

Personal Identity in Moral and Legal Reasoning

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Series in Philosophy of Personalism



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Introduction

The notion that humans have personal identity has fallen on hard times. It has been under attack for the better part of the last century by both British analysts who have analyzed it away and by continental philosophers who have deconstructed it. And so it has come to be that when systematic thinkers set out to understand human behavior in the many ways they do—as economists, neurologists, marketers, and philosophers, to name a few—they shy away from claiming to identify persons. Their reluctance is understandable: given the influence of science and the objectivizing tendency science encourages, it is not surprising that people try to make do with identifying individual somatic actors and discount “personal” identity as the trace of a superannuated conceptual heritage, old and in the way. Psychologists, who should be expected to study persons if anyone does, make do with studying behavior. Even in the humanities, influential voices counsel us to avoid accrediting individually identifiable beings like “the author.”

Yet, for some purposes and in some contexts the identification of persons seems intuitive. Each of us knows certain people personally but not others; we extend personal trust to some but not others; we hold some people personally responsible for their action but not others. When we accept someone’s personal promise or exchange personal vows, we take ourselves to be interacting with more than a living body. We take ourselves to be interacting with a being who is with us in a way that objects cannot be, someone who is present with us as another person.

For some purposes and in some contexts the identification of persons is socially indispensable. Take the ascribing of personal responsibility. When we find someone morally blameworthy or legally liable for a crime—or, for that matter, morally praiseworthy or legally innocent of a crime—our finding can only count as rational if we depend on some explicable standard for distinguishing actions for which someone bears personal responsibility from those for which he does not. It is certainly not the case that one is personally responsible for all the actions of the body he is; if he were, there would be no distinction between his causal responsibility and his personal responsibility. For example, when someone is driving on a country road and a deer springs, seemingly out of nowhere, into the car’s path, the driver, though causally implicated, would not be held personally responsible for the deer’s injury.

One might think that what gets the driver off the hook is that he did not intend to hit the deer. But while intending to do something is usually indicative

of personal responsibility, there are cases in which we blame people for harm they didn't intend. For example, someone whose cell phone rings during the performance of a string quartet bears personal responsibility for having let that happen. There are also cases in which someone intends an action but bears no personal responsibility for it: a two-year-old in some primitive sense intended to scribble on the wall but we do not blame him personally for his vandalism.

What we propose to do in this book is to uncover the criterion we use in practice to ascribe moral and legal rights and responsibilities. We are going to argue that for those purposes—which we will sometimes lump together as “forensic” purposes—supplying a clear distinction between actions for which someone bears personal responsibility and those for which he does not is tantamount to providing an account of his personal identity.

We are aware that setting off to account for personal identity, particularly to account for the criterion of personal identity governing moral and legal reasoning, will strike many philosophers as quixotic. We've already admitted that Anglophone analysts have concluded from various thought experiments—brain transplants, implants, and teleports—that it is impossible to provide a coherent account of individual personal identity that is useful in moral and legal decision-making, and that, transfixed by the contingency of meaning, many continental philosophers have given up on identity of any sort.

But our approach to the issue of personal identity will proceed along an entirely different course. We will look for clues in how people actually reason when they ascribe an action to a person. Instead of writing off popular patterns of reasoning as “folk psychology” we will show that there are coherent patterns in the ways we typically connect the character of somebody's action and his identity as the person acting. We will argue for the following:

1. In ordinary interactions we identify somebody personally as the present character of his resolve. “Resolve” will be a crucial term in our account of identity, so what we mean by “the present character of his resolve” will require some unpacking, to be sure. While we will be trying to give systematic rigor to that term, we will not be departing from ordinary usage. We say, for instance, of someone highly resolved to win the country club tennis championship that she is “putting a lot of herself” into winning, meaning that she is coordinating a good deal of her active life in that pursuit. So we seem intuitively grounded when we think of someone's resolve as his determination to accomplish something in coordination with other elements of his intentional life. The first chapter will demonstrate how this common sense understanding of resolve can be spelled out in terms of a for-

mal feature that characterizations of action bear when they count as resolute.

