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FOUR LEGS GOOD, PERSONHOOD BETTER!

by

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Phillip Cole[1] has found some problems with what he terms "the dominant view" of the concept of the person and its role in bioethics. In an interesting and thoughtful paper he identifies this dominant view principally with myself and Peter Singer.[2]

Cole identifies his interest as follows:

> The specific claim I want to dispute is that while killing persons is, on balance, to do them a moral wrong, killing non-persons cannot, on balance, do them a moral wrong because only the former have an interest in continued existence.[3]

Cole then spends five pages reformulating my arguments about personhood and noting that I use two strategies to arrive at my account. He goes on to offer two different interpretations of the first of these strategies in the belief that these interpretations render my account less than compelling or more than vulnerable to logical objections. At the end of this process, Cole, not unreasonably, asks: "How damaging is all this to Harris's account of a person?" He is kind enough to point out

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1 Phillip Cole, "Problems with Persons", *Res Publica* III/2 (1997), 165–83.

2 A first, small — but important — point to note is that while the concept of the person may well be rightly said "to play a central role" in the bioethics of Harris, and maybe of Singer and others, it can hardly be said "to play a central role in medical ethics"; nor does it constitute a "dominant view" in bioethics. Medical ethics is now a world-wide phenomenon, practised in most countries not only by philosophers and academics, but by health professionals, politicians, bureaucrats, journalists and many others. Most of the major religions have developed a distinctive approach to bioethics and the literature is not dominated by any one approach or "philosophy". The relatively small group of bioethicists who find a central place for the concept of a person or for "personhood" are by no means central to bioethics, nor even to Anglo-Australian bioethics.

3 *Supra* n.1, at 166.

that "[s]trictly speaking, neither of the above interpretations can be imposed upon [Harris's] first strategy ...". I agree with Cole as to their applicability to my approach. Cole then suggests that

> [A]t its most modest, all that Harris's strategy suggests is that one of the features that marks persons as morally different from non-persons is their possession of rational self-consciousness. But three much less modest claims might be thought to follow from this: (1) that the *only* property that makes persons morally different from non-persons is rational self-consciousness; (2) that rational self-consciousness is a necessary and sufficient condition of the value of persons; and (3) that rational self-consciousness is a necessary and sufficient condition of personhood. What I have tried to show is that none of these claims can emerge from Harris's strategy and that none of them are anyway remotely plausible.[4]

Cole admits that he attributes only the first of these to me. For the record, none of them apply to my account. I hold that rational self-consciousness, epitomised by the capacity to value existence, is a sufficient but not a necessary condition of personhood. I do not hold, nor have I ever claimed, that "the *only* property that makes persons morally different from non-persons is rational self consciousness".[5] I claim only that this property certainly does make persons morally different: and that lack of this property, and lack of any other properties more or equally plausibly definitive of personhood, are good reasons for supposing that the individual in question is not a person.

I don't wish to be disingenuous. I do believe that the capacity to value existence is the most plausible candidate for a defining characteristic of personhood. However, Cole's "logical" objections apply only against a view which holds that this is both a necessary and a sufficient condition of personhood. I am sure that it is a sufficient condition. Whether or not it is also necessary depends upon whether or not any other criteria of personhood, sufficient to distinguish persons from most animals and machines, can be identified and upon whether or not any of these do not involve or imply rational self consciousness. I have not myself found any plausible candidates and neither, so far as I am able to judge, has Cole.

4 *Supra* n.1, at 171f.

5 Original emphasis.

Constructed Facts

Cole then begins to develop his positive account:

> Harris is surely right that in advance of the recognition of something as a person, we must already have some idea of the features that constitute personhood. But it does not follow from this that the features which constitute personhood can be discovered by investigation, because personhood is not an empirical fact about certain sorts of creatures — it is a moral construct ... The concept of a person is a concept of recognition, and what we recognize is that there is some cluster of features here arranged in some way we can identify with ... In a sense we have to "learn to see" persons ... .[6]

I'm not sure how far Cole and I are in disagreement or what that disagreement means. I think I agree with Cole that "personhood" is a moral construct in some sense. However, it does not follow from this that "nobody can supply us with a checklist of features and then send us out to discover persons". While I share Cole's antipathy for checklists, once we have "constructed" personhood, we don't have to reconstruct it every time, nor do we have to wait to see, as we confront each individual person, if we recognise personhood in them.[7]

Personhood, even if constructed in the way that Cole suggests, is something we can learn to identify in individual cases from their characteristic features, particularly where, for some reason, immediate recognition fails or is suspect. Compare "courage", "honour" or indeed any of the moral virtues. These are in Cole's sense moral constructs. That does not mean they are not susceptible of definition, and even of definitions which have elements that could be rendered in list form. There may always be the possibility of new and unprecedented ways to be courageous or honourable. That does not mean, however, that we cannot provide sufficient conditions of courage and honour, which we could, if we chose, send people out into the world to discover. Some people wear courage on their sleeve: in others the courage is less visible,

6 *Supra* n.1, at 173f.

