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PART I

WORKING OUT THE POSITION

Personhood and Judgment

HUMANITY: PERSONS, PLACES, AND THINGS

To be human is to think and to imagine, to express one’s thoughts and imaginings, and to make decisions and take actions based on one’s thoughts and imaginings. Although there are exceptions to this, exceptions we discuss below, still the conception of human nature as characterized by a rich mental life and the ability to contemplate and act on that mental life captures the heart of it.

However persuasively some have argued that human beings are only marginally different from other animals,¹ G. K. Chesterton was right that the cave paintings in southern France refute them decisively.² Those images were painted deep inside many different dark caves tens of thousands of years ago, then were forgotten for thousands of years, before they were found again only recently. The images are primitive, as one would expect, but they are nonetheless unmistakable in their portrayals of bears, bison, mammoths, panthers, rhinoceroses, ibexes, hyenas, horses, insects, owls, aurochs, and other animals, not to mention men, women, and children—in short, many of the most important parts of those humans’ everyday experience. In addition to paintings, there are engravings, carvings, stencils, and finger tracings. We do not know for sure who made them or why, or exactly why they were put just where they were, but the images are able to reach across the millennia and to

¹ For one recent example among many, see Richard Dawkins’s *A Devil’s Chaplain*, esp. chaps. 5 and 6.

² In the first two chapters of his 1925 *The Everlasting Man*, “The Man in the Cave” and “Professors and Prehistoric Men.”

communicate clear and obvious meaning to us. Indeed, their expressive power is almost haunting.

As Chesterton rightly points out, however old these paintings are and whoever made them, what is unmistakable is that they were painted by human beings just like us. Those people's circumstances may have been dramatically different from ours, but their reactions to those circumstances were just what ours would have been. They wanted to express and record their experiences for the same reasons we do today. And their remarkable ingenuity in not only finding these seemingly inaccessible locations but also in employing such a degree of artistic and technical sophistication has required a rethinking of what human life was like twenty thousand years ago. Thus the essential humanity of these paintings is immediately recognizable. Indeed, this propensity to create may be one of the central defining features of humanity. As the Scottish philosopher Adam Ferguson (1723–1816) put it,

We speak of art as distinguished from nature; but art itself is natural to man. He is in some measure the artificer of his own frame, as well as his fortune, and is destined, from the first age of his being, to invent and contrive. He applies the same talents to a variety of purposes, and acts nearly the same part in very different scenes. He would be always improving on his subject, and he carries this intention where-ever he moves, through the streets of the populous city, or the wilds of the forest.³

This suggests not only that there *is* something that is essentially human, but also that it is unique among the living things on earth. No other animal on earth makes cave paintings.

It is frequently maintained that the chimpanzee has the mental development and ability of a three- or four-year-old human being; in some respects—like problem-solving ability—this is probably roughly accurate, although it is difficult to get a precise measure of such things. But chimpanzees do not make paintings that approximate those ancient cave paintings, only, perhaps, less well. A three-year-old child does. In fact, no chimpanzee ever spontaneously attempts to make any kind of representation of itself or its life or its relationships with other chimpanzees. I say “spontaneously” because some chimps have been trained by persistent and patient human dedication to take paint brushes and make images with them on paper or canvass. Elephants, similarly, have been taught to grasp a brush in their trunks and make strokes on canvass with

³ In his *Essay on the History of Civil Society*, p. 12. For recent evidence of the universality of the human artistic inclination, see Dutton's “Aesthetic Universals.”

them. There may be a handful of other animals capable of responding to similar training—though not many, since, among other things, a prehensile appendage is required—but the point to highlight is that this is *training*: it is much closer to the instinctive, and nonreflective, process involved in stimulus-response conditioning than it is to the “free play of deliberative faculties,” as the German philosopher Immanuel Kant (1724–1804) put it,⁴ that humans engage in. Painting is more difficult and thus more indicative of intelligence than, say, “training” a plant to grow in a certain way or “training” wood to bend or warp in a certain direction. Hence these animals obviously have intelligence—so much so, in fact, that they may be able to recognize pictures of themselves or their own images in mirrors. But they do not on their own—that is, without sustained, concerted human intervention—make any representations of their experiences. No other animal on earth makes cave paintings.

