

What's Personhood Got to Do with It?

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Abstract: Consider a binary afterlife, wherein some people go to Heaven, others to Hell, and nobody goes to both. Would such a system be just? Theodore Sider argues: no. For, any possible criterion of determining where people go will involve treating very similar (possible) individuals very differently. Here, I argue that this point has deep and underappreciated implications for moral philosophy. The argument proceeds by analogy: many ethical theories make a sharp and practically significant distinction between persons and non-persons. Yet, just like in the binary afterlife, this involves treating very similar individuals very differently. I propose two ways out. The first is to deny that such theories are strictly speaking true, but to claim that it is practically best if people adopt them. The second is to modify such theories so as to allow for continuous variation in the scope and strength of the moral obligations arising from personhood.

1. Heaven and Hell

Suppose there is a binary afterlife: you either go to Heaven or Hell. Not everyone goes to one place; some individuals go to Heaven and others to Hell. Heaven is really amazing, and Hell is absolutely awful. Theodore Sider makes the extremely plausible case for why no criterion of determining who goes where could be just. This is because any criterion will involve radically different treatment of individuals that are extremely similar in the relevant respects.¹

For instance, suppose the criterion is based on how many obscenities an individual has uttered over the course of her life. If she utters less than N obscenities, she goes to Heaven. Otherwise she goes to Hell. This is a patently unjust criterion. For suppose that Alfred has uttered $N-1$ obscenities and Betty has uttered N obscenities. Alfred will go to Heaven, but Betty will go to Hell. Yet, it is unjust to give these individuals such radically different treatment, since they are so similar in the important respect. Should the utterance of one single obscenity beyond the limit really be the thing that dooms someone to eternal suffering?

¹ Sider, "Hell and Vagueness."

The same thing can be said for any other criterion where a gradual scale may be constructed. Thus, suppose that whether a person goes to Heaven or Hell depends on how kind she was over the course of her life. Kindness plausibly comes in degrees; it's not an all-or-nothing matter. So, suppose that some continuous measure of how kind someone was over her whole life is constructed. That is, some function is applied which takes as inputs lifetime deeds, smiles, emotions, and so on, and outputs some real number representing aggregate kindness. The criterion for admission to Heaven then involves achieving some threshold T of aggregate kindness. But this would mean that one can achieve level of kindness $T - \delta$ for arbitrarily small positive δ and still go to Hell. This is unjust. Such a minuscule difference in kindness shouldn't have such drastic consequences on the individual.

What about a criterion that doesn't involve such a scale, but considers simply whether someone has faith in God? The problem is that the predicate 'has faith in God' is vague. While there will be some cases where an individual definitely has faith in God and others where she doesn't, there will also be borderline cases. Yet, given the binary afterlife, a sharp cutoff must be made. And so, imagine two individuals differing ever so slightly in terms of possessing whatever it takes to have faith in God – one of these will go to Hell and the other to Heaven. This is unjust.

What if God's plan is to admit the definitely faithful as well as the borderline faithful? The idea here would be that anyone who is in danger of being on the vague boundary of 'having faith in God' goes to Heaven rather than Hell. This, however, ignores higher-order vagueness, as Sider notes. For, consider the predicate 'definitely has faith in God or is a borderline case of possessing such faith' – this predicate itself is vague.

Even if epistemicism about vagueness is true, it is of no help. Epistemicism is the view according to which there is no semantic indeterminacy where vague terms are concerned – there's only epistemic uncertainty.² In other words, there are no borderline cases, and a sharp cutoff can be made. So, for any given individual there will be a determinate fact of the matter as to whether she has faith in God, even if to *us* it may look like a borderline matter. But even if there is a sharp semantic distinction between the faithful and the faithless, it is implausible that such a distinction can ground the justice of treating arbitrarily close cases of faithfulness so differently. One way to illustrate this is the following. Suppose there is a sharp cutoff when it comes to baldness. Hence, there is some number

² See Williamson, *Vagueness*.

N of hairs such that possessing less than N hairs makes you bald. Yet it's absurd to hold that one has a much stronger reason to lament the loss of the last hair that puts one below N as opposed to the one that went before it – even if it's that last hair that makes you bald. Semantic and practical distinctions are different things.