2. This formal feature—marking some actions as resolved and others as not resolved—is what governs us when we ascribe moral or legal responsibility. In other words, identifying somebody personally in terms of the character of his resolve determines what moral and legal judgments it is reasonable to make about him and his action.
3. By codifying the rules we follow when drawing inferences about someone's resolve—rules that jointly constitute what we will call character logic—we can shed light on some of the perennial issues that arise in connection with ascribing personal rights and responsibilities.

Let us hasten to assure readers that discerning the patterns of inference that comprise character logic will not require mastery of some new notational scheme or challenge us with anything esoteric. We need only make ourselves mindful of some of the general features of claims about what people do, claims like, “Babe Ruth hit 60 home runs in 1927,” “William Howard Taft took office in 1909,” “Bonnie runs the clothing department at Wal-Mart,” “Tesla produces electric cars,” and “tigers eat meat.” We will represent such claims as having an ‘A did C’ form. That is, they are all claims that ‘a certain agent A did (does, will do) an action of a certain character C.’ We will call them “character claims.” Character logic is simply the logic we use to draw inferences from character claims. This will become clearer when we consider examples.

The best way to see what is distinct about character claims is to hold them up against the kind of claims Aristotle operated with in his logic of categories. Aristotle invited us to think of truth claims as claims about how classes or categories are related. If, along life's way, you took a course in category logic you may recall the four ways he showed us in which statements can relate the categories they contain: All S is P, No S is P, Some S is P, and Some S is not P. These standard form category claims each have a subject (S) term and a predicate (P) term. Every S or P term denotes a class or category. Accordingly, any category claim about S and P can be read as a claim about the inclusion or exclusion of the members of one class by the other. For example, to say that all rabbits are mammals is to say that every member of the rabbit class is a member of the mammal class; to say that no Red Sox fans are Yankee fans is to say that all Red Sox fans are excluded from the class of Yankee fans and vice versa.

Though Aristotle believed there are different kinds of knowledge, each with its own virtue and kind of wisdom, he held that category logic governs all rational thought. Practical virtue and theoretical virtue, according to him,

both require the formulation of rational arguments, the simplest and most helpful of which is the syllogism. His emphasis on syllogistic logic—the logic of inference about class membership—prevented him from appreciating that a different form of logic is necessary to account for the emergence of the subjects we call persons.

This is what limits us when we use category logic to reason about what people do: it requires us to assume that what we are calling character claims can be rendered successfully, albeit awkwardly, in one of the standard forms truth claims take. It means that claims ascribing a character of action C to an agent A can be rendered as claims predicating a category of action P to a subject S. While this is unobjectionable in many cases, there are exceptions, and it is the exceptions that make reasoning with character claims distinctive and, we will argue, indispensable in forensic contexts.

Imagine this little vignette: two people hear that “Kay bought a used car.” The Aristotelian assumption would be that both of them heard a claim that was, for formal purposes, that “All people identical to Kay are (members of the category of) people who bought a used car.” But now imagine that the two people, Jay and Bea, differ in how well they know Kay. Bea knows Kay as a friend, let us say, while Jay has yet to meet her. Since the only thing Jay knows about Kay is that she bought a used car, characterizing Kay’s action by putting her in the category of used car buyers completely captures what he understands of her action. But not so for Bea. To her, “Kay bought a used car” discloses a far richer and more complex truth. She knows that Kay recently lost her house in a foreclosure and that she has had to sell her Lexus. And Bea knows that the way Kay’s divorce was finalized means that she now has to struggle to find a new financial equilibrium and that buying a used car was a telling step in her scaling back for the sake of a better fresh start.

What makes Bea’s awareness of Kay different from Jay’s involves Bea’s acquaintance with some of the other strands of Kay’s intentional life into which her car purchase is woven. Kay (to Bea) presents herself (in the act of buying the car) as a thread in a tapestry of active significance rather than just a discrete act. Buying that car bears more than its category meaning; it reveals her laudable pluck.

The richness of character that Bea sees in Kay’s action (but Jay does not) is our starting point in this account of personal identity. We are going to look for certain features—formal features, as we will explain below—the character of Kay’s action had for Bea that it did not have for Jay. Discerning that distinctiveness in Bea’s grasp of Kay’s action will enable us to see how the character of Kay’s action identifies her (for Bea) personally.

