THE NOTION OF THE PERSON IN BIOETHICAL DEBATES[*]

Trilemma

When bioethical discussion touches on the notion of the person it usually takes the form of an argument which has a decisive character. Such an understanding often forms a simple syllogism: one should not kill a person; X is a person; therefore: one should not kill X with, in the place of X – according to the problem considered – terms such as *nasciturus*, 'someone terminally ill who has requested euthanasia,' 'someone who's life functions are maintained by medical apparatus' are employed.

On the other hand, one may also encounter such positions as that noted by Hugo Engelhardt:

> Not all people are equal. (...) Not all people are persons. Not all people are conscious, understanding and able to praise or criticise something. A foetus, a newborn, the mentally handicapped, those in a deep coma – are examples of people who are *nonpersons*.[1]

We should note that Engelhardt does not question the syllogistic scheme above. He rejects the validity of one of its premises i.e. that a *nasciturus* or someone who is mentally handicapped is a person. It is not the aim of this paper to establish if the conclusions of this syllogism are true or false. We can state, however, that they are not justified on the basis of the premises assumed. The reason is not that the premises are false but rather that it is unclear what they state. We should be aware that closer analysis shows that the notion of the person is not so much decisive as unclear and deceptive. To be exact, in relation to the notion of the person we may form the following trilemma:

Either:

    1. The notion of the person is ambiguous;

or

    2. The notion of the person is arbitrary;

or finally:

    3. The notion of the person is redundant.

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[*] Translated by Aeddan Shaw.

[1] H.T. Engelhardt, *The foundations of bioethics*, Oxford University Press, New York 1996, pp. 135–138.

It is easy to see that if the presented alternative is true then the use of the notion of the person in bioethical discussions becomes irrational.

From mask to ontology

The notion of the person (Lat. p*ersona*) stems from the word *prosopon*. This term referred to a mask in Greek (and Roman) theatre and its application in philosophy came somewhat later since we cannot find any trace of it in ancient philosophy. It was initially utilised in Roman law but Roman jurists did not equate the word *persona* with the word *homo*. One man could, from the legal perspective, be many persons. As it was termed: *unus homo sustinet plures personas*. It functioned thus so that *persona* identified the legal status of a man, independent of their other statutes. Romans could thus be one person as a Roman citizen, another as *pater familias*, yet others if they performed certain public offices. It is not difficult to see why the word *persona* was so appealing in this context: for the law, a man – depending on the legal context – wore different 'masks': as a senator, the head of the family, a praetor etc.

It was exactly the legal notion of the person which was utilised in *Adversus Praxean* by Tertullian, a thinker who undoubtedly was aware of the basic notional categories of Roman law. In his exploration of the mystery of the Holy Trinity he wrote:

> Independent of the close ties between the Father, the Son and the Holy Spirit, we must be careful to differentiate those *persons*.

Or:

> Believers never talk about two Gods or two Lords although they acknowledge that each of the persons in the Trinity is God and the Lord.[2]

This conceptual solution of the problems surrounding the Holy Trintiy was not accepted immediately however. It only came about in the 4th century AD during a debate on the meaning of the Greek word *hipostasis*.[3] The problem focused on in what way it was possible to express the fact that the Holy Trinity was one and tripartite at the same time. The unity of the Trinity had been established since the Trinity is one substance (*ousia*, *substantia*) while the tripartite nature had been expressed with the help of the Greek term *hipostasis*. The problem was that *hipostasis*, like *ousia*, was expressed with the same Latin word, *substantia*. In order to eliminate misunderstandings, the translation was altered to *subsistentia*. However, by the 4th century this subtle distinction had fallen into obscurity, a direct way to conceptual problems or even heresy. As a result, they reverted to Tertullian's notion of *persona*: it was formulated as God is one but in three *personae* in documents from the Council of Alexandria in 362 AD.