2. Personhood

A problem with a similar structure is ubiquitous in ethics. Much moral theorizing commonly assumes that whether or not an individual is a person determines the nature of our obligations to that individual. Of course, non-persons may well impose duties on us. A cat is not a person, and it is wrong to torture a cat for fun. But the sorts of moral constraints a cat imposes on us are dramatically different – both in strength and kind – from the sorts of demands that persons impose on us. Persons are to be granted an array of stringent rights, and many philosophers add, they are to be regarded as moral equals in some sense.³

While this structure is ubiquitous in moral theorizing, perhaps the most clear-cut example of it occurs in the moral philosophy of Immanuel Kant and his followers. The relevant kingdom here is the Kingdom of Ends, rather than the Kingdom of Heaven. Individuals in the Kingdom of Ends merit a special kind of moral respect, according to Kant. They may never be treated as mere means and must always be treated as ends in themselves. Kant distinguishes between *things* and *persons*. He writes, “Beings the existence of which rests not on our will but on nature, if they are beings without reason, still have only relative worth, as means, and are therefore called *things*, whereas rational beings are called *persons* because their nature already marks them out as an end in itself, that is, as something that may not be used merely as a means, and hence so far limits all choice (and is an object of respect).”⁴ Furthermore, for Kant, each member of the Kingdom stands as an equal to every other member. All rational beings have *absolute*, and hence, equal, worth.⁵ T.M. Scanlon's contractualism shares this core structure as well. Scanlon is particularly concerned with the morality of what people owe to each other. The duties persons have towards each other – namely, to act

³ For a few examples, see Williams, “The Idea of Equality”; Waldron, *One Another's Equals*; Sher, *Equality for Inegalitarians*; Wallace, “Hypocrisy, Moral Address, and the Equal Standing of Persons.”

⁴ Kant, *Practical Philosophy*, G4:429.

⁵ Kant, *Practical Philosophy*; Wood, *Kantian Ethics*; Wood, *Kant's Ethical Thought*.

according to principles that no one could reasonably reject – are different in kind from the moral demands that non-persons can give rise to.⁶

The problem that arises, however, is that as in the case described earlier, you are either in the Kingdom of Ends or you are not. If you are in the Kingdom, you stand in the relation of equality to all who are in it; you command respect and must never be treated as a mere means. If you fall outside, however, you do not merit the special respect that those in the Kingdom do. This is a *big deal*. It matters a lot for you whether or not you are in the Kingdom of Ends, just as it matters a lot for you whether you end up in Heaven or Hell.

What is the criterion for admission into the Kingdom of Ends? As before, we might specify some threshold T of a continuous function of cognitive capacities such that reaching T means you are in the Kingdom. The problem is that a creature with index level $T - \delta$ for arbitrarily small positive δ will fall outside of the Kingdom. This is implausible. It is unjust to treat individuals that are so close with respect to the relevant criterion so differently.

Now, philosophers have not usually formulated the criteria in terms of such an index; rather, they ask whether or not something has a particular agential property. For Kant the important property is rational nature, which is the capacity to set ends for oneself. Similarly, for John Rawls, the crucial property is the capacity for a conception of the good and for a sense of justice, which is “a normally effective desire to apply and to act upon the principles of justice, at least to a certain minimum degree.”⁷ Only individuals that have this property fall within the scope of the (very demanding) duties of justice. As Jeremy Waldron puts it, “Within Rawls’s model, the sense of justice is an admission ticket to the negotiations at the original position, in which it is initially an open question which principles will turn out to be accepted.”⁸ However, just as the predicate ‘has faith in God’ is vague, so are predicates like ‘has the capacity to set ends for itself’ or ‘has a sense of justice.’ As anybody who has observed a child grow up knows intimately, it is vague whether someone has the ability to set ends for herself. So, there will be borderline cases where it is not clear whether the individual has the required capacities.

⁶ Scanlon, *What We Owe to Each Other*.

⁷ Rawls, *A Theory of Justice*, 442.

⁸ Waldron, *One Another’s Equals*, 105.

What is Kant talking about when he refers to our “humanity” or rational nature? According to Christine Korsgaard,

[Kant] is referring to a more general capacity for choosing, desiring, or valuing ends; ends different from the ones that instinct lays down for us, and to which our interest is directed by the operations of reason...the distinctive feature of humanity, *as such*, is simply the capacity to take a rational interest in something: to decide, under the influence of reason, that something is desirable, that it is worthy of pursuit or realization, that it is to be deemed important or valuable, not because it contributes to survival or instinctual satisfaction, but as an end – for its own sake.⁹

With Korsgaard’s definition in mind, consider a newborn infant. Paradigmatically, it operates by instinct – it seeks out milk, warmth, and cries when it is hungry or uncomfortable in some other way. An infant clearly does not exhibit the “rational nature” that Kant talks about. Perhaps somewhere around the age of three or four, children begin to assert themselves as individuals, making and adhering to conscious rules, wanting things beyond instinctive desires, and so on. But, just as it is vague when a person becomes bald, or when a group of pebbles becomes a heap, it is vague when a child begins to satisfy Korsgaard’s description. The same presumably goes for having a ‘sense of justice.’

