. These moral stances are often wholly independent of preexisting notions of personhood and are acquired prior to giving serious thought to the concept of personhood. People who do not contribute to the bioethics literature, to political debates, or to activist causes have no need to

mount reasoned arguments in support of their strongly held views on abortion or any of the other problems that give rise to discussions of personhood. Those who choose to enter the public arena of debate must seek support for their antecedently held value stance in one or another argument likely to be compelling to their audience. The most compelling arguments for those involved more or less formally in bioethics seem to be arguments that involve the concept of personhood.

One consequence of the fact that the large majority of efforts to define personhood are within the context of a single biomedical issue is that they give little guidance for understanding personhood in different contexts. The difficulty is most evident in cases where personhood is said to emerge at some stage in the developing human embryo. Does identifying quickening or viability of the fetus as the precise point of emergence of personhood yield any characteristics that are helpful for determining the personhood status of a patient in the advanced stages of Alzheimer's disease? Of a patient who has lost all neocortical activity but whose brain stem continues to function? I think not. This suggests the superiority of an approach that seeks characteristics of personhood independent of its application in one particular context in bioethics. A *general* conception is more valuable than one fashioned to suit a specific purpose. Joseph Fletcher's indicators of humanhood (1972, 1974, 1979), and Mary Anne Warren's (1973) and Michael Tooley's (1976) criteria of personhood are standards set so high that, while they apply to a wide range of contexts in bioethics, they would rule out neonates, patients with dementing illness, and many individuals labeled mentally ill or mentally retarded. The only other single standard proposed on grounds of consistency is encephalographic (EEG) activity (Brody 1978), the onset of which renders the fetus a person at about six weeks and the cessation of which serves as a criterion for declaring a person dead, whatever other vital functions remain.

Two additional, general characterizations of personhood in the bioethics literature are worth noting before turning to an examination of the nature of the dispute and the modes of argument employed. The first feature is the almost total absence of attempts to demonstrate a strictly scientific basis for determining when personhood begins. This is in sharp contrast to the wording of the proposed human life bill in the United States Congress (1981), and to the efforts of political antiabortion

forces to call expert witnesses and obtain scientific testimony regarding the beginning of "human life." Although scientific findings are sometimes brought in as relevant to a determination of personhood (the presence of the full genetic code and encephalographic readings being the chief candidates), there are no serious proponents of a strictly scientific criterion for personhood in the bioethics literature. Various proposals rely on scientific advances to lend support for age-old views; modern genetics, supplying knowledge about the unique genetic structure of every fertilized ovum, is used by proponents of the view that conception is the moment when personhood begins to provide biological backing for theological teachings (Ramsey 1975; Noonan 1976, 1978). But since those orthodox religious views antedated the modern science of genetics, it could hardly be hailed as a scientific "discovery" to cite conception as the inception of personhood. In this case, as in the case of EEG readings, scientific developments afford a convenient source of objective data in support of antecedently held views. My survey of the bioethics literature did not reveal a single proponent of the view that when personhood begins is a straightforward scientific question. It remains, however, to explore a related point to which we shall return later. At least one writer (Brody 1978) denies that the determination of personhood is a matter for decision rather than discovery. But if it is not a matter of *scientific* discovery, as the senators who sought expert testimony would have us believe, what plausible candidates are there, and what methodology can be employed?

The second additional feature, not of overriding importance but worth pointing out in passing, is that very few authors make use of the strictly philosophical writings devoted to the concept of a person. Those who do refer to historical or contemporary writings in mainstream philosophy only pay lip service to this vast literature, perhaps by mentioning the various schools into which previous thinkers could be divided or by noting with approval predecessors who took a particular stance. One has only to list a few of the authors of tomes on the mind-body problem, the concept of a person, and related topics in philosophy of mind to recall that Descartes, Hobbes, Locke, Spinoza, Leibniz, Hume, Kant, James, Russell, Wittgenstein, Ryle, Strawson, and Parfit—among countless others—addressed a range of issues closely related to the problem of personhood, if not identical to it. Two contemporary writers who do not entirely ignore the history of philosophy

are Engelhardt (1976) and Fletcher (1979), yet their positions do not rest or build substantially on the historical sources, but simply mention some philosophers as historical predecessors of the views they propound.

