

- Maynard Smith, J. 1982: *Evolution and the Theory of Games* (Cambridge UP).
- 1984: 'Games Theory and the Evolution of Behaviour', *Behavioral and Brain Sciences* 7, pp. 95–125.
- Measor, N. 1986: 'Games Theory and the Nuclear Arms Race', in P. Singer (ed.), *Applied Ethics* (Oxford UP), pp. 229–56.
- Moore, F.C.T. 1985a: 'The Martyr's Dilemma', *Analysis* 45, pp. 29–33.
- 1985b: 'A Problem about Higher-order Desires', *Acta Philosophica Fennica* 38, pp. 149–55.
- 1988: 'Do Higher-Order Desires Resolve Conflict?', in Shu-hsien Liu & R. E. Allinson (eds), *Harmony and Strife: Contemporary Perspectives, East and West* (Hong Kong: Chinese UP), pp. 59–67.
- 1990: 'Rome Inferences and Structural Opacity', *Mind* 99, pp. 601–8.
- Pörn, G.I. 1977: *Action Theory and Social Science: Some Formal Models* (Dordrecht: Reidel).
- Sabourian, H. 1989: 'Repeated Games: a Survey', in F. Hahn (ed.), *The Economics of Missing Markets, Information and Games* (Oxford: Clarendon Press), pp. 62–105.
- Sen, A. 1979: 'Rational Fools', in E. Hahn & M. Hollis (eds), *Philosophy and Economic Theory* (Oxford: Clarendon Press), pp. 87–109.

THE OWL AND THE PUSSYCAT

BY BRENDAN LARVOR

The project of Ronald Dworkin's *Life's Dominion* (London: Harper Collins, 1993) is to reconstruct the popular debates about abortion and euthanasia in such a way that everyone turns out to have the same values, in spite of appearances. Differences of opinion are then explained by differences in priority accorded to key elements of the common scheme of values. Under Dworkin's reconstruction of the arguments, almost everybody agrees with almost everybody else about almost everything. On his account of the matter, the United States is divided into two hostile and irreconcilable blocs only because the abortion debate is conceived in terms which conceal its real structure. The goal, then, is to reconceptualize the argument so that the underlying logic of the differing stances comes clear. If this is achieved in the way that Dworkin envisages, it will turn out that the division of opinion into two starkly opposed positions was a fiction, and that the real picture is that of a sliding scale of relative priorities.

In North America the abortion issue is usually understood to turn on the question of whether the foetus is a person in the morally relevant sense, and if so at what stage the change takes place. To be a person in this sense means to be a bearer of natural rights. This approach seems proper because in the liberal tradition one is free to do what one likes provided that no one's rights are infringed. Hence a woman is free to have an abortion provided that no one has a right which would thereby be violated. Opponents of abortion make their case by claiming that there is a person with such a right, namely the foetus, which is said to hold a 'right to life'. It appears obvious that anyone who has any rights at all must have a right to life. The right to life is

said to be basic, a precondition of all other rights. In order to deny that the foetus has a right to life, supporters of the pro-choice movement are therefore compelled to argue that the foetus does not hold any rights whatsoever. In other words, the pro-choice stance is that the foetus is not a person in the morally relevant sense.

Dworkin's first step towards a reconstruction of the abortion debate is to claim that, in spite of appearances, it is not really about the moral personhood of the foetus. His reasoning is that, on the one hand, almost everyone in the pro-life camp admits that there are circumstances in which abortion is permitted, when the woman's life is in danger, or perhaps if she is a rape victim (in the recent case in Ireland it was argued that the woman's life was in danger from suicide). Now, it is not morally permissible to kill one person to save the life of another. It is certainly not permissible to kill an innocent party just because someone else committed rape. If the pro-life lobby really believed that the foetus is a person, then there would be almost *no* circumstances in which they would countenance abortion. Certainly they could not permit abortion in cases of rape or danger to the woman. Nevertheless, very few pro-life supporters are prepared to stand by the most gruesome consequences of the view that the foetus is a person in the rights-bearing sense. Most pro-life opinion would allow an abortion necessary to save the woman's life, even though such an exemption would be a direct contradiction of their official position.

On the other hand, most people in the pro-choice corner think that a woman has to be able to give a good reason if she wants an abortion, at any stage of the pregnancy. Dworkin maintains that almost everybody on the pro-choice side believes that it would be wrong to have an abortion just in order to attend a music festival, for example. Pro-choice activists often argue their case by supplying typical reasons for terminating pregnancy, and by denying that women are likely to seek abortions on other than serious grounds. But if the foetus is not a person, and if that is all that matters, then why is it wrong to have an abortion for trivial reasons? The point applies equally well wherever one draws the line at which the foetus is supposed to become a moral person. Suppose that this event is deemed to take place at the end of four months: if the woman wished to terminate the pregnancy at three months, most pro-choice opinion would expect her to be able to give a serious reason for so doing. If the moral personhood of the foetus were the core of the case then it would be sufficient for the woman to point to the calendar.