Child psychologist Jean Piaget, who, among other things is famous for his work on norm-acquisition in children, stressed that “it is convenient for the purposes of exposition to divide the children up in age-classes or stages, but the facts present themselves as a continuum which cannot be cut up into sections.”¹⁰ According to Piaget, “We cannot therefore speak of global or inclusive stages characterized as such by autonomy or heteronomy, but only of phases of heteronomy or autonomy which define a process that is repeated for each new set of rules or for each new plane of thought or reflection.”¹¹ Children’s processes of acquiring norm-guided behavior – which is central to acting upon maxims in the Kantian sense or possessing a sense of justice in the Rawlsian sense – are thus gradual, rather than discrete.

⁹ Korsgaard, *Creating the Kingdom of Ends*, 114.

¹⁰ Piaget, *The Moral Judgment of the Child*, 27.

¹¹ Piaget, *Sociological Studies*, 85–86.

Recent work in developmental psychology finds that infants' transition to full-fledged moral agency is multifaceted and gradual. Michael Tomasello and Amrisha Vaish argue that morality develops in two steps. Toddlers exhibit cooperative behaviors that reflect *second-personal* morality, which includes commitments to joint projects, a sense of equality in dividing resources in certain contexts, and evaluating others in terms of their cooperativeness. However, these behaviors are still not rooted in a norm-based, agent-neutral understanding of morality that full-fledged human adults typically possess. This develops in later preschool years, where children can evaluate others in terms of social norms, and can see themselves as but one individual among others. Further, they come to regulate themselves in light of their grasp of these norms.¹² The authors emphasize that the shift from this first to the second stage is gradual:

These are all quite challenging developmental feats that are likely accomplished gradually over time rather than all at once. The transition from a second-personal to a norm-based morality is thus not an abrupt one, and so it is plausible that some norm-based morality is evident even at age 2 years, whereas in many circumstances, even adults may not demonstrate a full-fledged norm-based morality.¹³

Fiery Cushman et al. argue that while young children make moral judgments predominantly based on *outcomes* rather than the actor's *intent*, this gradually shifts as they age. They claim that both outcome-based and intent-based processes of judgment exist in full-fledged adulthood and their conflict explains the phenomenon of moral luck. The authors find that "young children's moral judgments exhibit increasing reliance on mental states such as intent as they age." The two-process system of judgment comes on line sometime between ages 4 and 6. Yet, the authors point out, "Our evidence does not, however, suggest a rapid change occurring between the ages of 4- and 5-years old for all children, but rather a more gradual change spanning several years."¹⁴

Other plausible conditions necessary for the commonly accepted conceptions of personhood to be applicable to an individual also develop in such a way that it is hard to say where personhood might begin. For instance, the ability to ascertain the mental states of others, essential to possessing a

¹² Tomasello and Vaish, "Origins of Human Cooperation and Morality."

¹³ Tomasello and Vaish, 250.

¹⁴ Cushman et al., "The Development of Intent-Based Moral Judgment," 16.

“theory of mind,” is a critical component of possessing a sense of morality or justice.¹⁵ Yet, the theory of mind also develops gradually within humans, spanning multiple stages.¹⁶ Self-consciousness, too, develops in gradual stages, exhibiting more and more complexity as the individual matures – so that the threshold necessary for personhood is difficult to locate.¹⁷

Now, while very young children and infants are not persons, they (mostly) have the *potential* to become persons. This raises complex questions of how to understand our duties to them.¹⁸ One widely held view here is that such potential is sufficient to grant entry into the Kingdom of Ends. And if that’s right, then worries about the claims that children generate on us are side-stepped. For, even if a particular child is not able to set ends for herself or is on the borderline of being able to do so, she nonetheless generates claims on us equal in strength to fully-fledged persons. Rawls writes, for instance, “the minimal requirements defining moral personality refer to a capacity and not to the realization of it. A being that has this capacity, whether or not it is yet developed is to receive the full protection of the principles of justice.”¹⁹ If that’s right, then the problem I’ve been sketching for personhood does not apply to the case of children.

However, this doesn’t make the problem go away. For, as Charles Darwin emphasized in *The Descent of Man*, “the mental faculties of man and the lower animals do not differ in kind, although immensely in degree.”²⁰ Recent work in primatology has found deep and important similarities between human and primate behavior.²¹ Thus, we should think of our earlier ancestors as gradually developing their mental capacities through forces of natural and sexual selection. So, imagine your complete ancestral history beginning all the way from a single-celled organism, considering only fully developed adults. You are a person, and the single celled-organism is not. But those who take the Kantian model of morality seriously are committed to saying that along the way, there had to be at least one parent such that her child became part of the Kingdom, but she never did. This is hard to believe, particularly because evolution proceeds slowly. A criterion that recommends such different

¹⁵ Kagan, “Three Unresolved Issues in Human Morality.”