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2 Quoted after www.tertulian.org.
3 Cf. Boethius, *Contra Eutychen et Nestorium*, http://www.documentacatholicaomnia.eu.

However, in the 6th century controversy arose once again. In his work *Contra Eutychen et Nestorium*, Boethius introduced his own formulation – and perhaps the most famous – of the definition of a person: *persona est rationalis naturae individua substantia*, a person is an individual substance of rational nature. He explained that this meant we "are related in this manner to what the Greeks called υποστασις, *hipostasis*." This differentiated between the notion of subsistence (*essence*) and substance. *Subsistentia* (*essentia*), related to the Greek term *ousia*, refers to being which is not impaired (so-called independent existence). In turn, *substantia* (*hipostasis*) refers to being which may be the basis for impairment (impairment may belong to it). A person (*persona*) is that *substantia* which is individual and rational. In the conception of Boethius, man is simultaneously *subsistentia*, *substantia* and *persona*.

Meanwhile, God is a unified *subsistentia* but also three *substantiae* (and thus three persons). Boethius highlights, however, that talking about the three divine substances has been forbidden by the Church as it leads to certain heresies. What is interesting in this consideration is that Boethius 'inverts' the traditional translation of the Greek concepts. Normally '*ousia*' is identified with '*substantia*' and '*hipostasis*' with '*subsistentia*.'

The notion of the 'person' played, perhaps surprisingly, a minor role in Scholastic ethics, largely remaining at the service of theology. Józef Bocheński noted:

> There is no equivalent expression to 'person' in Aristotle, in his philosophy. It does not feature yet this has not stopped him becoming one of the greatest moralists in history. In St Thomas Aquinas, the expression *persona* often features in dogmatic theology. Yet in moral philosophy it appears only once, namely in his article *De acceptione personarum*. It takes into account man in his personal relation to a candidate, not his value. It is the only example in which St Thomas uses the expression 'person' in his ethics, which does not prevent him being a great moralist.[4]

The close connection between the notion of the person and Thomism only featured with the 20th-century Personalists. This fact is important for two reasons. Firstly, Personalism, even though it was not an official doctrine of the Catholic church, played a role in the thoughts of its representatives which is hard to overestimate. As a result, Personalism has become undoubtedly one of the most important voices in bioethical discussions. On the other hand, however, it is important to stress that the marriage of Thomism with the Personalist approach is, while at least historically charming, artificial. For Boethius, the notion of the person had a technical character. Its introduction was indispensible in terms of Boethius great work of trying to unite Greek philosophy with Christian faith. It was not meant – and did not – to play a crucial role in ethical discussions. Such a utilisation of the notion of the person is much later. Put plainly, it became a reaction to a different conception of the person which has arisen in modern times.

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[4] J.M. Bocheński, *Między logiką a wiarą* (*Between Logics and Faith*), Noir sur Blanc, 1998, p. 130.

The modern conception of the person

At the forefront of these theories, two undoubtedly stand out: the conceptions of Locke and Kant. In *Essays Concerning Human Understanding* Locke wrote:

> we must consider what PERSON stands for; which, I think, is a thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing, in different times and places.[5]

Locke formulates in this fragment the *psychological* conception of a person: the crux of personality is the ability to reflect and, in particular, to reflect on oneself and thus have a feeling of identity in different times and places. This vision is fundamentally different from the classical conception of the person. It is important to remember that Locke is one of the main philosophers responsible for the 'subjective turn' in philosophy, the appreciation of the subject which Descartes undertook – more or less *explicite* – with his fundamental ontological division of the *res cogitans* and the *res extensa*. In other words, in modern philosophy the person is not a psychophysical unity – the person is a thinking subject, *ego cogitans*. Such an understanding of the person is opposed by Kant in his *Critique of Pure Reason*:

> By this *I,* or *he,* or *it* (the thing), which thinks, nothing is represented beyond a transcendental subject of thoughts = *x*, which is known only through the thoughts that are its predicates, and of which, apart from them, we can never have the slightest concept, so that we are really turning round it in a perpetual circle, having already to use its representation, before we can form any judgment about it. And this inconvenience is really inevitable, because consciousness in itself is not so much a representation, distinguishing a particular object, but really a form of representation in general, in so far as it is to be called knowledge, of which alone I can say that I think something by it.[6]

Kant thus feels that the psychological definition of a person is inadequate since – on the basis of theoretical understanding – we do not and cannot have any representation of it. In the *Metaphysics of Morals* he states that "A person is a subject whose actions may be imputed to him. Moral personality is therefore nothing other than the freedom of a rational being under moral laws (whereas psychological personality is usually understood as an ability to be conscious of one's identity in different conditions)."[7]

In other words, for Kant the person is defined by the fact that she is *responsible* for her own acts. This conception may be termed the *ethical* theory of the person. It is worth emphasizing that it featured in Kant's metaphysical project. As we know, Kant attempted to show that metaphysics – at the level of theoretical reasoning – is impossible. He stated that in epistemology, such notions as the world, the soul or God could not be equated with any object. Those notions played a role of the transcendental ideas whose task is to organise our experience. Metaphysics is possible, however, on the grounds of practical cognition and it was to this ordering that the Kantian notion of the person belongs.

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[5] J. Locke, *Essays Concerning Human Understanding*, Dent, London 1961, p. 280.

[6] I. Kant, *Critique of Pure Reason*, A 346, internet version.

[7] I. Kant, *Metaphysics of Morals*, 6:223, internet version.

The above presentation of the three most important conceptions of the person – the classical, the psychological and the ethical – shows that attempts to compare these conceptions abstracted from their general metaphysical vision, from the very basis on which they were constructed, is a senseless task. One may not refer to the classical definition of Boethius if we do not *simultaneously* accept the metaphysics of Aristotle, which was structured by the ontological principles of form, matter, cause and *telos*. The psychological conception is composed of the fundamental separation of mind and body. Finally, the *ethical* conception is groundless for those who ignore the basic Kantian division between theoretical and practical reason. In other words, each of these three basic definitions of the person are accompanied by metaphysical baggage; accepting any of them commits us to a certain type of metaphysics.

The contemporary debate over the person

The 20th-century debate over the notion of the person – broadly speaking – lies between two positions. The first may be termed the descriptive and the second, the axiological. The descriptive conception of the person stems mainly from analytical philosophy, directly tied to the tradition of Locke, and defines the person according to certain empirical criteria (mental criteria). In turn, the axiological approach places emphasis on the fact that the person is a *bearer of values*. In this school, the positions are of the classical (mainly Thomist) and – perhaps more importantly – the Kantian and neoKantian origins.

One of the most famous examples of the descriptive theory of the person is that proposed by Peter Singer. It defines the person as the bearer of certain mental attributes: an ability to feel and understand, self-awareness and autonomy, the ability to imagine oneself in the future. These characteristics are not fulfilled by all people – e.g. those who are in a coma. On the other hand, such an understanding of personality may be ascribed to some animals (e.g. apes belonging to the order of primates).[8]

A similar position has been expressed, already quoted in this essay, by Hugo Engelhardt:

> Not all people are equal. (...) Not all people are persons. Not all people are conscious, understanding and able to praise or criticise something. A foetus, a newborn, the mentally handicapped, those in a deep coma – are examples of people who are *nonpersons*.

Advocates of the descriptive conception of the person – at least those who are engaged in deliberations of an ethical character – do not limit their deliberations to such definitions. These definitions are *used in ethical discourse*. The descriptivists claim that a person is someone entitled to certain rights whereas nonpersons are not entitled to such. For example, Singer claims, with the support of his conception of the person, that in ethics and law it is necessary to reject the

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⁸ P. Singer, *Animal Liberation*, New York Review/Random House, New York 1975.

dichotomy of 'human – non-human' and put in its place a division of 'person – non-person', in which rights are ascribed to persons only.