KANTIAN PERSONHOOD

I bring this up not to initiate a discussion of precisely what the difference between human and nonhuman animals is. We shall investigate that in a bit more detail later in the book. I have instead a different, though related, point to make here. It is this: The cave paintings are reflective of, partly constitute, and point toward the fact that human beings have *personhood*. Drawing on Kant again, we can divide objects in the world roughly into two categories: *things* and *persons*. A ‘thing’ is something that we may use to serve our purposes, without bothering to worry about its own interests—generally because a ‘thing’ *has* no interests. So, for example, a screwdriver is a ‘thing’: we are not required to ask its permission when we want to use it. A human being, on the other hand, is a ‘person,’ which means, approximately, that it is something that has its own deliberate purposes and exercises judgment with respect to them. It follows, Kant believes, that a ‘person’ may not be used to serve other people’s purposes without his permission. This is a foundational premise of the argument I wish to make, and of the “classical liberal” moral and political position I defend in this book: the nature of personhood is such that ‘persons’ may not be used against their will to serve other people’s ends.

Kant is one of the founders of this classical liberal tradition, and hence we should take a moment to look at his justification of this crucial claim. Kant’s position is that autonomy or freedom is necessary for an individual

⁴ In his 1790 *Critique of Judgment*.

to be a ‘person.’ “Rational beings,” Kant says, “are called persons inasmuch as their nature already marks them out as ends in themselves, i.e., as something which is not to be used merely as a means and hence there is imposed thereby a limit on all arbitrary use of such beings, which are thus the objects of respect.”⁵ An awful lot is packed into that sentence; let’s unpack it a bit. A ‘person,’ unlike a ‘thing,’ has the capacity both to construct rules of behavior for himself and to choose to follow them; hence, Kant argues, a person must be treated as an *end*, not merely as a *means*. Of course persons may be treated as means—when one pays someone else to mow one’s lawn, for example—but persons may never be treated *merely* as means. Respecting the lawnmower’s personhood would entail, for example, making him an offer and allowing him either to accept or not as he judges fit; allowing him to choose is a recognition that he has his own ‘ends’ or goals or purposes—he is a person, in other words, not a thing. On the other hand, forcing the lawnmower to mow one’s lawn against his will would be treating him merely as a means—a means to *my* ends—and thus treating him as a thing, not a person. From this consideration Kant derives this version of his famous “categorical imperative,” which he argues is the supreme rule of morality: “Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means” (G, p. 36).

Kant extends the argument by linking the notion of a ‘person’ with the notions of *worth* and *respect*. The only thing whose existence has “absolute worth,” Kant says, is “man, and in general every rational being” (G, p. 35). Everything else has a value or worth relative only to a person who values it. Kant’s argument is that because only the rational being can be subject to a moral law, only such a being warrants our respect as an ‘end in itself.’ The rational being alone is “autonomous”—that is, capable of making free choices—and hence alone has “dignity”:

Reason, therefore, relates every maxim of the will as legislating universal laws to every other will and also to every action toward oneself; it does so not on account of any other practical motive or future advantage but rather from the idea of the dignity of a rational being who obeys no law except what he at the same time enacts himself. (G, p. 40)

Kant goes so far as to say that “everything has either a price or a dignity” (*ibid.*), which means that everything that is not a person has a price; only persons, insofar as they are persons, have a dignity, meaning in part

⁵ From Kant’s 1785 *Grounding for the Metaphysics of Morals*, p. 36. Hereafter referred to as G.

that they are not, or should not be, for sale at any price. “Now morality is the condition under which alone a rational being can be an end in himself, for only thereby can he be a legislating member in the kingdom of ends. Hence morality and humanity, insofar as it is capable of morality, alone have dignity” (G, pp. 40–41). Individual human beings have a dignity because of their natures as beings of a certain kind (namely, rational and autonomous), and this fact about them entails that these individuals must be respected, both by themselves and by others.

Kant is notoriously difficult to understand—as you no doubt noticed!—and his complicated argument, not to mention his dense prose, has given rise to continuing reinterpretation. You’ll be glad to hear that we will not attempt to work through all of Kant’s argument here. Instead, I wish to focus on one main conclusion: the Kantian conception of rational nature implies that my using you against your will to achieve an end of mine would be immoral because it would violate your dignity as a person. It would not only use you simply as a means to my end, but by making you adopt my “maxim” or rule of behavior, it destroys your autonomy. Importantly, the end or goal I wish to achieve by using you, whether good or bad, is irrelevant: given the nature of a person’s essential humanity, *any* use of it simply as a means is a disrespecting of it.⁶ So even if the reason that I enslaved you was to force you to use your keen intellect to search for a cure for cancer, I have still violated your dignity as a rational being—and therefore, according to the Kantian argument, I have acted immorally. That is the bedrock moral principle on which most of the rest of this book is based.