¹⁶ See for instance, Wellman, *The Child’s Theory of Mind*.

¹⁷ For a discussion of some of these stages, see Rochat, “The Ontogeny of Human Self-Consciousness.”

¹⁸ Harman, “The Potentiality Problem”; Schapiro, “What Is a Child?”

¹⁹ Rawls, *A Theory of Justice*, 446.

²⁰ Appleman, *Darwin: A Norton Critical Edition*, 188.

²¹ See de Waal, *Our Inner Ape*.

moral treatment of two individuals that are extremely similar with respect to the underlying property in question is unjust.²²

Another way to formulate the core issue is this. Sider's problem arises because there aren't different "levels" of Heaven and Hell in the binary afterlife scenario discussed above. The problem is entirely avoided if there were different levels of Heaven and Hell. Suppose, for example, there is a distinct level of the afterlife for each number n of obscenities uttered over the course of one's life, with each level getting successively worse as n increases. While such a system may well be unjust for altogether different reasons, it is not vulnerable to Sider's critique. Similar things can be said about a system whereby one's afterlife gets better and better as one exhibited more and more faith in God during one's earthly life. Likewise, an ethical theory that assigned different "levels of personhood," as it were, and assigned progressively more demanding moral rights to higher levels, would not face the analogous problem.

Furthermore, if the capacities underlying the notion of "personhood" can vary continuously, the ideal escape from the problem would involve infinitely many levels of personhood, each of which gives rise to obligations of different scope and strength. But even a view which discretized things to some extent is less problematic the more levels it allows. In the limit as the number of levels approaches infinity, the problem is avoided entirely.

The kinds of theory that are centrally affected by the problem sketched here are those which are bound to make a sharp distinction between persons and non-persons in the way they carve the deontic landscape. Thus, for instance, a theory according to which persons are owed a certain kind of *respect*, while non-persons are not, will run into the problem.²³ It will be forced to treat very similar cases very differently.

But to what extent is this an easily fixable shortcoming? Can we for instance note that respect, of the kind that is owed to persons, can come in degrees? If it can come in degrees, then it would seem there's an easy fix – borderline cases of personhood might merit partial respect. Thus, perhaps while

²² Of course, the worry that any demarcation of personhood is "arbitrary" in some sense has been raised in the literature, especially in the context of the ethics of abortion – see for example, Tooley, "Abortion and Infanticide." Merely repeating that point is not saying something new. What I want to emphasize in this paper, however, is the injustice of *hanging a lot, in an all or nothing manner* on a sharp demarcation, where the underlying property is either scalar or vague.

²³ The respect in question is what we might call *recognition respect*, following Stephen Darwall. See Darwall, "Two Kinds of Respect."

you deserve full respect since you are a paradigmatic case of a person, your borderline hominid ancestor may merit half or three quarters the amount of respect. Of course, while it may take some work to figure out what partial respect comes to, it seems like this is a way to preserve a respect-based normative theory without running afoul of a problem analogous to Sider's Heaven and Hell case.

However, whether such a move can be made depends on the *structure* of the normative theory in question. Many influential theories make a categorical distinction between what is owed to persons and what may be owed to non-persons so that the morality of what we owe to persons exhibits a different structure in comparison to the morality of what we may owe to non-persons. T.M. Scanlon's contractualism is a good example here. Scanlon makes a distinction between the morality of "what we owe to each other" and moral reasons grounded in what he calls "impersonal" values.²⁴ The morality of what we owe to each other is governed, according to him, by the contractualist formula, according to which "an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement."²⁵ Given this structure, some distinction has to be made as to which entities fall under the scope of "no one." Entities that fall under the scope will be able to secure distinctive moral claims, because actions will have to be *justifiable* to them. Entities falling outside of the scope will have no such privilege. Scanlon's structure thus is essentially one that *has* to make a sharp distinction, and thus runs afoul of the problem presented here.

The same can be said of theories of justice based on Rawlsian contractarianism. For Rawls, the principles of justice are those that would be chosen behind a "veil of ignorance." Rational parties, represented as *free* and *equal* persons, are to choose principles of justice without knowing what position in society they are to occupy – thus, they don't know their race, gender, social class, natural talents, and so on. The parties are rational in a thin sense – they are effective in choosing means for particular ends. Importantly, they are *mutually disinterested* – qua contracting parties they are not interested in the aims and goals of other parties and do not have either benevolence or antipathy towards one another. Like Scanlon's theory, this theory has a structure that must make a sharp

²⁴ Scanlon, *What We Owe to Each Other*, 219–20.

²⁵ Scanlon, 153.

distinction in the relevant sense – what claims an individual has depends on whether or not they get represented by a party in the original position. If they do get represented, they will be able to make claims of *justice* equal in nature to everyone else who gets represented. If they don't get represented, they will fall outside of the scope of justice. The theory is not designed to assign partial representation to individuals on the borderline of whatever it takes to qualify as the proper bearer of justice claims.