Dworkin does not claim that the life of the foetus is without value: quite the reverse. He believes that even the most well-justified abortion is regrettable because something precious has been lost, namely, a new human life. He does not seek to play down the tragedy of such a loss, and indeed he insists that a simple denial of the moral personhood of the foetus cannot supply an adequate account of the matter precisely because it fails to articulate the *moral calamity of a lost life*. Dworkin does not, at this stage, attempt to settle the issue one way or the other. His point is just that whatever we decide, the abortion controversy cannot be simply about whether or not the foetus is a person with moral rights, because that way of looking at the debate cannot capture its fine structure. Moderates on both sides qualify their views in ways which are inexplicable if the moral personhood of the foetus is taken to be the central issue, the pro-life faction by permitting terminations which they ought

not to permit, the pro-choice side by demanding serious reasons for termination when their theoretical position does not require them.

With this argument in place, Dworkin goes on to say what he thinks the debate is really about. But I want to concentrate on this first step, because it raises an interesting question. Why is opinion so sharply bisected? Why, if Dworkin's simple reasoning is valid, has no one noticed it before? Why does everyone continue to talk as if the moral status of the foetus were the key problem? To put the question pointedly, why is it that very few people recognize their own position on Dworkin's theoretical map? Most contributors to the abortion debate believe that they know their own opinions better than anyone else, and that they really are arguing about the moral personhood of the foetus. Apart from its philosophical interest, this question has implications for the political success of Dworkin's venture, since if no one recognizes the dispute Dworkin describes then there will be no bridges built and the stand-off will continue. Part of the answer lies in the hold of liberal ideology and the language of rights over the political imagination of the West. It can seem that anything worth protecting must be preserved by some right, to be held by an appropriate individual. However, I believe that this is not the whole story.

In order to answer these questions I want to ask another: how do we recognize other people? Among the many perceptual judgements that we make are judgements that this bit of matter does not support consciousness whereas that bit does. We make such judgements all the time, without thinking about it. How? Well, we do not do *ad hoc* Turing tests, nor do we try a bit of radical interpretation and see how we get on. Recognizing other people hardly ever involves a theory of rationality, not even implicitly. We do not learn to recognize human beings, and then (separately) learn that humans are almost always intelligent. We do not perform any inference such as: this is a human being, humans are intelligent, therefore this is intelligent. Someone may wish to claim that we do perform that inference, but so fast that we do not notice, or again perhaps it is a 'subconscious inference'. What possible grounds could there be for believing in 'subconscious inferences' or 'inferences faster than thought' or any other conveniently occult logical processes? Such talk makes no sense at all, and one would only find it tempting if one were in the grip of a powerful and familiar epistemological picture, according to which our knowledge of the world is inferred from some logically basic empirical data: 'sense-impressions' or 'protocols' or what-have-you. It then seems that our recognition of other people *must* take the form of an inference from the appearance of their bodies to knowledge of their minds; if we are not aware of any such inference, then it must be hidden from us somehow. This is not the moment to rehearse the case against empiricism. It is sufficient to say that there is no need to postulate concealed inferences.

So how do we recognize other people? Well, we just *see faces*, without performing any inference at all. Indeed, 'judgement' is a potentially misleading word here because it suggests cogitation. In fact it is 'natural' for us to see faces in much the same way as it is 'natural' for humans to follow the line of a pointed finger, whereas a cat just looks at the fingertip. It is just something we do. Phenomenologically, seeing a face is as immediate and as compelling as seeing a colour. It is almost impossible for a human being to look at another simply as a lump of matter, without seeing the person

there. This ought not to be the case if the physical appearance is apprehended directly and the mind recognized later. The point is important because our capacity to see faces is so basic to human perception that we are easily misled. Whenever we see anything that remotely resembles a mature human being, we find ourselves tempted to talk as if it were a person. Corpses are said to look peaceful. Skulls seem to grin. Orang-utans have faces so similar to those of melancholy humans that we feel a twinge of pity, even though there may be absolutely nothing wrong. Owls are associated with wisdom for no better reason than that their eyes face forward, making them look a bit more like us. Even those of us who know that a cat's brain is the size of a prune and that any intelligence it may show is strictly hard-wired find ourselves saying silly things like 'Oh look, he wants to thank you for his Christmas present'. Almost everyone can see the man in the moon, but all the moon has going for it is that it is round. In brief, it is fundamental to our nature to go round ham-fistedly applying the principle of charity chiefly on the basis of physical similarity to adult humans.