Singer's theoretical manoeuvre is typical for advocates of the descriptive conception of the person. A 'person' is defined by them solely on the basis of descriptive, *psychological* criteria, but then the definition is utilised *normatively*, to decide legal and ethical controversies. Thus, the descriptivist approach suffers from serious methodological schisophrenia: the notion of the person is defined descriptively, but used normatively.

As we can recall, another approach is offered by advocates of the axiological conception of the person. In this case, the ethical value of person is ontologically prior and defines the personhood. In such a consideration, the person is independent of *contingent* mental attributes which stem from, for example, a serious impairment, or the stage of personal development (foetus, infant etc.).

A particularly interesting example of the axiological conception is the Personalist view. Personalism is a surprising melange of Thomist philosophy with an emphasised role for the notion of the person and sometimes home to the theses of phenomenology or the philosophy of dialogue. The eclecticism of this trend is clearly visible if one considers that within the Aristotelian and Thomistic conceptual scheme the notion of person played *no role at all*. The justification of this claim is to be found in the already presented philosophical history of the notion of the 'person.' One may therefore venture the claim that introducing the notion of the 'person' to the Thomist conceptual inventory is contrary to the spirit of authentic Thomism. Indeed, it is hard to understand who the person should be in this context. We should remember that this term was *only* used with the objective of harmonizing Aristotelian metaphysics with the problems (from the point of view of philosophy) of the claims of Trinitarian theology. It was of course essential and fully justified when used to express the truths of faith in conceptual categories as understood by the elite in the twilight of the Ancient period. Amongst the Personalists, however, this conceptual stratagem became somewhat broadly applied.

These few remarks suffice, as I believe, to confirm that the contemporary debate over the notion of the person has developed due to complicated historical conditions and has usually lead to the advocacy of eclectic, methodologically unsound and undoubtedly arbitrary conceptions. Bocheński adds:

> Where (...) have we taken this notion (of the person) from? It's main creator was, I think, Kant. Later it became more widespread thanks to the work of anti-rationalist philosophers. (...) From this a dubious impression follows. It would be better if we had been without it. The category of the person is not needed in philosophical undertakings.[9]

The person in law

As we have already mentioned, the notion of the person (*persona*) in law manifested itself for the first time in Roman law. It was a technical notion which de-

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[9]   J.M. Bocheński, *op.cit.*, p. 130.

noted a *bundle of rights*. A human, in accordance with *unus homo sustinet plures personas*, could be 'many persons.' We can state that the notion of the person in law (the physical person and the legal person) to this day has a *technical* character and is not connected with any concrete philosophical content.

It is easiest to show this by analysing something key to the shaping of contemporary law – normative acts. For example, from the *Universal Declaration of Human Rights* we can read:

> [R]ecognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

> [D]isregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

> All human beings are born free and equal in dignity and rights.

It is easy to see that in this key declaration, the word 'person' never features. The only exception occurs in the preamble to the Declaration in which (only in the English version) can we read that "[t]he peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person." In the official Polish translation, for example, the word 'individual' is used.

The term *person* is used only in a technical sense, in the *Universal Declaration* as well as in other acts of international law. For example, the *Convention for the Protection of Human Rights and Fundamental Freedoms* in 1950 refers to the right of every *human* to life, claryfying that the deprivation of life will not be regarded as contrary to the convention if it occurs as a result of the necessary use of force in defending any *person* from illegal violence. The technical sense of *person* is even utilised in the famous Oviedo 'bioethical' convention (convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine). The term 'person' does not even feature in the title and when it does feature in the text then it is in the technical legal understanding such as when it refers to the consent that must be given by a person in agreeing to medical procedures or when protecting a person who is not in a state to express such an agreement.