The Nature of the Dispute and Modes of Argument

Efforts to define "person" are all prescriptive rather than descriptive. Most of those who have tried to arrive at a satisfactory definition would probably agree with this observation, since there is no basis for continuing disagreement over the acceptance of a purely descriptive concept. Descriptive definitions capture the accepted meaning or general usage of a word or concept, as good dictionaries succeed in doing. This is perfectly compatible with the view that living languages continue to evolve and that natural languages are irreducibly "open-textured" (Hart 1961). But although a term can be ambiguous—that is, it can have multiple meanings, all of which are correct—and while it can have a vagueness at the penumbra, for a definition to be descriptive its core meaning must be widely accepted and understood, at least roughly, by users of the language to refer to the same type of entity, event, or state of affairs. That there remains such intractable and wide disagreement over the meaning of "person," about the criteria for its correct application, and about the true conditions for its proper use in practice demonstrates beyond doubt that the definitions proposed in the literature are prescriptive rather than descriptive.

Substantial agreement exists among contributors to the bioethics literature who are explicit in acknowledging that personhood is a value-laden concept (Tooley 1976; Gustafson 1973; Warren 1973; Wertheimer 1971). This agreement exists even among those who disagree radically on where to draw the line between persons and nonpersons. Michael Tooley (1976, 302) sets the standard for personhood very high, adopting the following criterion: "An organism possesses a serious right to life only if it possesses the concept of a self as a continuing subject of experiences and other mental states, and believes that it is itself such a continuing entity." Tooley identifies being a person with having a serious moral right to life, and is explicit in treating the concept of a person as a normative one: "I shall treat the concept of a person as a purely moral concept, free of all descriptive

content" (Tooley 1976, 299). At the other end of the continuum, John Noonan (1976, 292) sets the standard for personhood very low, adhering to the traditional Roman Catholic position that "if you are conceived by human parents, you are human." (Noonan treats humanity, or being human, as equivalent to personhood, while most other writers sharply distinguish these two notions.) Yet even though he locates the boundaries of personhood at the opposite end of the spectrum from Tooley, Fletcher, Warren, and others who set the standard of personhood very high, Noonan (1978, 214) nonetheless treats the concept as largely a moral one: "To recognize a person is a moral decision; it depends on objective data but it also depends on the perceptions and inclinations and ends of the decision makers; it cannot be made without commitment and without consideration of alternative values."

Explicit acknowledgment that personhood (and humanhood, when held to be synonymous with personhood) is at least a value-laden concept, if not a purely moral one, can also be found in the religiously based writings of James Gustafson (1973, 49), who poses the question, "What constitutes the distinctively human?" and replies that "a simply *descriptive* answer to that question would not be sufficient." And in the secular, philosophical tradition, Mary Anne Warren (1973, 224–25) asserts that "the concept of a person is in part a moral concept; once we have admitted that x is a person we have recognized . . . x's right to be treated as a member of the moral community."

Although I believe most writers who do not explicitly say so would agree with those who readily acknowledge that personhood is a normative concept, at least some would strongly disagree if that claim were couched in different terms, to wit, that arriving at a definition of personhood is a matter of *decision*, not a matter of *discovery*. Brody (1978) discusses this claim and asserts his own position that it is not a matter of decision, arguing against those, O'Connor (1968) and Wertheimer (1971) in particular, who espouse the opposite view. But if arriving at a set of criteria for personhood is a matter of discovery, what sort of discovery is it? Brody does not characterize the type of inquiry that would yield such a discovery, but he does offer some persuasive arguments against the opposing view. Since I am convinced that all proposed definitions of "person" are prescriptive rather than descriptive, and because I believe that observation amounts to the same thing as holding that to arrive at a satisfactory concept of

personhood is a matter of decision not discovery, I will conclude this essay by returning to that dispute. Stated as a conclusion, following the discussion of the literature in this section, that position is more likely to be clear and convincing.

To indicate the nature and scope of disagreements surrounding personhood, it would be useful at this point to provide a list of issues on which writers in the field of bioethics disagree. Space does not permit a full discussion of these disagreements, but the intractable nature of the problem of personhood will be easier to understand once it is seen that there are many smaller disputes underlying what may seem to be the only "real" issue: arriving at criteria for personhood or determining when personhood begins.