While these are the paradigmatic cases, a structural difference between the morality of what is owed to other persons and what is (potentially) owed to non-persons is quite common. The dominant view in moral philosophy is that people have certain inviolable rights. Thus, the rights of one may not be violated merely to secure a greater benefit to others. Thus, if cutting up one healthy patient is the only way to save five who need different organs, it is nonetheless impermissible to do so. However, it is not common in moral and political philosophy or modern commonsense morality to apply such constraints in our treatment of non-human animals (who are generally taken to be non-persons). Of course, many writers have argued that the suffering we currently inflict upon non-human animals via the food industry is morally wrong.²⁶ Many who may accept this, however, do not assign inviolable rights to such animals. Thus, as Jeff McMahan puts it, animals are “freely violable in the service of the greater good,” whereas persons are “fully inviolable.”²⁷ Such a structure may be described, following Robert Nozick, as “utilitarianism for animals, Kantianism for people.”²⁸ Of course, this raises the question of where Kantianism should end, and utilitarianism should begin – what is to be done at the borderline?

There are notable exceptions to this. Sue Donaldson and Will Kymlicka, for instance, have developed a detailed view on which non-human animals, even those that are not “persons” in any sense – deer, for instance – have inviolable rights.²⁹ Of course, many will find the implications of this view implausible. But putting that to one side, even animal rights theorists in this vein will have to make a distinction between the set of individuals that possess these inviolable rights and the set that does not. For Donaldson and Kymlicka, the crucial property is sentience, or consciousness. Animals like deer have “selves” in this sense – there is someone home, as it were. But this too will

²⁶ Famously, Singer, *Practical Ethics*.

²⁷ McMahan, *The Ethics of Killing: Problems at the Margins of Life*, 265.

²⁸ Nozick, *Anarchy, State and Utopia*, 39.

²⁹ Donaldson and Kymlicka, *Zoopolis: A Political Theory of Animal Rights*.

admit of vagueness. There will be borderline cases – think of fish, mosquitos, lizards – and the exact problem raised earlier for personhood will reappear for consciousness.

3. Sophisticated Theological Responses

Sophisticated *theological* responses to Sider’s problem of the binary afterlife exist and may well be successful. But I contend that because they have distinctive features that are missing in the case of personhood, such responses will be of no help in the latter case. Consider, for instance the response to Sider detailed by Matthew Konieczka.³⁰ According to this response, God gives everyone at least what they deserve. Some undeserving sinners enter Heaven, but there are no individuals deserving of Heaven placed in Hell. But furthermore, God seeks to achieve some greater good, G, that is diminished by allowing too many undeserving sinners into Heaven. He thus calculates the precise point at which G would be sacrificed, and lets in that many undeserving sinners, ordered by their deservingness. We, however, are not in a position to know what G is and neither are we in a position to know what the cutoff mandated by the goal of preserving G is.

For this style of response to be helpful in the case of personhood, we would have to specify what the analog of G is. Konieczka doesn’t seek to identify G because, for him, God’s goals need not be transparent to us. This, of course, is a point commonly made in Christian theology. Such a response, however, is not available to ethical theorists. For, the task of ethical theory is to specify what matters and what our obligations are. It’s a serious count against ethical theory if it has to posit a mysterious good that is opaque to us while specifying the contents of our obligations.

In addition, G must not be some instrumental good that would be sacrificed by letting in too many borderline cases into the Kingdom of Ends. For, Kantian theories aim to use the concept of personhood to specify the scope of our *non-instrumental* ethical duties. Persons are to be regarded as ends-in-themselves, who possess a dignity rather than a price, according to Kant. In a similar vein, Rawls seeks to identify the requirements of justice not as ways to promote some other good, but rather as the fundamental goal for social and institutional organization. I am not optimistic that such

³⁰ Konieczka, “Hell Despite Vagueness.”

a good G can be identified. At any rate, the burden is plausibly upon the defender of the Konieczka-style solution to the case of personhood.

Another theological response that has been explored is the idea that God chooses to actualize the world in which the gap between the most deserving Hell-bound person and the least deserving Heaven-bound person is sufficiently large so as to avoid Sider's worry of treating similar cases very differently. Trent Dougherty and Ted Poston defend this idea along with the claim that the largeness of the gap is undetectable by us.³¹ The dis-analogy between this and the case of ethical theory, however, is that a good theory should be able to tell us what our obligations are in a range of (at least nearby) possible worlds. Even supposing that the actual world contains no cases of borderline persons (or potential persons), a good ethical theory should be able to tell us what moral claims possible borderline persons (or potential persons) *would* make on us.

