Death Sentences

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Jeff McMahan's *The Ethics of Killing*,[1] is a very ambitious book on what we vaguely call the sanctity of life. It has been extravagantly praised by so many of the people we would expect to hear from, most remarkably by Don Marquis. He has called it 'one of the best philosophical books ever written'. And if it is not exactly the best of all philosophical books it would be fair to call it one of the longest. It gives the impression of great thoroughness.

We are offered substantial chapters—one might almost say monographs—on our identity over time, on why death is so often a misfortune, and on the way killing is wrong (when it is). These are followed by a lengthy discussion of abortion and euthanasia. The 'main purposes' of all this industry are by no means unusual. They are 'to defend the permissibility of certain killings' (251)—cases of what people used to call, pejoratively and somewhat technically, the killing of the innocent. In this endeavour, it would appear, no stone is left unturned. People who scorn the complexities of medieval philosophy will have little patience with what we have here, unless indeed they are attracted by the conclusions on offer.

This last however is no small matter. Practical ethics in our time has been a liberating subject, and Professor McMahan provides the ethics community once again with the usual liberating conclusions. Not least among these conclusions we find a firm rejection of human moral equality: our 'commitment to a fundamental moral equality among all human beings … has to be abandoned' (233). Out of context one might not know what 'moral equality' amounted to, and why its rejection might be liberating. But the merest glance at this book provides context enough.

Not all the conclusions, it must be said, are liberating. In this respect too, this book is in full conformity with recent trends in bioethics. Thus we are certainly not to think of ourselves as liberated in regard to the killing of nonhuman animals. 'Killing animals, and allowing them to die, are far more serious matters than we have supposed' (230). Indeed it could be more serious to kill a frog than to kill an infant. This depends upon what view one takes of death

[1] *The Ethics of Killing, Problems at the Margins of Life*, New York: Oxford University Press, 2002.

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(210). This concern about 'allowing an animal to die' is indeed something of an extension of current thinking; McMahan could have emphasised just how much of this allowing there is, every day the world over. And this is by no means the only novelty. Even where his broad conclusions seem rather familiar, the way he reaches them has some unusual features. I shall have to confine my attention, self-denyingly, to what seems most distinctive about McMahan's approach.[2]

I

Let us first ask whether there *is* such a thing as the ethics of killing. Taken very broadly, as here, there seems to be no well-defined subject answering to this description. One might just as well talk of the ethics of cutting. The field therefore needs to be delimited—as Professor McMahan of course realizes. The author's treatment in this volume (the first of two) is confined, he says, to the topic: 'killing beings on the margins of life' (3). This might suggest that especial attention is to be given to the murder of toddlers and elderly pensioners. But not so. In fact, we are given a curiously unnatural account of what it is to occupy these margins.

For example nonhuman animals are said to be 'marginal' (vii). That seems to indicate that a healthy adult cat, let us say, is only marginally alive, or only marginally a case of a living being. This is something we might well want to say of a virus, but hardly of a cat. Again, among human beings, an individual with severe brain damage is here said to be at the margins of life, and this perhaps suggests that such an individual would not have long to live. But of course this need not be true; indeed it might be the very fact that such an individual is threatening to live on for many years under routine nursing that would prompt the team charged with his care to call in an ethicist to provide a justification for killing him. By contrast, a gangster in the movies will say of a living rival 'He's a dead man!'. This unfortunate fellow would not be considered to be 'at the margins of life' in this book even though his life is very nearly over.

All this goes to show that we have set out with an unsatisfactory notion. I think that McMahan must have some intimation of this,

[2] A clear overview of the main themes is provided in Tim Mulgan's interesting Critical Notice in *The Canadian Journal of Philosophy*, Sept 2004.

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for he later drops this reference to life all together, and talks instead about marginal *beings*—morally marginal beings, one might say—beings 'very different in seemingly important ways from morally innocent, cognitively normal adult human beings, our dealings with whom constitute the core of the subject matter of moral philosophy' (251). But this raises a problem of its own. One immediately wants to know what would entitle anyone to talk of such a core? It sounds both sinister and comical. Sinister when one thinks of the way children are rightly given priority ('women and children first!'), and comical when one wonders when one last met a morally innocent cognitively normal adult.