We have been referring to the “form” (‘A does C’) our characterization of somebody’s action takes. That may strike you as a puzzling reference, particularly since we are suggesting that we cannot simply identify actions by categories when we reason in moral and legal contexts. So let us provide a few examples of what we mean by formal features. First, it is a formal feature of characterizations of actions that they are embedded in character claims, claims that have the form of an ascription of an action to an agent. In other words, we do not characterize action without imputing it to an agent; we do not claim that ‘C’ but that ‘A did C.’ What makes this crucial to recognize is that it presents us with a clear contrast, as we will demonstrate, between character logic and category logic. Though it may seem that our focus on the *formal* features of character claims introduces an unnecessary complication, the contrast between category logic and character logic comes through most clearly when we juxtapose the form of character claims (‘A does C’) to the form of categorical propositions (any one of Aristotle’s four proposition types from ‘All S is P’ to ‘Some S is not P’). We must ask therefore a certain degree of indulgence on the part of readers who are unfamiliar with Aristotelian category logic or uncomfortable with symbolic notation. The formal analysis, which might seem forbidding at the beginning, will become easier as we proceed.

If we use category logic in ascribing C to A, we understand A to be a subject term to which we predicate an action categorized as C. When we identify A as a member of a category, we assume that A has its own independent meaning (expressed in terms of membership in a class) apart from C. This generates the problem of identifying the agent of an action apart from any particular action we ascribe to him, a feat—and here we agree with the consensus—that is impossible to pull off in a forensically useful way.

Our approach, by contrast, recognizes that when a character claim identifies somebody personally (such as “Kay bought a used car” did for Bea) the identity of the agent can be read out of the character of the action ascribed. We are going to show that A—when A names a person—has no meaning apart from C—when C has the kind of richness it had for Bea. We are going to show that the richness of C bestows a character identity upon A and gives A the only personal identity he has. In contrast to category logic, which presupposes that A and C are semantically independent, character logic presupposes that A and C are mutually semantically dependent. We will have more to say about this later in the introduction.

Character claims have other formal features that are going to prove crucial for our account. In standard cases the actions they characterize play themselves out over a stretch of time: they each have an inception and a completion, even if we can fix those limits only vaguely. Another distinctive formal feature is that we can classify any act we characterize as either socially inter-

active or not. Still another is that an act C bears a positive or negative value for its agent. We will explore the implications of each of these features of character claims as they bear on the question of identity.

By clarifying these features of our characterizations of action and the character claims in which they are lodged, the distinctive features of character logic become apparent. Moreover, the formal features of character claims will be found to determine the standards we depend on when ascribing personal rights and responsibilities.

We have already anticipated one of our core observations: the person-identifying feature of characterizations of action is what we call “resolve.” Thinking of resolve this way—as a form somebody’s character of action can take—marks a departure from the usual approach of looking for factors independent of an action’s character that determine it as resolute, factors like the strong motive force behind it or its high rank among intentional priorities. In the first chapter, our task will be to discern the form a characterization of action has to have if it is to count as resolved. That form can be discerned by describing the kind of imaginative feat it takes to project resolute action. It turns out that resolving to do something involves a feat formally akin to telling a conventional story.

After disclosing the formal similarities, we will also note two telling differences. Having compared and contrasted personal resolve with conventional narrative resolve, we will be able to distinguish a form of narration that may reasonably be called “telling a personal story.” This form of storytelling is personal in that it determines a character of resolve and thereby determines someone’s personal identity. The upshot of this analysis will be that we treat a person reasonably—for moral and legal purposes—when we treat him as the resolve he presently projects in his personal story.

We are going to see that thinking of a person as the character of his resolve ascribes to him a body of movement that reaches beyond his own intentional life. It reaches into the lives of those he interacts with by inflecting the character of their actions as well as accomplishments by others in the future. An account of all three of these registers is required to represent the being of a person since they all represent ranges of movement determined in character by the character of his resolve.