7 Of course, with human persons we don't normally go through any process of recognition of personhood at all. We simply see most humans immediately as persons; their being persons is part of what we see when we identify them as humans. But that does not mean that there are not some humans that we wrongly recognise as persons, nor that there are not some persons whom we don't (easily) recognise as persons because they're not human.

less obviously recognisable, but they may nonetheless be recognised as courageous if we know what we're looking for.

So where Cole insists that "personhood is not an empirical fact about certain sorts of creatures — it is a moral construct", he is surely wrong. It is both an empirical fact and a moral construct. Courage is part of the furniture of the world, it is a fact about some people and some actions. Sometimes it can be observed, and sometimes it can be discovered by a process of investigation, a process of uncovering the relevant facts and features.

Now of course, Cole may not quarrel with this. Where we part company, I think, is in what the act of creation necessary to personhood might be like. Cole says that "an act of creation is constituted by the intuitive recognition of a pattern of features ... and what we recognise is that there is some cluster of features here arranged in some way we can identify with ...".[8] On the other hand, I have argued that personhood is constructed by the attempt to understand the features that not only distinguish those we "recognise" as persons from those we recognise as non-persons, but also by the analysis of those features to see how, why and even whether or not they might be connected with the special value we place on persons.

A very important part of my account is that, having identified those features we believe, for good reasons, to be constitutive of personhood, we are enabled to recognise as persons those for whom we have no fellow feeling or solidarity. There may be people in the universe whom we cannot identify with in the superficially immediate sense in which Cole uses the concept of "identifying with" someone, as involving something immediately recognisable about them. As I suggested in *The Value of Life,*[9] "persons" may include (or may come to include) animals and creatures from other planets who may be nothing like us, nothing remotely recognisable, nothing we can identify with, but perhaps, something that we can *understand* and to which we can apply arguments and principles. Such creatures may indeed even include machines with which (whom?) it may be even more difficult to identify.

8 *Supra* n.1, at 174f.

9 John Harris, *The Value of Life* (London: Routledge & Kegan Paul, 1985).

Persisting Interests

Cole suggests that my argument from personhood is "interest based" and he uses the idea that even the dead or those who have permanently lost consciousness may have interests which persist and survive even their death in order to suggest that it is possible that the conclusion that "ending the life of a non-person cannot do them a moral wrong, is simply false". [10] For the record my own account of personhood is not "interest based". On the view of personhood I have developed, "ending the life of a non-person cannot do them a moral wrong" for the simple and sufficient reason that "they" do not exist to be wronged or indeed to be harmed in this way. There is no person present, no one who could value life. If the non-person cannot value life, they can lose nothing that they value if they lose their life, nothing that is or could be of value to them. They cannot therefore be wronged in this way. Cole shows (and I have never denied) that it is possible, even for the dead, to have continuing, or as I have termed them, "persisting" interests. [11] While these interests may be harmed or frustrated, the dead individual whose interests they are is affected in a very different way from that in which the interests or preferences of persons may be harmed or those persons wronged. We will return to those points in a moment. I accept that there might be ways in which non-persons which have never been persons can be harmed, or even wronged (for example by being caused pain or distress) but losing their lives is not, necessarily, one of these. [12]

It is important to note here the difference between non-persons who have never been persons (cats, canaries, fetuses and trees, for example) and non-persons who are ex-persons (the dead, those in Persistent Vegetative State (PVS)). Some of the interests of persons can survive their loss of personhood or death. The persons these non-persons once were can, in an attenuated sense, be said to have been wronged or even harmed if these interests are frustrated. The sense is attenuated because the individual allegedly harmed or wronged has ceased to exist at the time the harm or wrong is done. While it is true that we can talk of

10 *Supra* n.1, at 177.

11 See my *Wonderwoman and Superman* (Oxford: Oxford University Press, 1992), ch.5.

12 For an interesting discussion of these issues see F.M. Kamm, *Morality, Mortality* (New York: Oxford University Press, 1993), chs.1–3.

wronging the dead,[13] we also say that the dead are beyond the reach of human agency.[14] None of this, of course, applies to non-persons who have never been persons. Whatever interests these latter individuals have, in staying alive for example, they are not the interests of persons and they have no personal interests that can be harmed.