Naturally, we also find ourselves ascribing intentions to objects which do not resemble adult humans at all ('This computer is out to get me'), but that just shows that our charity extends in other directions too. Looking into an ants' nest, we cannot help but see industry and co-operation, no matter how often we remind ourselves that ants cannot possibly have moral characteristics. What I want to stress is that this tendency to read intelligence into cats and owls is not mere whimsy. It may be, as Vygotsky claimed, that it is essential for the socialization of children that we see them as complete people before they really are, that we create a person-shaped space in the social fabric into which the child grows. At any rate, seeing faces is too fundamental to us for these mistakes to be mere silliness. I suggest that it is this same generosity in ascriptions of personhood that explains why the abortion debate takes the form of a kind of muddled concern for the foetus. We find it difficult not to see the foetus as a person, just as I cannot quite believe that the cat is not self-conscious, despite my knowledge of the relevant facts. This would explain why pictures of embryos are used so extensively by the anti-abortion lobby. Looking at them, we see faces, rightly or wrongly.

Like any other sort of perception, this face-seeing capacity sometimes leads us into errors, many of which can be detected. We know that orang-utans are not congenitally melancholy and that cats are not as smart as they look. If we did not have the ability to recognize such errors, there could be no abortion debate. One look at a foetus would establish the pro-life claim. It is because we can recognize errors in other cases that it makes sense for pro-choice advocates to claim that the pro-life lobby is making a mistake in the case of the human foetus. Part of the point, however, is that even when we recognize an error, we have to struggle with ourselves in order to avoid falling back into it. The reason is that while face-seeing is a basic natural fact about humans, it is not just any natural fact. It is not *mere* psychology. It is one of the natural facts which make social life possible (it is not the only one; blind people are not condemned to solitude). The difficulty of not falling back into error varies. At one extreme, it is easy to stop seeing the man in the moon. At the other, it is almost impossible to look at a corpse without seeing the person whose body it used to be. That is why it matters to us what 'expression' the corpse wears when we pay our last respects.

The corpse case illustrates a further point. The cases of erroneous face-seeing cited are all logically alike, but they differ substantially in their importance to the relevant individuals. It would be entirely sentimental to arrange a birthday party for a dog, complete with a decorated cake and paper hats. It is not merely sentimental to care for a corpse until it is buried or cremated. Now, suppose we decide (as a result of philosophical and scientific enquiry) that a foetus of a certain age is not a person. Then treating such a foetus as a person would be on a par, logically speaking, with canine birthday parties and the practice of embalming. I contend that if treating a foetus as a person is an error, it is much more like the practice of embalming than it is like the canine birthday party. It is not 'mere sentimentality', but rather speaks to something deep within us.

It might be objected that *our erroneous tendency to treat corpses as if they were living people* (by, for example, placing them in comfortable coffins) *is mere psychology, and is independent of properly philosophical questions about our capacity to recognize other minds.* It is true that face-seeing is a psychological feature, but philosophers deploy the dismissive 'mere' at their peril, because some psychological features play central roles in our social and ethical lives. Certainly, it may turn out that face-seeing plays this role contingently. That is, we may be able to imagine a community of blind people who enjoy successful social and ethical lives without ever seeing any faces. The fact remains that for most people, seeing faces is the primary means for recognizing other minds, and this point ought to interest philosophers even if it is only contingently related to the meaning of 'person'. It is entirely appropriate for philosophers to examine the quality of fit between what we think and what we feel.

This train of thought has two immediate consequences. The first is that the abortion debate will almost certainly continue to be conducted in terms of the welfare of the foetus whatever arguments may be brought against that approach, because the natural human tendency to see intelligent faces everywhere, including in the womb, is just too deep. In Dworkin's account, our concern for the foetus is founded on a rather abstract appreciation of the value of human life in all its aspects. My point is that, looking at a picture of a foetus, we do not just see more human life, we see a person. We cannot shake off the idea that there is a person there, no matter how much foetal physiology we learn. The foetus case is rather like the corpse case in this respect. No matter how closely we attend to the fact that the corpse is not a person, we still cannot help caring what 'expression' it wears on its face. Consequently, it will always seem most natural to articulate our worries about abortion in terms of the interests of the foetal person, even though we may believe ourselves to have medical evidence and philosophical analysis showing that there is no such person and no such interests. Let me reiterate: this tendency to see a person where there may be none is not 'mere sentimentality', it is basic human perception at work. There is often a tendency on the pro-choice side to sneer at anyone who seems to treat a foetus as a person, which has always seemed philosophically insensitive to me. The realization that the urge to treat the foetus as a person is not mere sentimentality has the important and liberating consequence that a woman who mourns for an aborted foetus is not being silly, nor is she 'letting the side down'. The inclination to regard the foetus as a person is a normal, natural human response.