The second chapter explores the distinctive presence persons have with one another interactively. Persons can be present in ways entities cannot. While that seems obvious in everyday encounters, it has proved puzzling and elusive for those who identify actions with categories. We can make better sense of personal presence if we recognize the distinctive temporal logic governing character claims. One way to focus on this distinctiveness is to compare our

use of the word “moment” when we talk about actions with our use of it when we talk about natural events. Whereas a moment of action, as mentioned above, spans the time between its inception and its completion, events mark outcomes. Since e-vents, understood etymologically, are out-comes of causal antecedents, this tends to situate them at points in time. Recognizing this distinction allows us to make sense of our perception that some achievements are of greater moment than others.

Applying a temporal logic of action to reasoning about resolved intentional lives also gives us a basis for making sense of personal presence. Persons are variably present according to the moments of action we see resolved in their lives. They have temporal volume. By clarifying the notion of the volumetric presence of a person, we will be able to understand some important features of how a person’s resolve governs our forensic reasoning about him.

Chapter three begins our account of how our regard for persons as characters of resolve justifies many of the moral and legal inferences we intuitively draw. (Though many people use the word “intuition” to dodge an appeal to reason, in this account intuitions can be justified as reasonable. What we are calling an intuition is nothing more mysterious than the tug of character logic as it tries to assert its legitimate governance over our inferences in such matters.) We turn first to the issue of rights. There is, we will argue, a range of rights intrinsic to being a present character of personal resolve. We will have seen in chapter 1 that people resolve their intentions so as to enhance their success as intentional beings. That being the case, to be resolved is to intend the greatest satisfaction of one’s intentional life. We will see that the personal right to optimize one’s resolve can be asserted in two ways, as the positive right to initiate any interaction that promises to actualize one more momentarily and as the negative right to withdraw from any interaction that promises to limit one’s self-actualization. I have a positive right to engage you interactively whenever doing so promises to actualize me most. You have the negative right to turn me down when the interaction is not similarly promising for you or, alternatively, to break it off when it no longer holds that promise. Instead of calling these turn-down rights “negative,” we are going to call them “absolute,” not only because “absolve” is implicit in that word but because “absolute” reflects the precedence the rights they name have over positive rights.

We will show how this account of positive and absolute rights sheds light on a wide variety of thorny issues arising among people who discuss rights. To name a few: it gives some purchase on the elusive notion of universal rights if we think of them as “personal rights” rather than “human rights.” It makes clearer sense of the scope of damages we find reasonable to assess by seeing how it correlates with the loss of active moment in the life of the plaintiff. It

shows us how a contract can be construed as a personal promise, how it makes sense to outlaw certain advertising as deceptive, how it makes sense to determine what acts of law-breaking should be respected as civil disobedience, and even how it determines grounds for divorce that respect the persons concerned.

Lest you think, given the brevity of this book, that we are promising too much, let us hasten to emphasize the modesty of what we hope to achieve. To accomplish our task, we need only highlight some of the inferential moves people actually make in determining when someone has a right to do something and to show that those moves are underwritten by an awareness of the inherent positive and absolute right to be a person, an awareness that allows us to solve some of the puzzles that stymie us when category logic governs the discussion.

Chapter four explores the basis we have for holding somebody personally responsible for his action, both in judging that he is responsible and, if he is, how blameworthy (or praiseworthy) he is. It argues that A is personally responsible for all and only the actions A does resolutely. The equivalence between the actions that are elements in A's resolve and the action for which he bears personal responsibility is guaranteed by the semantic interdependence of A and C we noted earlier: when we ascribe personal responsibility not only is the A term implicit in the C term but the A term and the C term are mutually implied. C, understood in the context of A's resolve, implies A. And A, understood as a character of resolve, has C as an integral part.

This logical peculiarity—the mutual implication of A and C that is implicit in character claims that identify persons—also turns out to determine how blameworthy or praiseworthy A is for C. Making that assessment, we will see, is always a matter of assessing the momentary damage or satisfaction brought about by A in doing C and the volume of A's personal presence in that moment.