4. Objections and Replies

Objection 1: Vagueness is ubiquitous. Many commonly used predicates are vague, including 'is bald,' 'is a heap,' 'is flat,' and so on. Moreover, the Sorites Paradox has been around for a long time, and no decisive solution is forthcoming from metaphysicians and logicians. Why is it a problem for ethicists in particular?

Reply: The problem is pressing for moral philosophy in particular because according to a large family of ethical theories, a lot hangs on whether an individual is a person. The problem is not simply that whether an individual is a person is *vague* on a particular definition of personhood. Rather, it is that we hang a lot on whether an individual is a person, in an *all-or-nothing* manner. On the contrary, not much hangs on whether a group of pebbles is a heap. Likewise, whether I am bald is not something I have reason to lament in an *all-or-nothing* fashion. There is no number of hairs N such that the moment I lose that many hairs, I have reason to lament my hair loss, but little or no reason to do so at $N-1$. Rather, I plausibly have more and more reason to lament my hair loss the greater the number of hairs that I lose.

³¹ Dougherty and Poston, "Hell, Vagueness, and Justice."

Hence, the problem that the vagueness of personhood poses for much of moral philosophy is not a problem of vagueness *per se*. The situation is exactly analogous to Sider's problem of the binary afterlife. The general lesson of that case is that we shouldn't assign something of enormous practical significance in an all-or-nothing manner where the predicate we use to make the determination is vague.

Objection 2: John Rawls used the notion of a *range property* to help characterize the nature of personhood for the purposes of moral and political theorizing. Consider the example of points within a unit circle: *being within a unit circle* is a range property in the sense that a point that's just within the boundary is equally within the circle as a point that's near the interior. Similarly, Toledo is just inside Ohio's border, whereas Columbus is close to the center of the state. Yet both are equally *within Ohio*. Likewise, an individual that just passes the threshold of personhood is equally a person as someone who far exceeds that threshold.³²

Reply: This putative solution's effect is to merely push the bump under the rug. The question will then become: why should we care about personhood defined as a range property clearing a threshold T of whatever function we end up choosing, rather than $T-\delta$, for arbitrarily small δ ? Why is the former the key range property but not the latter?³³ At any rate, if the range property solution were to work in the personhood case, it would apply equally well to Sider's case. There, it could be said, being such that one utters less than N obscenities over one's lifetime is a range property – somebody who utters $N-1$ obscenities has this range property just as much as somebody who utters zero obscenities. Similarly, being over a threshold T of kindness is a range property – a moral saint is over the threshold just as much as someone who barely crossed it. Yet this does little to assuage the worry that the binary afterlife Sider describes is unjust. And since whatever goes for the Sider case applies to the personhood case, if the notion of range property is no panacea in the former, it is no panacea with regards to the latter either.

Objection 3: Sharp cutoffs are ubiquitous in the law, and this is surely within the realm of justice. For instance, the legal drinking age is 21. We might debate as to whether this is the correct cutoff point, but we don't find using such cutoffs problematic *per se*. Similar things may be said about a

³² See Rawls, *A Theory of Justice*; Waldron, "Basic Equality."

³³ For more on this line of argument, see Carter, "Respect and the Basis of Equality."

host of legal distinctions – speed limits, amounts of liquid allowed in carry-on luggage, etc. Moreover, even the crucial property of *mens rea* is vague. Since possessing an intention to \emptyset is a vague matter, whether or not someone intended to commit a particular crime will be a vague matter. Yet, surely, applying *mens rea* as a criterion in legal proceedings is not unjust.

Reply: There are strong social and logistical reasons to make sharp cutoffs in cases like the drinking age. Plausibly, part of the rationale for the drinking age is to prevent people from making irresponsible choices with alcohol, and empirically speaking, people tend to get more responsible as they get older (up to a certain point). However, we also don't want judges, law enforcement officials, and shopkeepers to substitute their own judgments as to how responsible someone is with alcohol.

Furthermore, while *mens rea* is vague, it's indispensable as a determinant in court proceedings. That said, the legal system does allow for distinctions that avoid the problematic all-or-nothing character discussed above. Frequently, judges will adjust penalties based on how malicious they see the intention to be, for example. Similarly, a system with properly used prosecutorial and judicial discretion will apply different penalties depending on the particular circumstances of offering alcohol to a minor. Presumably, both amount and age will count. Offering a glass of wine to a 20-year-old will be addressed differently from offering large amounts of liquor to a 14-year-old. Ultimately, however, the law is indeed a blunt instrument, but it's better to use a blunt instrument rather than none at all, if those are the only options.

