

The performativity of personhood

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Debates in bioethics around abortion and the moral status of the human fetus frequently take recourse to the concept of 'personhood' as a means of moral arbitration: whether the fetus can be properly identified as a person is taken to determine what can be done to it, primarily, whether it can be killed or not. In the tradition of Peter Singer and Michael Tooley, Alberto Giubilini and Francesca Minerva extend this logic to defend the idea of 'after-birth abortion'. They claim that, insofar as abortion, (by definition prior to birth), is morally permissible, killing a newborn should also be permissible, since '[t]he moral status of an infant is equivalent to that of a fetus, that is, neither can be considered a "person" in a morally relevant sense.'¹ What is perhaps most surprising and novel about their argument, though, is that they claim that this applies both to neonates with severe disabilities that make life 'not worth living', as well as healthy neonates. They are, in a sense, being more radical, and some may argue consistent, than previous defenders of infanticide such as Singer.

There are numerous problems with the argument they make, but I will not elaborate on them all. Instead, I want to make a point about context, and particularly about the effects of language within the context of its use. An obvious problem with the argument being made is its almost total neglect of contextual factors such as variations in abortion law, and the fact that very few if any jurisdictions permit abortions in the third trimester when the fetus is healthy or 'normal'. While legal permissibility is not equivalent to moral permissibility, nor is it completely independent of it. This suggests that the argument for the moral permissibility of abortions of healthy foetuses after viability needs to

1 Alberto Giubilini and Francesca Minerva, 'After-birth abortion: why should the baby live?' *Journal of Medical Ethics*, published online 23 February 2012. Available from: <http://jme.bmj.com/content/early/2012/03/01/medethics-2011-100411.full>.

be made before an argument for ‘abortion’ after birth gains much traction. But perhaps a less obvious dimension of the neglect of context is a failure to fully appreciate the conditions under which the designation of ‘person’ can be considered felicitous, and just what the effects of that designation are.

It is often noted that the concept of the person derives from the Latin term ‘persona’, meaning the mask used in a play or performance, or the part played by an individual in life – in essence, *a role* that an individual plays. This etymology highlights the specifically performative dimension of the concept of the person, a dimension that takes at least 2 forms. The first of these is the sense in which being a person demands a certain kind of *performance*, or can be understood as such a performance. This interpretation is developed by Friedrich Nietzsche, for instance, in his proclamation that ‘there is no “being” behind doing, effecting, becoming; “the doer” is merely a fiction added to the deed – the deed is everything’.² This perspective is useful for considering the development and practice of ethical subjectivity, but the second form of the performative dimension of the person may have more direct relevance to the issue at hand.

In abortion debates, philosophers generally treat the term ‘the person’ as descriptive, such that statements claiming that something is a person (or not) can be considered either true or false, depending on the characteristics of that thing. But this obscures important aspects of its usage. In *How to Do Things with Words*, J.L. Austin identified a subset of speech acts as *performative* (rather than constative), in that they do things in their very declaration or utterance. They do not simply describe states of affairs or things, but actually perform the act they ostensibly describe. ‘I promise’ or ‘I apologize’ may be taken as paradigmatic of such performative statements. Performative speech acts cannot be judged according to their truth-value, but are instead considered ‘happy’ or ‘unhappy’ depending on their success. While Austin attempted to limit performatives to a particular grammatical form, social theorists have subsequently extended his identification of the performative capacity of speech acts well beyond this.

2 Friedrich Nietzsche, *On the Genealogy of Morals and Ecce Homo*, ed. Walter Kaufmann, trans. Walter Kaufmann and R. J. Hollingdale, New York: Vintage, 1989, 1st essay, s13.

One can argue that uses of the concept of the person in abortion debates have something of this performative force. 'Personhood' is not a matter of the accurate attribution of the concept 'person' on the basis of objective properties of the fetus, with the change in moral status depending on these changing properties. Rather, the attribution of personhood immediately and in itself changes moral status, and this attribution may occur independently of the actual properties of the fetus. In other words, in being called a person, the fetus is *made into* a person, such that the name 'person', 'retroactively constitutes its reference'.³ One implication of this is that the claim that a fetus is a person – or, is not a person – cannot be judged on the basis of whether it is true or not; what matters is whether the claim is felicitous or infelicitous.

This shift in perspective has a number of important implications, two of which I briefly note here. First, Austin emphasized that a degree of conventionality was required for a performative speech act to be felicitous.⁴ This highlights that there is also a degree of conventionality at work in what we call 'person': the felicitous performance of calling something a person is highly norm-bound. This conventionality does not mean that personhood is not open to challenge and transformation. In regards to pregnancy, technologies such as obstetric ultrasound put pressure on intuitions about the moral status of the fetus. Ultrasound simultaneously challenges and re-establishes the norms of personhood in its impact on the maternal-fetal relationship, and the way in which it can contribute to the depersonalization of fetuses diagnosed with abnormalities such as trisomy 21 or cleft palate. Nor does the conventionality of the felicitous attribution of personhood mean that what is or is not a person is settled once and for all; quite obviously, there are border disputes.

This leads to the second implication, which is that the felicitousness or otherwise of a performative such as the attribution of personhood is often highly dependent on matters of social authority. As Austin pointed out, but did not fully elaborate, the felicity of a performative speech act depends to a large extent on it being spoken by someone with the appropriate institutional

3 Slavoj Žižek, *The Sublime Object of Ideology*, London: Verso. 1989, 95.

4 J. L. Austin, *How to do Things with Words*, 2nd ed., Cambridge, MA: Harvard University Press, 1975, 14.

legitimacy and social authority: not just anyone can effectively name a ship or declare war, for example.⁵ Extending on this, Pierre Bourdieu has argued that language is inseparable from its social context, and the felicity or otherwise of a performative utterance is ultimately a matter of ‘symbolic power’.⁶ Given this perspective, one can see that debates about the moral status of the fetus are themselves expressions of, and struggles for, such authority and symbolic power. Academic philosophers are by no means excluded from this struggle for symbolic dominance.

Against the backdrop of the symbolic authority of the university system (including academic publishing) and the claim to expertise that it legitimates, it may be worth questioning the strategic effects of moral arguments about personhood today. For instance, which claims to personhood are excluded or rendered invalid by the phrase, ‘in a morally relevant sense’? What determines moral relevance in this context? Contemporary moral and political debates on abortion are volatile, and for women the stakes are high. What are the possible political ramifications of an argument for the permissibility of killing a healthy neonate in the context of these debates, which includes legal campaigns to limit abortions to the gestational period prior to the development of a fetal heartbeat (detectable at about 6 weeks)? This is not the place to address these questions; but the performative dimension of the term ‘the person’ makes it clear that the force of a claim is inseparable from the social context in which it is made. That behoves philosophers to consider the effects of their language use, and of the arguments they make, beyond a narrow construal of veracity and logical consistency.

5 Ibid., 23

6 Pierre Bourdieu, *Language and Symbolic Power*, ed. John B. Thompson, trans. Gino Raymond and Matthew Adamson, Cambridge, UK: Polity Press, 1991