1. *Equivalence of meaning between "human" and "person."* Some writers sharply distinguish between the terms "human" and "person" while others hold them to be equivalent in meaning. Although this may appear to be merely "a question of semantics," it is often the case that what seems to be simply a verbal quibble turns out to be an underlying conceptual disagreement of larger importance. Those writers whose disagreement does not reduce to a preference for one locution rather than another ("personhood" versus "humanhood" versus "distinctively human life," etc.) hold different positions on the ontological status of the fetus in the abortion controversy (Beauchamp 1978, 188-91). Since questions of ontology are metaphysical questions, we cannot expect ontological disputes to be settled by an appeal to factual considerations or to moral concerns, although both may be relevant to metaphysical arguments designed to draw conclusions about the ontological status of an entity.

2. *Indeterminacy of the status of the fetus as a person.* I have already noted that some authors offer bold prescriptions for defining personhood and others devote their writings to an analysis of the views of others. Within the second group, some writers explicitly state that it is impossible to secure agreement on the concept of a person (Wertheimer 1971; Gustafson 1973; English 1975), while others are silent on that point. The sharpest disagreement, then, is between those who offer criteria for personhood and those who deny the feasibility of the entire enterprise.

3. *The importance of personhood for efforts to resolve the moral debates surrounding abortion.* Since the majority of writings on personhood occur within the context of the abortion debate, it is not surprising

to find the widest variation of claims made in this connection about the relevance and importance of defining "personhood." At least the following positions can be distinguished:

- a. Settling the abortion issue once and for all depends crucially on coming to some agreement about whether the fetus is a person and, if so, when in its development personhood begins (Engelhardt 1976; Tooley 1976; Noonan 1976; Brody 1978; Warren 1973).
- b. Settling the abortion issue has little or nothing to do with when personhood begins since abortion may be morally justified even if it is acknowledged that the fetus is a person from the moment of conception (Thomson 1978).
- c. Whether the fetus is a person is irrelevant to whether it should have legal protection; concerns about the health of the fetus create pressing policy issues regardless of whether or not the fetus is granted the status of a person (King 1979).
- d. Since it is impossible to provide a set of necessary and sufficient conditions for personhood and therefore impossible to secure agreement on the criteria for personhood, that issue must be seen as entirely irrelevant to arriving at a solution to the abortion controversy (English 1975; Wertheimer 1971).

Note that while (b), (c), and (d) all treat the issue of personhood as separable from the question of the justifiability of abortion, each draws a different conclusion: (b) justifies abortion *even if* the fetus is a person, by holding that one person's rights take precedence over the rights of another person (the rights of the mother override the rights of the fetus); (c) is compatible with holding that even if the fetus is *not* a person, it *still* deserves protection under the law; and (d) claims that the abortion issue *must* be addressed separately from the problem of personhood, since the latter problem is insoluble.

4. *The importance of personhood linked to the need to ascribe rights.* Although most writers accept without question a strong link between being a person and being the bearer of rights, especially the right to life, at least one author denies the need for rights language altogether (Fletcher 1972, 1974, 1979), and a second minimizes the importance of the link by allowing that even a being with rights, including a right to life, may have to yield to the overriding rights of another (Thomson 1978).

Criteria for Personhood

In offering the foregoing short list of points of disagreement in the literature on personhood, I intentionally omitted the most obvious points of disagreement: disputes about the properties an entity must have in order to satisfy the criteria of personhood. As a reminder of just which properties have been proposed as the defining characteristics of persons, the following candidates are selected from writers who set the standard of personhood very high. Interestingly, authors who choose a lower standard most often present their criterion for personhood entirely within the context of the abortion controversy, as in the case of Brody (1978), whose proposed criterion is the onset of encephalographic activity, and Noonan (1976), who takes conception by human parents as the definitive condition. But as noted previously, Brody considers it an advantage of his criterion that it can consistently be used as the determining condition for both the beginning *and* end of personhood. The following examples of high standards are more significant as *general* proposals regarding personhood than most other candidates, since the majority of the latter fasten on one or another stage of fetal development as the point at which personhood begins.