Moreover, we do recognize that there isn't a huge *moral* difference between offering someone a glass of wine seconds before his 21st birthday and seconds after, except insofar as there is a moral duty to obey the law. In the case of personhood, things are different. There, it seems ethicists have wanted to assign a crucial *moral* distinction between persons and non-persons. It's also less obvious whether an instrument of *such bluntness* is necessary. If we can find less blunt ways of properly taking into account the properties underlying personhood within moral theorizing, we should.

5. Two Options

The preceding argument leaves us with two chief options. The first is to deny that the all-or-nothing importance assigned to personhood is fundamentally correct. Consequently, the systems of

deontological ethics tracing their roots to Kant are ultimately false.³⁴ Nonetheless, perhaps these systems give us useful rules with which to guide our conduct, and in doing so, we promote some genuine moral goal that these theories don't themselves identify. That is, perhaps we ought to strive towards moral goal *M*, but acting on the fiction of the moral equality of persons is the best way we can in fact strive towards *M*, given facts about human nature. To take this route is to understand Kantianism, along with Scanlonian contractualism and other ethical systems which hang a lot on personhood, on the legal model. As discussed earlier, the legal system acts *as if* people suddenly become responsible adults at the same discrete moment in time, which is false. Yet, justice is best served if the system employs some such fiction.³⁵

The basic idea behind this line of argument might be that humans are imperfect creatures and have many biases which can be especially strong within the socio-political arena. It is thus best – in terms of securing the peace, cooperation, and stability that enables us to flourish – if we tell ourselves the noble lie that a sharp boundary between persons and non-persons exists, and that all persons have equal moral standing – i.e. there are no “levels” of personhood.

Ultimately, however, ethical theories like Kantianism are simply false. They are merely useful fictions. It is worth noting here that this will be a further cost to those who think that the rules of morality are ones we should be able to act on – that is, morality should not be “self-effacing” in the sense described by Derek Parfit or Henry Sidgwick.³⁶ Kant and Rawls both emphasized this idea of publicity in the context of principles of justice.³⁷

³⁴ It might be thought that utilitarians face this problem as well. For Jeremy Bentham, the crucial property is not rational nature, but rather the capacity to suffer. See Bentham, *An Introduction to the Principles of Morals and Legislation*. And of course, the capacity to suffer comes in degrees. However, utilitarians have not been committed to hanging an all or nothing practical distinction based on the capacity to suffer. A squirrel has less capacity to suffer than the average human – and utilitarians are happy to adjust the strength of reasons we have towards either being proportionately. Moreover, the duties we have towards either being are not fundamentally different *in kind* as the Kantians hold. Rather, they're both ultimately duties to reduce suffering and promote pleasure.

³⁵ If this is right, morality might be ‘esoteric’ in the sense that philosophers articulating defenses of utilitarianism have suggested. It's a familiar worry that perhaps if utilitarianism were widely familiar and accepted as true, then aggregate utility would not be maximized. Thus, utilitarianism itself would recommend that it not be widely known. See Sidgwick, *The Methods of Ethics*. The point holds for consequentialism in general. See, for example, Parfit, *Reasons and Persons*.

³⁶ Parfit, *Reasons and Persons*; Sidgwick, *The Methods of Ethics*. See also: Driver, *Consequentialism*.

³⁷ See Grosser and Parr, “Publicity.”

Another way to proceed is to try to salvage the core insights of these theories while denying that the Kingdom of Ends involves a sharp cutoff. The challenge here will be to spell out our obligations to individuals on the borderline. Consider, for instance, one of your early hominid ancestors regarding whom it is unclear whether he has the agential properties that Kant or Rawls require. He exhibits robust reciprocal behavior for example, but it's hard to say whether he has "a sense of justice" or "sets ends unto himself." Does he have one foot in the Kingdom of Ends and one outside? If so, what are our obligations to him? Do they resemble the kinds of duties we have towards sentient creatures in general? Or do they involve duties that take into account the respect that is owed to persons: duties not to be paternalistic, not to break promises, and so on?

Perhaps it is possible to develop a conception of treating an individual as an end in himself that is a *matter of degree*. According to this conception, the scope and strength of the moral obligations of Kantian respect can vary with the cognitive and agential sophistication of the individual. Hence the kinds and strengths of obligations you have towards the aforementioned hominid ancestor are somewhat different from those you have towards the average modern human.³⁸

Consider, for example, the widely acknowledged duty not to act paternalistically towards competent adult persons.³⁹ A possible view here is that it is more wrong to act paternalistically towards the typical competent adult modern human than it would be towards the borderline-person hominid ancestor. It would thus be more wrong to administer a beneficial medical treatment, say, to the former rather than to the latter without first obtaining medical consent. Nonetheless, there can still be some reason not to treat this ancestor paternalistically in various contexts – it would be wrong to treat him merely like a squirrel or a slug. Furthermore, there would be some *prima facie* reason to live with the hominid ancestor on mutually acknowledged terms of reciprocity in a way that's not desirable or even possible with squirrels and slugs.⁴⁰

In general, then, it may not be an essential feature of deontological morality that a sharp distinction between persons and non-persons must be made, and that our duties towards individuals must vary

³⁸ To some extent, this has been appreciated and incorporated within the abortion debate. Mary Anne Warren, for instance, writes: "It does seem reasonable to suggest that the more like a person, in the relevant respects, a being is, the stronger is the case for regarding it as having a right to life, and indeed the stronger its right to life is." Warren, "On the Moral and Legal Status of Abortion."