It may also be easily shown that legal regulations do not pressupose any concrete *philosophical* vision of a person. As an example, let us consider a section from the Polish Civil Code. This code does not define what is a physical person. However, in the first of the articles of Title II, "Osoby [Persons]," in Article 8 c.c., it states:

> Article 8.§1. Every human, from the moment of their birth, has legal capacity.

Legal capacity – which consist of a certain bundle of rights – is bestowed upon every human from the moment of their birth. The capacity to perform legal acts is different, as it is limited to people who turned thirteen and have not been in-

capacitated. It follows that the capacity to perform legal acts does not constitute a subset of the rights contained in legal capacity. The Code limits the capacity to perform legal acts not only according to age but also in terms of mental illness or other kinds of mental disturbance. These circumstances do not, of course, limit legal capacity.

An important anthropological pressupposition is contained in the articles relating to the declaration of intent, in particular Article 60 and Article 82 c.c.:

> Article 60. (…) the intent of a person to perform legal act may be expressed by all actions manifesting that intent in a sufficient manner (...)

> Article 82. The declaration of intent made by a person, who lacks consious or free ability to make decisions and express their will, are to be regarded null and void. This refers in particular to mental illnesses and other, even lapsed mental disturbances.

We can see that, firstly, the use of the notion of the person in both articles has a technical (legal) character. It stems from the understanding of the person which may be reconstructed with the help of the above cited article of Title II of the Code. Secondly, Articles 60 and 82 c.c. presuppose a certain thesis of what a human is. In detail, a human being is capable of expressing their will in a free and conscious manner. We should be aware, however, that the fact that someone is unable to express their will (whether incidentally or permanently), does not mean they lose their status as a person (in a legal sense).

One may therefore say that the notion of the 'physical person' does not correspond with that outlined in the descriptive notion of the person (in the philosophical sense). We should bear in mind that in the opinion of authors such as Singer or Engelhardt, the person is an individual who possesses the ability to feel and understand, is self-aware, has the ability to praise or rebuke someone. In the legal sense, a man who does not fulfil these criteria remains a person (in the legal sense). On the other hand, the provisions of civil law pressupose a certain 'model' vision of man. Such a 'model' is that of an adult and healthy person who has the ability to freely and consciously express her will. It is obvious that this is in accordance with the descriptive understanding of the notion of the person. In other words, the civil code contains certain elements of the descriptive conception but not as criteria of legal personality.

On the other hand, the meaning of the notion of the 'physical person' does not correspond to the meaning of the notion of the person in the axiological conception. We should be aware that it is the civil law that ascribes a bundle of rights to a 'physical person;' the criterion for establishing personality is descriptive, and the value is ascribed by the law. In particular, the notion of the 'physical person' cannot be equated with the notion of the person according to the Personalists. The main trend of Personalism rests on Thomist philosophy, in which a key role is played by the principle of purpose (*telos*). As a result, Personalism regards a foetus as a person, something which civil law does not.

There do exist, however, legal regulations – such as the already mentioned declaration and convention of human rights as well as some constitutions – which see a certain 'original' value in man (e.g. dignity). We thus have to do with the situation in which legal acts pressupose a vision of man which is *consistent with*

some theses of the axiological conception of person. Once again, however, these aspects do not constitute a legal definition of a *person* but rather are elements which make up the legal vision of *man.*

Contra personam

The analysis conducted above, which did not have a normative character (it does not formulate any postulates) forms the basis of the growing conviction that in legal and bioethical discussions *we should not utilise the philosophical notion of the person.*

One may summarize our findings in the following manner:

(Thesis 1) In law there appears a technical notion of the person which does not correspond with *any* philosophical notion of a person. As a result, the risk of *equivocation* arises and sometimes does when we mix legal and philosophical discourse. Law contains, therefore, certain elements of a vision of man: some of them belong to the descriptive and others to the axiological account of the person.