What then characterizes these morally marginal beings? We are given a frank, if negative, answer. We are *not* concerned in such cases with respect ("with the morality of killings that are wrong because they involve a violation of the requirement of respect" 248). We are to discuss the morality of killing individuals outside the circle of those to whom respect is due, beings which are not "susceptible to …injustice", for example chickens or young children (163, 245-6).

Many of these marginal beings will be dependent individuals, vulnerable to neglect. So it is relevant to notice that at least where neglect is in question, McMahan works with an unsatisfactory notion of his main concept, the concept of killing. He argues, in the face of 'nearly universal belief', that we cannot ever be said to kill if death results from an omission (236-7). Even the deliberate starving of someone in our charge, undertaken to ensure death, would have to be classed instead as 'letting die'. McMahan interestingly discusses a range of cases in an investigation of the killing/letting-die borderline (379-82). But he seems unreasonable to assume that one and the same action or policy cannot come under both heads.

Here it is useful to notice that 'letting die' is a somewhat artificial notion. We will want to know in the particular case what an author has in mind by it. In one way, we 'let die' any organism which will eventually die because we have not killed it first—a conception which seems briefly to be in play on p. 390. But that surely lets us in for far too much letting. Perhaps then we will confine the notion to cases where lives at risk are not conserved where this would have been possible. But even here, we will probably not choose to say for example that a doctor who goes in for hip replacements rather than intensive care is, over a lifetime, 'letting die' all those who would not have died when they did if he had gone in for life saving. Of course it might be difficult to identify such people, and this might affect what we say. On the other hand if a doctor, wanting a baby dead,

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subjects the child to a routine of starvation and sedation, perhaps under the heading 'nursing care only', we might well choose to call *this* letting die. But the fact remains: to bring about someone's death in this way is *also* to kill. The starvation might have to be carefully controlled and supervised. In this regard the concept of killing is quite like the concept of slimming. One can slim by 'doing' (by taking exercise say) but also by 'not doing' (by not eating). English law counts as murder the deliberate starving to death of a child.[3] Perhaps the reluctance to say that a deliberate starving cannot be a killing stems from the assumption that an absence cannot be a cause. But a lack of vitamin C *causes* scurvy.

Though as I have said there are discussions here about a great number of matters, the subject which is to occupy most attention in this book is, we are told, abortion (viii). Abortion occupies by far the longest chapter (154 pages), and much of the earlier discussion is a preparation for it. Professor McMahan has clearly had a long term interest in this topic. In the Preface of Michael Tooley's *Abortion and Infanticide* of 1983 he is thanked for his 'extraordinarily detailed' assistance. The general impression a simple reader would get from *The Ethics of Killing* would be of something definitive on this topic: all these points made, all those suggestions refuted. The author himself is something of a draughtsman, and his rather attractive picture of a foetus adorns the book's cover. McMahan's conclusions about abortion and infanticide are, as one might expect, fairly advanced. They would, I expect, be even more advanced if intuition or shame did not from time to time intervene. The timid reader, unacquainted with bioethics and who merely supports the abortion status-quo, will feel entitled to regard himself as "a moderate".

This focus on abortion responds to a need. If people much needed to kill what are here categorized as 'the congenitally severely retarded' there would doubtless have been a helpful chapter on that too. It would have been a shorter one, for the justification of killing in this case would be easier; for it is apparently *evident* that these retarded individuals do not come under this thing called 'the morality of respect', whereas there might be room for doubt in the case of

[3] *Gibbins and Proctor*, (1918) 13 Cr. App. Rep. 134. Gibbins, the man in the case, committed suicide. The sentence of death on Proctor was commuted as she was pregnant at the time. For an example of the way purposive starvation can be carefully controlled and supervised, see Michael Burleigh, *Death and Deliverance*, Cambridge: Cambridge University Press, 1994, p. 240-2.

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those disposed of in abortion, if unretarded (260). Moreover it is quite possible, in McMahan's view expressed elsewhere, that these retarded individuals will turn out to be living lives that are not genuinely worth living, from the objective point of view at least, even if they are glad to be alive.[4] However there is not much cause for philosophers to consider these matters, save as an academic exercise. The average person's freedom would be little enhanced by a permission to kill the retarded—though to be sure their organs might sometimes come in handy. And in any case central European precedents in the twentieth century makes the very thought an uncomfortable one. Abortion by contrast is definitely needed. We now wonder how people could have got along without it.