³⁹ For a helpful recent treatment, see Flanigan, *Pharmaceutical Freedom*.

⁴⁰ W.D. Ross's deontology based in *prima facie* duties might have an especially easy time accommodating all this, since such duties can continuously vary in strength. Ross, *The Right and the Good*.

drastically depending on the classification. To the extent that Kantian morality is centered around respect, or treating others as ends in themselves, it seems to plausible that a graded scheme of obligations can be spelled out, without involving sharp cutoffs. Respect might appropriately come in degrees, so that there might be separate, continuously differentiated, levels of ascension in the Kingdom of Ends. Insofar as we can cash out a notion of respect that can come in degrees, the deontological intuitions about the rights possessed by paradigmatic persons need not be abandoned in favor of utilitarian views which do not make sharp distinctions between persons and non-persons. That is, we need not adopt a view on which the rights of persons are freely violable in the service of greater aggregate welfare – which, of course, many ethicists have found implausible.

What will have to go, though, are structures common to Kantian systems of morality wherein a group of individuals legislates the principles that govern them, so that each individual gets an equal say, and the principles are chosen unanimously. For Kant, this is the Kingdom of Ends, for Scanlon this is the set of individuals to which actions must be justifiable, and for Rawls, this is the original position. These structures necessitate a sharp cutoff between the legislators and the non-legislators.

One worry with thinking of respect in the Kantian sense as coming in degrees is the following. If such respect tracks rationality, then should people who are more rational or are better at planning their lives assert stronger claims on us than people who score lower on these dimensions? This would be a consequence some would find unpalatable. However, the view that respect can come in degrees need not be committed to such a scheme. We can hold that after a certain level of rational capacities is reached, greater possession of such rational capacities doesn't matter morally in terms of how we are to treat individuals.

For example, consider four individuals: the bacterium, the borderline hominid, Average Joe, and Socrates. Let's assume that Socrates scores much higher than Average Joe in terms of rationality – he is able to grasp more abstract reasons, is able to better engage in moral reasoning, and so on. Average Joe, let's suppose, is the statistically average human being in the world today – so he passes whatever bar Kant, Scanlon, and Rawls have in mind when they delineate the criteria for personhood. The borderline hominid is an unclear case. He possesses many proto-rational powers – is able to engage in reciprocity, for example. But it's not clear whether he can act on full-fledged rational principles or has a robust “sense of justice.”

Now, if respect comes in degrees, and we could somehow assign a numerical value to this respect, the following view is possible, and doesn't run afoul of the problem I have been discussing. The bacterium, let's say, would get a respect-value of 0. This would mean it is wholly permissible to use it as a mere means to our ends. The hominid might receive a respect-value of 0.5. What this could mean is that it is wrong to use the hominid as a mere means, but perhaps not as wrong as it would be to use a full-fledged person as a mere means. Perhaps it might also mean that the hominid has some rights, but not others – a strong right to life, say, but a weak or non-existent right to property. Further, it might mean that the threshold required to override the hominid's rights is lower than that required to override a person's rights. Thus, perhaps while it could be wrong to kill the hominid to save two others, it might not be wrong to kill it in order to save five others. But, it might be wrong to kill one full-fledged person in order to save five others. Now, as the hominid gets closer and closer to the threshold for personhood, the respect-value increases, becoming closer and closer to 1. At some point, the value would equal 1. Importantly, there is no sharp jump. Average Joe and Socrates, however, both have respect-values of 1. Thus, both Average Joe and Socrates make the same kinds of moral claims on us, and it is just as wrong to kill or steal from Average Joe as Socrates.

The view thus need not lead to an elitism of sorts where those with greater rational capacities are in possession of stronger rights-claims. Nonetheless, some further questions will arise for the defender of such a view. Why do rational capacities stop mattering after a particular point? What explains the respect-curve flattening out at 1, as it were? Addressing these questions is beyond the scope of this paper, and some philosophers have raised doubts about whether they can be satisfactorily answered.⁴¹ My point here is merely that such a view is *available* to a deontologist who sees the Kantian notion of respect as central to the moral domain.

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⁴¹ See McMahan, "Challenges to Human Equality"; Husi, "Why We Are Not Moral Equals."

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