Tooley's criterion. Tooley (1976, 302) does not offer a set of properties or characteristics, but rather a criterion couched in the language of mental states and mental events: "An organism possesses a serious right to life [i.e., is a person] only if it possesses the concept of a self as a continuing subject of experiences and other mental states, and believes that it is itself such a continuing entity." This is usually referred to as the "self-consciousness requirement," a requirement that is an ingredient in the other two high standards of personhood to be sketched below. It is as obvious to Tooley as to his readers that this criterion justifies infanticide if it justifies abortion. Tooley accepts this consequence of his argument although he is reluctant to specify any precise point, based on his criterion, at which personhood begins. His acceptance of the consequences for infanticide may cause abhorrence in some readers, but Tooley (1976, 299) dismisses such abhorrent reactions as emanating from irrational cultural taboos instead of from reasoned arguments:

The typical reaction to infanticide is like the reaction to incest or cannibalism, or the reaction of previous generations to masturbation or oral sex. The response, rather than appealing to carefully formulated

moral principles, is primarily visceral. When philosophers themselves respond in this way, offering no arguments, and dismissing infanticide out of hand, it is reasonable to suspect that one is dealing with a taboo rather than with a rational prohibition.

Warren's Criteria. Mary Anne Warren (1978, 224) suggests the following as "the traits which are most central to the concept of personhood, or humanity in the moral sense":

1. consciousness (of objects and events external and/or internal to the being), and in particular the capacity to feel pain;
2. reasoning (the developed capacity to solve new and relatively complex problems);
3. self-motivated activity (activity which is relatively independent of either genetic or direct external control);
4. 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 many indefinite, possible topics;
5. the presence of self-concepts and self-awareness, either individual or racial, or both.

Warren is not altogether conclusive on how many of these traits need be present for the bearer to count as a person, nor is she entirely clear on whether they are to serve as necessary conditions, sufficient conditions, or both. She holds both that (1) and (2) alone might be sufficient for personhood, "and quite probably (1)–(3) are sufficient." And "(1) and (2) look like fairly good candidates for necessary conditions, as does (3)." Warren's criteria appear to be a detailed specification of Tooley's more simply stated proposal, but a further observation is worth making. Recognizing the same consequence for infanticide as noted above regarding Tooley's condition, Warren is nonetheless unhappy with that result of applying her criterion. But rather than weaken the criterion for personhood in some way, she chooses to stick with her list and to hold that, despite the fact that killing a newborn infant would not be murder, infanticide is nevertheless *not* permissible.

Warren (1978, 227) offers two reasons in support of this moral judgment:

In the first place, it would be wrong, at least in this country and in this period of history . . . to kill a new-born infant, because even if its parents do not want it and would not suffer from its

destruction, there are other people who would like to have it, and would, in all probability, be deprived of a great deal of pleasure by its destruction. . . .

Secondly, most people, at least in this country, value infants and would much prefer that they be preserved, even if foster parents are not immediately available. Most of us would rather be taxed to support orphanages than allow unwanted infants to be destroyed. So long as there are people who want an infant preserved, and who are willing and able to provide the means of caring for it, under reasonably humane conditions, it is, *ceteris paribus*, wrong to destroy it.

It is not my purpose to assess these reasons, or to evaluate the adequacy of Warren's criteria for personhood in light of this moral stance concerning infanticide. I raise the issue in order to illustrate the response of an author who is unhappy about at least one of the logical consequences of the concept of personhood she has articulated. Unlike Tooley, who is prepared to accept the consequence that infanticide is morally permissible, Warren seeks reasons to conform to her intuitions or moral sentiments to the contrary. But notice that she does not find infanticide wrong for reasons that refer even to the interests (much less to the rights) of the baby; the wrongness stems, instead, from the pleasures adults would be deprived of by virtue of the infant's destruction, or by the discomfort adults would experience in knowing that babies are being killed rather than placed in orphanages. Warren does not acknowledge an infant's "right to life," and so she remains consistent with her position regarding personhood and the status of the fetus as a nonperson. Perhaps this demonstrates the limits of rights language in the moral domain, even with respect to so rights-oriented a topic as abortion and infanticide. When an analysis couched in the language of rights fails to square with the moral judgments a philosopher would like to reach, one strategy is to abandon that language in favor of a consequentialist justification.