PERSONHOOD AND PURPOSES

One thing indicative of personhood, therefore, is having *ends*: purposes, goals, aspirations, things you want to accomplish. They need not be grand and lofty, like realizing world peace; they can be quite pedestrian and local, like getting in a workout today. The point is, you, unlike screwdrivers, have them. But dogs and horses have purposes in some sense, as do perhaps mice and even earthworms; one might even argue that oak trees and lichens do as well. In fact, the idea that *everything* in nature has a purpose is a venerable one indeed, dating back at least to the ancient Greek philosopher Aristotle (384–22 B.C.). What distinguishes a person’s interests from those of dogs, mice, and oak trees, however, is that they

⁶ See Robert S. Taylor, “A Kantian Defense of Self-Ownership.”

are, or can be, deliberate and intentional. Oak trees' purposes, if they have them—and modern biology has tended to steer away from ascribing purposes to things in nature—would have been given to them by something else, such as God or nature (or perhaps Nature). Persons, on the other hand, are capable of giving themselves purposes. Persons are usually aware of their purposes and they often intentionally develop new ones; they might decide against some they have had for a long time or redirect those they already have. So after having had a good philosophy class, she decided to become a philosophy professor; after a mid-life religious conversion, he quit his lucrative job and gave away all his material possessions; and after having a baby she used the leadership skills she had developed as a banking executive to organize a Mom's Group to support other new mothers. In each of these cases the person's actions are motivated by the purposes that the person individually created and developed. They got ideas about what they wanted to do, they imaginatively fleshed out in their minds both what they wanted and what would be required to accomplish what they wanted, and they set about directing their everyday activities accordingly. Those are the hallmark characteristic activities of 'persons,' exactly what is missing in 'things.'

Now we must be careful not to overstate our ascription of deliberateness to the purposes of persons. That is why I said that persons are "usually" or "can be" aware of their ends and "often" change them on purpose. What this gets at is that sometimes even proper persons are unaware of what they are doing or where their lives are going, at least momentarily; and they might well not be aware of why their purposes changed or what the ultimate origin of their purposes is. We all know people who have religious beliefs but are not really sure why they have them, who become lawyers because that is what was expected of them, who buy only certain brands of shoes or clothing because that is what the cool people wear, or, what is especially evident in my line of work, who go to college because, well, that's just pretty much what everyone expected them to do after high school. In any or all of these cases one might argue that the agents' purposes were not their own and were instead given to them by someone or something else. Fair enough. But that still would not disqualify the agents in question from personhood, however, because even in the cases in which one is doing what others have told one to do, or is drifting sleepily through life, or is just not paying attention, it is still the case that one *could* be aware. One can always stop and think, focus one's attention—or just snap out of it. Those nonhuman animals or plants that one might like to say have purposes cannot be made conscious of their

purposes as purposes. That is clear in the case of oak trees, but even in the case of, say, dogs, the dog loves its master and will do whatever it can to sneak into the car and go for a ride, but the dog does not and cannot be made to understand that it has or is acting out of respect for interests. If you are not sure about this, talk it over with your dog, and see if you can get him to understand that he is an agent acting out of respect to ends. Let me know how you fare.

TWO COMPLICATIONS

You may be wondering whether the distinction between ‘persons’ and ‘things,’ and the relegation of nonhuman animals to the category of ‘things,’ implies that we may use nonhuman animals for our purposes. I address this question squarely in chapter 8, but let me tell you now the position I will defend: yes, it does mean we may use them, but it does not mean that we may act cruelly or inhumanely toward them. The level of care and concern we should display toward all animals should track their intelligence and their abilities to sense and perceive. Thus we should be more solicitous about a chimpanzee than about a cow or a snail, and more solicitous still about a human being. The questions of whether in fact chimpanzees and perhaps a few other kinds of animals might count as ‘persons,’ exactly how much care we should display toward them, whether we should consider them to have “rights,” and so on are crucial to delimiting the exact boundaries of the conception of personhood in play here. They will, again, be addressed in chapter 8. For our present purposes, however, what is needed is to see that *human beings* are ‘persons’ and not ‘things,’ and hence the moral injunction against using them against their will applies to them (if also to other beings as well).