(Thesis 2) No single, universally accepted philosophical conception of the person exists. In philosophical discussions, competing theories of the person exist, stemming from fundamentally different presuppositions and often resting on historical accidents and misunderstandings.

As a result, the first thesis of the trilemma is justified, i.e. that the notion of the person is ambiguous. In terms of legal and bioethical discussion, this ambiguity is reinforced by the fact that law utilises an independent, technical notion of the person.

This ambiguity, which undoubtedly rules out the possibility of leading a meaningful debate in which a key role is played by the notion of the person, may be avoided in two ways: either via an arbitrary choice of one of the existing definitions of a person or through the rejection of the notion altogether. The first solution is very problematic since it forces us to accept some kind of ontology (e.g. modified Thomism). It would be hard when such important social questions are settled with the support of such a strong presupposition.

The second solution – rejecting philosophical notion of the person in legal and bioethical discussions – seems more justified. As we have highlighted, law consists of certain theses which relate to the question of what constitutes man. We may therefore postulate that instead of talking about a person, we can talk about a human. Our analysis has shown that – at least in relation to the most important legal acts – this is the practice. Recognising the notion of the person as redundant allows us to escape from both the problem of ambiguity and that of arbitrariness. Once again, let us repeat our trilemma:

Either:

    1. The notion of the person is ambiguous;

or:

    2. The notion of the person is arbitrary;

or finally:

     3. The notion of the person is redundant.

It seems that the only sensible solution to this trilemma is to accept the third thesis.

The vague human

As a consequence of replacing the notion of the 'person' with that of the 'human' in bioethical debate, we have not solved all of the problems. Let us once again repeat the syllogism which features in the introduction to this paper, replacing the term 'person' with that of the 'human.'

(a) One should not kill humans.

(b) X is a human.

(c) Therefore: One should not kill X.

At first glance it may seem that we have revived all of the problems which we had with 'person.' In place X we may once again use other terms (*nasciturus*, 'the individual whose living functions are supported by medical apparatus,' etc.) and the whole debate reappears. The problem is that we are using natural language and names used in this language are usually vague or open textured.

This is also the case with the notion of the 'human.' In the overwhelming majority of cases there is no doubt that the given 'object' may be defined by the term human. There exists, however, (or potentially may do so) a borderline cases in which there is no certainty if we are considering something which may be designated a human or not. This leads to a serious logical problem. If we reconstruct our syllogism in the first order logic then we obtain:

(a) $Ha \rightarrow \sim Ka$

(b) Ha

(c) $\sim Ka$

where H means "is a human," a is the name of an individual, while K – "it is allowed to kill."

If, for example, an individual a is maintained by medical apparatus then one could argue that a is a borderline case of the term 'human.' From the semantic point of view it means that the statement Ha holds the logical value of 1/2 (neither true nor false). In such a situation, however, the premises (a) and (b) do not lead to the conclusion (c). *Modus ponens* may only be applied when both premises in an argument are true.

Is there a way out of this situation? It seems that this problem stems from the way in which the question is posed. We should not try to settle weighty bioethical problems – e.g. the acceptability of abortion – by appealing to general (and vague) notions such as 'human.' The formulation of every bioethical problem should be at an appropriate level of precision. It is thus better to ask should we conduct abortion and consider the arguments for and against rather than appeal to vague theses such as that a foetus is a human. Otherwise it falls into the problems of a logical nature.

To summarise: we have come to two conclusions. The first states that the (philosophical) notion of the person is unnecessary (or even unwelcome) in bioethical discussions. The alternative to rejecting this notion is to accept that it is ambiguous or arbitrary.

The second conclusion leads to the statement that bioethical problems should be formulated on an appropriate level of detail. If we formulate it with the help of overly general notions we fall into a 'deductive paralysis.' Deriving conclusions from statements which feature vague notions are – in most instances – impossible. It would seem that this is the case with most of those cases which arose controversy.