Compare Warren's attempted resolution with that of Thomson. Warren claims that neither a fetus nor an infant is a person, so neither has a right to life; nonetheless, it is permissible to kill a fetus but wrong to kill an infant (*ceteris paribus*, of course). Thomson argues that even if a fetus is a person, and therefore has a right to life, it is still permissible to kill a fetus because of the overriding rights of the mother. If appealing to the concept of a person in moral arguments

about abortion yields a pair of conclusions such as these, it provides a good reason to doubt the value of that concept for the purpose of reaching an ethically acceptable solution to problems in bioethics.

Fletcher's Criteria. In several essays, written over a period of years, Joseph Fletcher (1972, 1974, 1979) proposes criteria or indicators of humanness. The following list is taken from the last of these writings and consists only of Fletcher's (1979, 12–18) headings, without his ensuing remarks that explicate the titles. The list consists of fifteen positive propositions and five negative ones:

1. Minimum intelligence
2. Self-awareness
3. Self-control
4. A sense of time
5. A sense of futurity
6. A sense of past
7. The capability to relate to others
8. Concern for others
9. Communication
10. Control of existence
11. Curiosity
12. Change and changeability
13. Balance of rationality and feeling
14. Idiosyncrasy
15. Neocortical function

The five negative propositions are:

1. Man is not non- or anti-artificial
2. Man is not essentially parental
3. Man is not essentially sexual
4. Man is not a bundle of rights
5. Man is not a worshipper

Fletcher intends his list to be applicable across the board in bioethics—to problems of abortion, euthanasia, and decision-making in gynecology, obstetrics, pediatrics, general surgery, and medicine. He is the one writer on this topic who denies the helpfulness or even relevance of the language of rights for finding solutions to problems in bioethics

that give rise to discussions of personhood ("humanhood" is his preferred term).

Moreover, from his other writings it is clear why he rejects an approach to ethical issues based on the concept of rights. Fletcher is a straight-out consequentialist, one who, in the eyes of his critics, takes the tenets of consequentialism to an ethically questionable extreme. This may be the most telling example of an author's nonmoral values influencing the moral stance adopted with regard to personhood. A wholesale adherence to consequentialism has a direct bearing on moral issues, but the position is not itself a normative one. It is, however, a metaethical position and, broadly construed, falls within the domain of philosophical ethics. Ultimately grounded in a Christian ethic of love, Fletcher's brand of consequentialism is indistinguishable in practice from the much maligned and oft misunderstood theory of utilitarianism. But since even the most enlightened form of utilitarianism must admit at least some cases in which the sacrifice of one or more human beings is required to achieve the greater good of all, adherence to that doctrine has the unsavory result that it is sometimes necessary to kill human beings (or allow them to die) in order to do what is morally right. That result is rendered less unsavory by defining the individuals to be sacrificed as nonpersons or as subhuman.

It is worth citing one example of Fletcher's application of his own criteria outside the context of abortion or the termination of life of individuals who have lost all neocortical functions. Using terminology now abandoned by those who work in the field of mental retardation, Fletcher (1979, 22) says about "idiots": "They are not, never were, and never will be in any degree responsible. Idiots, that is to say, are not human. The problem they pose is not lack of sufficient mind, but of any mind at all." Referring to his explanatory gloss under the first criterion for humanhood, we find that Fletcher (1979, 12) considers "any individual of the species *Homo sapiens* who falls below an I.Q. grade of 40 in a standard Stanford-Binet test . . . questionably a person; below the mark of 20, not a person." He does not state clearly what adoption of his view licenses us to do with "idiots," but it is apparent that if they do not qualify as persons, they may, at best, be treated in the way we treat animals, and might even be sacrificed to serve the interests of truly human individuals.

To conclude this section, space permits only a brief mention of additional strategies of argument regarding personhood about which

strong disagreement exists in the bioethics literature. The chief strategies are the use of the potentiality principle, the use of analogies, and the use of artificial cases (this last strategy is probably a subcategory of the use of analogies, but is worth distinguishing because of the special character of the analogies employed).