Hence the abortion debate will always be understood by almost everybody to be about the moral personhood of the foetus, in spite of the philosophical and political obstacles raised by this approach. Our psychological programming is so profound that we shall never be able to help seeing a foetal person in the womb. With this starting point, the debate will always turn on whether or not that perception is a mistake (as it is with the cat or the orang-utan). This answers our original question about why the abortion debate continues to take the shape it does, even though the raw material for Dworkin's simple argument has been around for decades.

The second consequence is that there can be no satisfactory rational reconstruction of the abortion debate, because the non-rational feature (not *irrational* – a term of disapprobation) which I have been describing obtrudes in an essential way. For the same reason, there will always be a tension in our attitudes towards cats, because on the one hand, we know from studying their physiology that they are not capable of higher thought, yet we keep them in our homes 'for company'. It seems less crazy to talk to a cat than to a coffee-pot, even though neither understands our chatter. In spite of my knowledge to the contrary, I cannot quite convince myself that the cat is not wise, that the orang-utan is not sad and that the embryo is not anxious to live. It ought not be a surprise that a non-rational element should obtrude in a debate about something as fundamental as reproduction, but it does mean that there is no hope of bringing theory and sentiment into a happy state of reflective equilibrium. This opposition within our attitudes does not much matter in the case of cats, of course, but when combined with Dworkin's argument it signals the failure of any philosophical analysis which purports to supply a unified rational reconstruction of our fundamental attitudes towards abortion (where that project is distinguished from the practical question of what our policy on abortion ought to be). My argument purports to show that popular debate will always be fashioned around the moral personhood of the foetus; Dworkin's argument shows that such a debate will always be inadequate. There can be no unified rational reconstruction of our basic commitments in this area, because our disquiet about abortion is in large part due to our inevitable disposition to see a person in the womb, whatever our official position may be. This disposition is too deep to be swept aside with a grim determination to be unsentimental and 'scientific'. Any philosophical theory which fails to take account of it will not capture all the salient features of the problem and will not win widespread acceptance. On the other hand, Dworkin shows that a moral theory which does focus on the alleged moral personhood of the foetus is doomed to miss the fine structure of popular attitudes. Hence the prospect for Dworkin's political project and all others like it is bleak. I should add that I take no pleasure in this conclusion.

Notice what I am not saying. I am not saying that we cannot, by scientific and philosophical argument, reach a view about the morality of abortion. What I am saying is that in order to reach such a view, we must put aside the question of foetal personhood, even though the apparent personhood of the foetus is the motive for joining battle for many people. Suppose that we settle on some analysis, such as that offered by Dworkin, which makes no use of the notion of foetal personhood. We should then have to endorse its practical consequences. Ethical judgement is not simply a matter of ratiocination. Having reached a settled view, we have to look into

our hearts and see if we can live with it. When we do, we shall always see the face of the foetus looking back at us. Rational argument about abortion is not precluded; all I am saying is that few people can ever be altogether happy with the outcome.

Dworkin's philosophical method in his work on abortion and euthanasia is to produce rational reconstructions of the principal positions. That is, he asks what the fundamental commitments of typical actors in the debate ought to be, given their views on moral questions of particular interest. In the argument reproduced above, he rejects the obvious rights-based construction of the issue in favour of a more complex story about the value of human life. The point is that all of his argumentation presupposes that our moral judgements can be developed into a consistent system, that our ethical life can be represented as the working-out of a set of basic value-judgements. He dismisses all argument about the personhood of the foetus because it is inconsistent with the decisions people make in certain circumstances. This would be unproblematic if moral judgement were a purely rational matter. As it is, moral judgements are inseparable from the messy, vague, non-rational but uniquely human experience of a populated world upon which our more abstract and impersonal modes of thought depend. Dworkin seems to assume that the moral aspects of this basic kind of experience can be expressed as a consistent scheme of attitudes. If it turns out that he is wrong in his assumption, then there may be no hope of achieving 'reflective equilibrium'. The example of the abortion debate suggests that moral theories of the sort offered by Dworkin face an uneasy trade-off between consistency and relevance.

Oxford

BEST OPINION, INTENTION-DETECTING AND ANALYTIC FUNCTIONALISM

BY JOHN DIVERS AND ALEXANDER MILLER

Richard Holton has recently launched a sustained attack¹ on Crispin Wright's case for the thesis that best opinions concerning one's own intentions are extension-determining. Wright argues that his extension-determination thesis for intentions follows if provisional equations (PEs) such as

$$(1) \quad C(\text{Jones}) \rightarrow (\text{Jones intends to } \emptyset \leftrightarrow \text{Jones believes he intends to } \emptyset)$$

satisfy the following conditions:

- (A) *Apriority*: they must be *a priori* true,
- (B) *Non-triviality*: the cognitively ideal conditions C must be specified non-

¹ 'Intention Detecting', *Philosophical Quarterly* 43 (1993), pp. 298–318.