We will survey the kinds and degrees of personal responsibility one might incur under the various formal relations A and C can have in ascriptions of responsibility: 1) A's action C can be resolved in a personal story fully comprehensive of her intentional life (we will be using feminine pronouns gender-inclusively but distinctively to designate persons—if such there be—who are fully integrated in their intentional being): we would hold such a person fully responsible for C. 2) A's action C can be resolved in a personal story that is only partially comprehensive of A's intentional life: we would hold such a person responsible for C but recognize his responsibility as diminished. 3) A's action C can be irresolute: we judge that such a person acted irresponsibly in doing C. 4) A can be a character of resolve no longer narratively coherent with

C: we would rightly forgive such a person. 5) A can be judged to have acted while not yet being or no longer being a character of resolve: we would not hold such an agent personally responsible for C even in a diminished way.

In chapter five we take up an apparent anomaly that will have emerged when we examined the practice of person-respecting societies in preventing people from exploiting one another or in punishing them when they do. It would confound our account if an offender could reasonably claim that exploiting others is what actualizes him best. If he could plausibly make that claim, we could not justify stopping him from acting that way, much less imprisoning him. To rebut this objection, we must show that it is reasonable to believe in the inconceivability of actualizing oneself best by exploiting others. Nothing we will have found up to this point gives us grounds for believing that. Nothing we will have found up to this point supports the thesis that someone can only be most fully actualized living in harmony with others.

We can call this belief—that actualizing oneself best can only be achieved in harmony with the interests of others—a belief in moral integrity. The “integrity” part of this belief does not pose a problem. It is easy to see from a practical standpoint that the better someone resolves or integrates his life, the more of what he intends is likely to be accomplished. But it is quite another matter to say that he has the best prospect for integration when he is in harmony with the intentional lives of those he interacts with. The question we have to answer is, why should anyone believe that the quest to actualize oneself most momentously is also a moral undertaking?

To answer this question, we need to look back into the early history of the notion of a person as an individual being. The narrative imagination it takes to identify individual persons was not available early in the history of our species. Neither then was the possibility of moral integrity, which, if it exists, must characterize individuals. That kind of identity, we will argue, first came to be fixed as a narrative possibility in the sacred stories told by Western monotheists.

Needless to say, today that provenance tends to make people suspicious. But what these early monotheists were required to believe in order to support their belief in moral integrity is not the stumbling block it is widely taken to be. Removing that block will involve analyzing ethical monotheism into the three formal character claims it comprises. We are going to see that all of them are rational claims in the sense that they are subject to confirmation or disconfirmation on the basis of evidence from people’s ordinary experience.

While chapter 5 tries to show how the notion of moral integrity got started and what evidence is relevant to judging whether it is actually a human possibility, chapter 6 explains why the question of moral integrity matters. It argues

that persons identified in the absence of grounds for affirming the possibility of their moral integrity are systematically diminished in all three dimensions of their personal being: by the compromised coherence of their individual intentional lives, by the diminished scope of their communal possibilities, and by the foreshortened historical importance of what they do.

The prospects for sustaining person-respecting societies, we will argue, depend on whether we can rationally affirm the prospect of moral integrity. If our account of personhood and moral integrity is cogent, the resulting understanding of the personal sustains and broadens those prospects.

A preliminary note is in order about the way we will be using ordinary language in our attempt to recover the person as a subject of rational discourse. Our use of certain words (for example, “moment,” “intention,” “resolve”) may already have struck you as eccentric. Our claim is that identifying persons requires us to hear in the uses of some common terms the meanings they bore before the nearly exclusive dominance of category logic. The modern uses of these words have often occluded their older meanings, meanings that reflect their original character logical governance. If we listen for that etymologically prior use, we can usually hear a clue about how the terms function to inform our intuitions. We have already noticed how a moment of action differs from the moment of an event. When we remind ourselves of the active meaning of “moment”, the word becomes transparent to “momentum,” the “movement” that determines it. Or take the word, “satisfying.” If it seems odd to hear talk about someone satisfying his intentions, that is because we usually think of satisfaction in causal terms, like satisfying an itch by scratching it or satisfying a craving for cashews by eating a handful. But to satisfy originally meant to make enough, so to satisfy an intention is to make enough movement to accomplish it. Or take the word “importance.” An act’s importance is not the same as an event’s importance. The latter refers to consequences while the former refers to the weight of active moment: how much active moment does the meaning of my act carry into my moment of resolve?

To help avoid confusion, you occasionally may want to consult the axioms of character logic we will be exploring; they are compiled at the end of the book.

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