The potentiality principle. This is the well-known strategy of taking the moment of conception as the beginning of personhood because of the potential of the fertilized ovum to develop into a full-fledged adult human being. Two writers who explicitly accept this argument are Noonan (1976) and Kluge (1975), and those who argue directly against that strategy are Fletcher (1979), Tooley (1976), Brody (1978), and Warren (1973). Thomson (1978, 199) offers no argument, but hurls the following barb: "Similar things might be said about the development of an acorn into an oak tree, and it does not follow that acorns are oak trees, or that we had better say they are. . . . A newly fertilized ovum, a newly implanted clump of cells, is no more a person than an acorn is an oak tree." Thomson's remark is an example of mixed strategies since she rejects the use of the potentiality principle by way of an inept analogy with acorns and oak trees. While those who accept the potentiality principle typically hold that personhood begins at conception, writers who reject its use accept the beginning of personhood at various later points: Brody at the onset of brain waves, Thomson somewhere prior to birth (she doesn't say when), Warren and Tooley at some point after infancy. It seems fair to conclude that an appeal to the potentiality principle is made only by those whose criterion of personhood, taken by itself, is so implausible it requires the use of some such principle in order to construct a reasoned argument. The only other alternative would be simply to accept religious dogma on the matter of personhood, which few contributors to the bioethics literature are inclined to do.

The use of analogies and artificial cases. Analogical reasoning is a powerful mode of argument, but in order for an analogy to be sound, the items compared must be similar in relevant respects. The trick, of course, is to agree on which respects are relevant and which not. Artificial cases appear to nonphilosophers as less similar to the case under consideration than real cases might be, despite the ingenuity philosophers display in inventing compelling examples. I discuss these two strategies together here since I think they are both aspects of the same type of argument.

Without supplying all the imaginative details, I remind the reader of two leading examples of artificial cases concocted by way of analogy concerning personhood and abortion. The first is Thomson's fanciful case of a famous violinist hooked up to your kidneys, which he needs to sustain his own life for a period of nine months, after which he will have recovered. The violinist is a person and so he has a right to life. Your life is not endangered, only your freedom to move about for nine months. We are supposed to consider the violinist an appropriate analogue to a fetus, and you and your kidneys as analogous to a pregnant woman and her life supports for the fetus. If your right to disconnect yourself from the violinist overrides his right to life, the argument goes, shouldn't it follow that a woman's right to terminate her pregnancy overrides the fetus's right to life? One can admire Thomson's philosophical imagination yet reject the soundness of the analogy on a number of different counts. Arguing in general against the use of artificial cases, Noonan (1978, 210) writes about this one: "The similitude to pregnancy is grotesque. It is difficult to think of another age or society in which a caricature of this sort could be seriously put forward as a paradigm illustrating the moral choice to be made by the mother." And Warren (1973, 221), who adopts a very high standard of personhood, and thus an extremely permissive stance on abortion, criticizes Thomson's analogy on the grounds that it is too weak to do the work required in the abortion argument: ". . . the Thomson analogy can provide a clear and persuasive defense of an abortion only with respect to those cases in which the woman is in no way responsible for her pregnancy, e.g., where it is due to rape."

The second example, hypothesized by Tooley (1976, 314–15) in his attack on the potentiality principle, concerns a kitten (another example of a mixed strategy). Imagine we have a chemical that, if injected into a kitten, would enable it to develop into an adult cat having the intellectual and psychological abilities of a human adult. Tooley relies on the reader's intuition that it would not be wrong to kill a kitten injected with this chemical and, reasoning by analogy, he rejects the potentiality principle as applied to the human fetus. Noonan responds to this artificial case in a similar fashion to his reaction to Thomson's example. A problem with the use of artificial cases as a strategy for arguing a moral point is that the debate shifts to a discussion of the preposterousness of the example, and hence to the adequacy of the analogy, leaving the real issue aside.