Cole claims his argument to have shown "that there are at least two cases where ending the life of a non-person does them a moral wrong, and therefore that the moral force of the concept of a person has been thrown into doubt". He continues: "This is by no means trivial, as a great deal of weight is placed on the supposed coincidence between the persons/non-persons boundary and the immorality/acceptability of killing boundary."[15] I think this is a trifle disingenuous. We'll call individuals who have never been persons "non-persons" and individuals who have permanently lost personhood "ex-persons". I don't believe Cole to have demonstrated that non-persons can be wronged by having their lives ended, though they may thereby be harmed in some sense. Non-persons are not susceptible of being morally wronged, they are not moral subjects or bearers of rights. Ex-persons, on the other hand, can have persisting interests that may be harmed — but these are very attenuated interests — for the frustration of these interests cannot after all be against their will, it cannot be a violation of their will. It is of course possible for things to happen which are not in accordance with their will in the sense that they would not have wished them to happen. But this does not involve the violation of that will.

However, let's grant that Cole has been successful. All he has shown is that a very weak moral harm or wrong is done to non-persons or ex-persons when they are killed. As Cole himself admits, if someone expressed a wish to have life-sustaining treatment and then permanently lost personhood "those wishes must, to some extent, be respected". While these wishes supply a "morally good reason not to kill that [sic] person",[16] Cole acknowledges that "[t]hat reason may be outweighed by

13 "I rather choose / to wrong the dead, to wrong myself and you / Than I will wrong such honourable me.": W. Shakespeare, *Julius Caesar,* Act III Scene II.

14 "Duncan is in his grave; /After life's fitful fever he sleeps well; / not steel, nor poison, / Malice domestic, foreign levy, nothing / Can touch him further.": W. Shakespeare, *Macbeth,* Act III Scene II.

15 *Supra* n.1, at 177.

16 *Supra* n.1, at 176. If we are not going to beg any questions, that should of

other factors"; and again I agree. Where we part company is over the question of how the wishes of non-persons to stay alive fare when weighed against the wishes of persons. This surely must be the test.

Suppose we have an individual who is in PVS and has been so for over a year. He signed an advance directive saying that if he were to be in PVS he wished his life to be sustained.[17] He is in the proverbial balloon (or occupying the only available emergency bed) with a person properly so called who is temporarily unconscious but has also expressed a prior wish to stay alive. The balloon captain has to throw one of them out. Whose wishes to stay alive should he respect and why? My account of personhood shows that whereas the person can lose something he values by being killed the non-person cannot, and that it is this that makes the moral difference between them. I'm sure Cole can find other possible moral differences that might pertain, but we must suppose this is the only difference. They both have the same life expectancy, they are both the same age, they both have as many family members and others who care for them, etc.

In the final section of his paper Cole makes plausible the thesis (which I for one do not deny) that non-persons can have morally significant interests and can be the objects of moral rules. Well, so can trees, species of slug, viruses, paintings and many other things that are not themselves moral subjects. However, these are not persons, and while there may be morally relevant reasons not to harm their interests or refrain from causing them damage, without good reason, and while they may indeed be the objects of protective moral rules, I suggest that the moral reasons we have for protecting the lives of persons will always be more important than the moral reasons for protecting those interests or obeying those rules.

The reason why persons are more important and why the concept of the person is, I believe, important for bioethics, is that persons, uniquely, are capable of wanting to go on existing and that it is the frustration of this desire, the violation of this autonomous expression of will, that constitutes the most significant moral wrong that may be done to them.[18] No other creatures can be wronged in this way, nor, I would

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course read "individual".

17 There are alleged cases of late recovery from PVS. I am assuming there is no possibility of that in this case.

18 There may be fates worse than death but they are few and far between.

venture, to this extent. When a non-person loses its life it loses nothing it can desire, it loses nothing it can value and hence nothing of value to itself. On the other hand, when a person loses her life she loses not only *something* she values and desires, but *everything* she values and *all* her desires. I have argued that this is a distinction of a different order of magnitude than any other distinction between persons and non-persons, and certainly so in respect of the features to which Cole has been able to point which might affect non-persons or ex-persons. It is this that separates the sheep from the people; and it is why that distinction, the distinction between persons and all other creatures, is of moral significance and thus of importance to bioethics.[19]

19 I am grateful to Justine Burley for helpful comments on an earlier draft of this paper.