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Facts versus decisions

(Commentary to Jan Bransen: Educatibility)

Here is a re-statement of what I take to be the core content of Jan Bransen's fascinating and liberating article. I shall re-state rather than quote because I want to bring out some points that are harder to express in Bransen's terminology. In particular I want to avoid the word "response-dependent", which is perfectly clear in Bransen's article, but which is used by other writers in a variety of senses. So a warning to the reader: I may be misinterpreting. If so I am sure that Bransen will point this out.

The central claim is that a family of concepts – person, agent, intentional, deliberate – are not directly descriptive or theoretical. Although they describe features of human beings (and also other creatures) they are not terms of biology or medicine, or for that matter anthropology. And although they are terms of common sense they are not commonsensical descriptions of the appearance and behaviour of human beings or of what it is like "from the inside" to be a human being. Instead, they are concepts that are attributed by creatures like us to one another, in a variety of contexts for a variety of purposes, most of which involve the recognition of another as competent to play a role in the system of cooperation, responsibility, and credit. The attribution is in a way self-sufficient, in that it is the attributers who decide, in judgement and in practice, to whom or what they apply the concepts. Personhood, on this account, is like a club whose members decide who else may join.

It is important to note that personhood and moral agency are not purely arbitrarily on this account. They cannot be applied or denied at whim. At a minimum the individuals to whom they apply must produce controlled actions as means to identifiable ends. That is, there must be changes in the environment which are sensitive to changes in the behaviour of the organism, and the pattern of such changes must be sensitive to the information flowing from the environment to the organism. This is not the only, or necessarily the best, way of stating the requirement, which amounts to requiring that there be states that have the barest causal characteristics of beliefs and desires. So stones are not even candidates for being persons. This leaves open, of course, whether apes, whales, two year old children, or demented old

humans are persons, and Bransen's suggestion is that we treat these questions not as factual questions to be decided either by scientific investigation or conceptual analysis but as issues our response to which are partly constitutive of their own correctness.

On this approach we can accept that the extension or denial of personhood to creatures is an important business, to which we should apply logic, responsible rhetoric, and imagination. Ideally our attributions should be part of what Rawls calls a reflective equilibrium, a situation where our general beliefs and our reactions to both real and imagined particular cases are logically consistent and psychologically harmonious. Our attributions should be ones that we can live with. (In saying this I am going beyond what Bransen actually writes, but I would be very surprised if he disagreed.) However reflective equilibria are rarely unique, and are not driven by evidence or theory alone, so that we are left with a lot of space within which we have to decide.

Now I have re-stated Bransen's ideas in my own words, so I can state some worries about them. The first worry concerns who is allowed to form the judgement that a certain class of creatures are persons. Bransen writes as if we begin with the majority of present-day adult human beings – 'us' – and the question is how the magic circle should be drawn so that it marginally expands or contracts this class. But in human history many people have denied that many other humans have moral status. It is not clear that for Aristotle women and children were full persons, and in human history racist beliefs have often led to an exclusion of large segments of humanity from full moral agency. (In the Afrikaans of old-time South Africa, for example, there were different general terms for people of European and African descent, and the latter term had overtones of non-personhood.) Except when they are utterly demoralised, the members of such excluded groups have continued with the central practices of moral discourse. They have blamed and praised one another, held one another responsible for the consequences of their actions, and made and honoured promises to one another. Thus if we take *their* judgements as determining personhood, they are in, but if we take the judgements of the ruling

group as constitutive, they are out. (Notice that the names of many groups of people in their original meaning mean "person". There are us and then there are the animals, some of whom walk on two legs.)

In fact there is a circularity here. It is judgements about personhood that determine its extension. But you have to be a person for what you say to be the expression of a judgement, in the full sense of the word. So suppose we have two groups, each of which says "person" of their members and "beast" of the others. In order to determine which one is correct we have to decide which one's sayings count as judgements, but to do this we have to decide which ones really are persons.

Now intuitively this is a quibble, a typical philosophers' difficulty. Both groups should count, for two reasons. First, members of both are clearly making judgements of personhood and entering into the including and excluding business in just the way we care about. Second, members of both are biologically identical, in all but inessential respects. So the exclusion of either is factually inadequate. But it is not obvious quite how we should appeal to either of these reasons on Bransen's account. *Are* members of both groups making judgements of personhood, or only mimicking such judgements. ("Aping" them!) And how is the relevance of the biological uniformity to be applied? After all, the exclusions that have figured in human history have usually involved real physical differences between groups of people, though they are utterly trivial from a biological point of view. *Why* are they irrelevant? Both of the questions here seem merely rhetorical if applied in our times to groups of typical human beings. But they have more force if the individuals in question are, say, sign-using chimpanzees.

One would hope that a proper use of the method of reflective equilibrium, introduced above as a friendly addition to Bransen's project, will solve the question. An exclusion of any large segment of the human race should be unsustainable as a harmonious combination of science, intuition, and moral judgement. But as I stated it, the ideal of reflective equilibrium was very vague. What is to count as harmony, between what elements of belief, intuition, intuition, and imagination, and in what proportions? These may not matter if we are considering the qualifications of large segments of humanity. But they may be vital if the issue is the status of foetuses, people in the later stages of Alzheimer's, or members of other species.

Suppose then we cannot settle these harder questions. Is that not just the conclusion that Bransen wants? If we cannot settle them we will have to decide them, by arbitrary fiat if need be, but better by consensus. (Consensus among whom?) The problem is that

we need to be able to settle these questions arbitrarily without allowing other questions to be settled in the same arbitrary way. We don't want to re-open the way to racism, or to interdependent beast-labelling by antagonistic groups. Can we do this, while keeping both factuality and decision as elements? Perhaps we can. I am reasonably confident that when the individuals in question are capable of entering into the ballet of mutual trust and consideration we can do it. I expect we can do it even when they are not permitted to enter into it, or their entry into it is not acknowledged as such. It is when they are not so capable that I am worried.