Real cases used in analogical reasoning have the advantage of being rooted in reality, yet the same problems exist regarding their similarity in relevant respects to the case at hand. In the personhood debate, a number of different uses are made of an analogy involving the treatment of minority groups as nonpersons or as subhuman. Rejecting various tacks taken by proponents of abortion to show that the fetus is not a person, Noonan (1976, 293–94) writes:

. . . feeling is notoriously an unsure guide to the humanity of others. Many groups of humans have had difficulty in feeling that persons of another tongue, color, religion, sex, are as human as they. . . . Experience shows that sight is even more untrustworthy than feeling in determining humanity. By sight, color became an appropriate index for saying who was a man, and the evil of racial discrimination was given foundation. . . . Finally, a distinction is sought in social visibility. . . . If humanity depends on social recognition, individuals or whole groups may be dehumanized by being denied any status in their society.

For a related yet somewhat different purpose, Brody also argues by way of analogy using minorities. In defending his view that the humanity of the fetus must be a matter of discovery of some sort, as opposed to O'Connor's argument that it is a matter for decision, Brody (1978, 232) says:

. . . this seems to place the matter of human rights open to too many objectionable decisions. After all, there are all types of people with all types of prejudices about what is or is not required for being a living human being. And would we want to say that members of some minority group are really not living human beings just because they fail to meet the criterion of humanity established by some prejudiced majority, where the criterion in question reflected the prejudices of that majority group?

Brody pursues the same line against Wertheimer, who defends a similar position to that of O'Connor. Wertheimer (1971, 86–87) himself raises the problematic issue of treatment of minorities based on perceptions of their humanity; Brody (1978, 235) still finds Wertheimer's account open to the same objections as O'Connor and concludes that "neither Wertheimer nor O'Connor have been able to meet the problem of the prejudiced society. . . ." This conclusion leads Brody to adopt the alternative view, namely, that personhood and the ascription of rights are matters of discovery, not decision.

The Inappropriateness of Using the Concept of Personhood in Resolving Dilemmas in Bioethics

After this gallop through the literature on personhood, it is probably gratuitous to assert the conclusion that personhood is not a useful concept for resolving dilemmas in bioethics. It is unfortunate that so much of the literature discusses personhood solely in the context of abortion, but I suspect that if a different topic absorbed as much public attention and was an equally pressing issue in public policy, the locus of debate would be lodged there.

If two people hold conflicting views on an issue in bioethics that allegedly involves the problem of personhood, is one of them likely to be convinced by the other's arguments regarding the proper standard for personhood? The answer is decidedly no. Let us take one last look at the writings featured in this essay.

Consider, first, Warren's (1978, 218) stated expectations about how her proposed criteria will be received by the foes of abortion: "It is possible to show that, on the basis of intuitions which we may expect even the opponents of abortion to share, a fetus is not a person, and hence not the sort of entity to which it is proper to ascribe full moral rights." Warren is, of course, well aware of the views of other writers who have discussed the humanity or the personhood of the fetus, including the writings of John Noonan. Yet so confident is she of the correctness of her five criteria for personhood, and of the likelihood of their universal acceptance by any thinking person, that she writes:

All we need to claim, to demonstrate that a fetus is not a person, is that any being which satisfies *none* of (1)–(5) is certainly not a person. I consider this claim to be so obvious that I think anyone who denied it, and claimed that a being which satisfied none of (1)–(5) was a person all the same, would thereby demonstrate that he had no notion at all of what a person is—perhaps because he had confused the concept of a person with that of genetic humanity (Warren 1978, 224).

Now it may well be the case that some naive individuals confuse the concept of a person with that of genetic humanity. It is because of the possibility of such confusion that Tooley (1976, 300) proposes avoiding the term "human" altogether in such discussions, noting that

to use the terms "person" and "human being" interchangeably tends to lend covert support to antiabortionist positions. Among those whom Tooley cites as falling prey to the same confusion Warren describes are Brody, Thomson, and Wertheimer. A related error, committing the fallacy of equivocation, is the charge English (1975, 242) levels against unnamed opponents:

. . . some have mistakenly reasoned from the premise that a fetus is human (after all, it is a human fetus rather than, say, a canine fetus), to the conclusion that it is a human. Adding an equivocation on "being", we get the fallacious argument that since a fetus is something both living and human, it is a human being.