But not so fast. The other thing you will wonder about is whether my definition of personhood means that some *humans* do not count as ‘persons.’ What about children and mental incompetents? I return to this concern below, after I have described what I mean by ‘judgment’ and how it can and should be used in difficult cases such as these. And before proceeding I should point out that the fact that there might be some exceptions to the general description of human ‘personhood’ does not mean that the description does not still apply to all the other cases. But the short answer to the question posed is that there are no hard and fast rules about human exceptions from personhood and that instead *judgment* is required. Children and mental incompetents are indeed the principal exceptions, but in most of those cases what to do—that is, who

should make decisions for them—is fairly obvious. We might say, then, that the paradigmatic exemplar of a ‘person’ is a normally functioning human adult. The closer a being, any being, approximates this exemplar, the stronger is its claim to respect as a ‘person.’ In most cases there will be little doubt as to whether the individual in question is in fact a person or not, even if it will turn out to be difficult, even impossible, to give a perfect and exceptionless definition of the exact boundary.⁷ Thus the conception of personhood described here should be sufficient to cover the majority of cases: it will allow us to tell in most cases whether a being in question is a ‘person,’ and, if not, which persons should be in charge of making decisions for them.

But there will nevertheless be cases where people of good faith will disagree—cases of particularly mature teenagers, say, or of an increasingly forgetful and confused grandmother. In hard marginal cases like these, there are, I suggest, no universally applicable rules yielding unique decisions that can be relied on. I wish there *were* such rules—it would make things a lot easier; but unfortunately there are not. I invite you to try to formulate one if you’re not sure; I bet you won’t be able to come up with a rule that is not subject to falsifying exceptions. If I am right, then in such cases *good judgment* will instead have to be exercised. The next question, then, is what exactly is this ‘judgment,’ and what makes it *good* as opposed to *bad*?

JUDGMENT, FREEDOM, AND RESPONSIBILITY

So human beings, or at least most of them, are ‘persons,’ and therefore they have purposes that are or can be deliberate. The other distinctively human feature is that they have a power that allows them to recognize their ends, including the relative ranking of their ends; to assess their current situations, including the opportunities and resources available to them; to estimate the relative chances of success at serving their ends that various available actions would provide; and finally to decide what to do based on a judgment taking all these variables into account. I wrap all of this into one term: *judgment*. To have judgment is to be able to do all this, and if something is a person, then it has judgment. Judgment is not, however, an all-or-nothing thing: it is a skill and, like other skills,

⁷ Donald E. Brown, for example, cites the features I suggest among the “universal” features of humanity. See Brown’s *Human Universals* and “Human Universals and Their Implications.”

to be good at it you need to practice and exercise it. Also like other skills, judgment is something that some people will develop better than others. That fact is reflected in the everyday experience that you would go to some people for advice but emphatically not to others; you trust some people's judgments about even your most important life decisions, whereas you also know people whose judgment you would not trust as far as you could throw them. The relevant point, though, is that every person has judgment and that it can be bettered by concerted practice. That too distinguishes persons from things.

If judgment is a skill that can get better by practice—or worse by disuse or misuse—what is required to make it better? Judgment requires two things: freedom and responsibility. It first requires the freedom to exercise it, the freedom to make decisions about oneself and one's life. If someone else is making my decisions for me, then I am not going to develop any judgment—in the same way that if someone else pays all my bills for me, I will not develop any sense of value or economy. A former professor of mine put it this way: people start cleaning up after themselves about the time everyone else stops cleaning up after them. That captures an important truth, but it is only half of the truth. The other half is that you need to be held accountable for your decisions too. If you are allowed to decide for yourself how to use your credit card, but then, when you have run the balance up to its limit, someone else pays the bill, you will not be developing your judgment. If you never clean up your messes or dress appropriately or open the door for another when you should, but no one ever calls you on it, then, well, so what? What difference will it make to me that I am imprudent, inconsiderate, rude, or selfish, if those I care about do not require me to change? If no one embarrasses me by pointing out my bad behavior, if no one shuns or avoids me, if no one chastizes me, if no one cuts my gravy train off, then I have little or no incentive to change; and being naturally lazy, as most of us are to some extent or other, chances are I won't change if I don't have to. Good judgment develops, in other words, not only by enjoying the freedom to exercise it, but also by being required to take responsibility for its exercise.

Another way of making the same point: if you were going to create your own new religion, one requiring people to sacrifice and change their otherwise everyday behavior, it would help to have a hell. Promises of good things to come if one behaves the way your religion prescribes will take you some distance, more with some people and less with others; but your efforts will be considerably aided if you also have punishment