It is entirely possible, however unlikely it may be, that able philosophers like Brody, Thomson, and Wertheimer unwittingly confuse personhood with the property of being genetically human. But it is surely false that Noonan is a victim of such slipshod semantics or logic, since he explicitly provides reasons for considering that which is genetically human to be a person, discussing the proposals of others who choose a different locus for the beginning of personhood from that which he accepts (Noonan, 1978). If there is any confusion here, it is to be laid at the door of those like Warren who, apparently forgetting their avowals that the concept of a person is in part a moral concept, treat it as a purely descriptive notion in holding that "the concept of a person is one which is very nearly universal (to people), and that it is common to both proabortionists and antiabortionists, even though neither group has fully realized the relevance of this concept to the resolution of their dispute" (Warren 1978, 224). What antiabortionists are doing, on the contrary, is proposing that the fetus be considered a person and, therefore, a creature to be treated as a member of the moral community.

Tooley, likewise, should not be at all surprised that some writers choose to call "persons" entities that he would consider genetically human but not persons. Since he acknowledges at the outset that he is using the term "person" as a purely moral concept, it is reasonable to expect that use by others of the term is similarly influenced by their antecedently held moral values. Because of the wide range of positions regarding the permissibility of abortion, and the fact that all of the writers to whom Tooley refers discuss personhood entirely within the context of abortion, it is not in the least surprising to

find them using the term “person” in a prescriptive way, a way that follows directly from their views about the morality of abortion.

As a reminder of the lack of consistency on this topic, consider Thomson’s essay. Although she argues at length for the position that the rights of the mother override the rights of the fetus, and although she admits at the end of her article that “we have only been pretending throughout that the fetus is a human being from the moment of conception,” she asserts that in some cases “resort to abortion is even positively indecent.”

She concludes with the statement: “A *very early abortion* is surely not the killing of a person, and so is not dealt with by anything I have said here” (Thomson 1978, 208–9) (emphasis added). This suggests, at least by way of contrast, that Thomson is prepared to agree to the proposition that a very late abortion *is* the killing of a person. When not speaking hypothetically about the fetus as a person, she ventures her own (tentative) view: “I am inclined to think also that we shall probably have to agree that the fetus has already become a human person well before birth. Indeed, it comes as a surprise when one first learns how early in its life it begins to acquire human characteristics” (Thomson 1978, 199). If, in spite of these acknowledgments about the status of the fetus as a person, Thomson maintains nonetheless that abortion is morally permissible (although in some cases indecent?), what further evidence is needed to show the irrelevance or the ad hoc nature of arguments about personhood in bioethics?

Having promised earlier to return to the discovery versus decision debate, I conclude with these observations. Bearing in mind Brody’s criticism of the position that it is a matter for decision, there is the further obvious difficulty of the inability to reach a consensus on the matter of personhood. If it were a matter for political decision, the absurd consequence would follow that the definition of personhood would be contingent on which political faction was more powerful at any given time—antiabortionists or proabortionists. If it is a matter for moral decision, we are thrown back into the quagmire depicted in this essay—a swamp in which the most carefully reasoned moral arguments leave opponents unmoved. If it is a matter for religious decision, we are confronted with the facts of pluralism in our society and with the constitutionally mandated separation of church and state. This leaves only a matter for individual decision, which entails the absurdly mistaken view of language that people can use words to mean whatever they want them to mean.

Suppose, then, that the determination of personhood is a matter for discovery. If so, what kind of discovery is it? No one in the bioethics literature seriously maintains that it is a purely scientific discovery although, as mentioned at several points, some scientific data are taken to be relevant to the problem. But the very fact that *different* bits of scientific evidence are marshalled (presence of the full genetic code, for one definition, and onset of encephalographic activity, for another) shows that the particular scientific data selected as relevant reflect particular antecedently held views about personhood.

Is it, then, a question that metaphysics can provide answers to? The "discovery" would then have to be either religious or philosophical. The epistemological difficulties of religious knowledge are well known, and this mode of inquiry would be wholly unacceptable to those who do not believe in the supernatural, or who do not follow whatever particular religious dogma is alleged to provide the source of relevant information. As for some metaphysical discovery that philosophical analysis might lead to, the evidence displayed herein reveals the futility of that approach. One can, nevertheless, continue in the quest for a Holy Grail or a Fountain of Youth, despite the failures of one's predecessors to believe in the triumph of hope over experience.

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