In regard to all this Professor McMahan makes a conspicuously honest admission: 'It is important to notice that the ostensible victims of abortion—foetuses—are not parties to the debate—while of those who are involved in it, the only ones who have a significant personal interest or stake in the outcome are those who would benefit from the practice' (viii). This seems correct. Standing to benefit from the practice is a very usual condition indeed, either directly as a fertile women or indirectly as a husband, sister, friend, etc. And we must not forget those many people who have already had abortions, or have performed them, or have advised others to have them, or have signed the appropriate forms, and so on. They would all be much relieved to be told this or that. However, having thus declared an interest on behalf of the participants in the debate, McMahan shows little evidence of extra caution in regard to his liberating findings. Quite the reverse in fact. A guardian ad litem doesn't get a look-in. Professor McMahan could of course have added his remark *after* the book was completed, as an entirely warranted expression of unease.

[4] Jeff McMahan, 'Wrongful Life' in Jules L. Coleman and Christopher W. Morris, eds., *Rational Commitment and Social Justice*, Cambridge: Cambridge University Press, 1998. p. 225, revised version, in John Harris, ed. *Bioethics*, Oxford: Oxford University Press, 2001. p. 455. The lives might be 'objectively degraded or unworthy' even if 'subjectively tolerable'. This is just one of the possibilities to be discussed in this area of ethics. One is of course reminded of that once popular phrase 'life unworthy of life'. The fact that we tend not to think that the life of subhuman animal is unworthy, even though by human standards it is not very bright, is apparently a point against this thesis. One is supposed to say, I imagine, that this or that retarded human being is more or less at the unretarded mouse level, and shares the rodent worthiness of life.

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Proofs that abortion is all right have taken the place once occupied in philosophy by proofs, now no longer wanted, of the existence of God. There is quite a philosophical industry devoted to supplying the new proofs and it can be expected to flourish for many decades to come. It is clearly thought wise to have several of these proofs, for safety, and I shall in due course be contributing my own. But at least one proof must be forthcoming, otherwise life (that is to say the kind of life we want to lead) would be impossible. A philosophical thesis will nowadays have to defend itself against the objection: 'What you say sounds plausible enough, but it would make it difficult for us to justify abortion.' Thus Rawls is rather put on the spot by McMahan for having argued in a way which might, just might, 'let in' (254) a foetus into the privileged circle of equal justice. Respect might be due after all. We are faced with a peril of inclusiveness. A 'stratagem' (192) would urgently be called for. All this is exactly as one would expect in a modern discussion of this topic. A philosopher is permitted to doubt that the sun will rise on the morrow, or question whether there has been a past, but he had better not raise doubts about the activities of respectable abortion-doctors. He would instantly face teams of refuters. This has happened in regard to Don Marquis's much anthologized article. The threat posed by this piece has surely been somewhat overrated. But there again, one cannot be too careful. One might find oneself having to agree with the current Archbishop of Canterbury and other fundamentalists.

The academic debate in these matters is like an enquiry into the dangers of smoking conducted almost exclusively among tobacco manufacturers. This would not matter too much if 'practical ethics' (and the bits of philosophy it calls upon) were a 'robust' enterprise—like engineering say—where error would make itself manifest, if not to everyone then at least to someone with a little training. But we know that no subject could be more fragile. And the uncertainties we face are compounded: the hazards of the metaphysics of identity times the snares of philosophical psychology times the perils of moral theorizing. The book under review which ventures into all these areas illustrates this matter extremely well. To be sure, the fragility of the subject is often concealed by the complicated apparatus of argument, the confidence of its practitioners and the reassurance that they give to one another.

At the beginning of the chapter 'Killing' Professor McMahan makes another good remark that is relevant to this point about fragility. He writes 'No one to my knowledge, has ever offered an account of why killing is wrong that even begins to do justice to the

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full range of commonsense beliefs about the morality of killing' (189).[5] When someone who has clearly worked so hard on this topic, and read so much, says this sort of thing we should surely take notice. What he says is still true, it seems to me, even if we are prepared as most of us are (McMahan included, 204) to doctor the list somewhat, adding here and subtracting there, perhaps in the interests of good-sense or consistency. It is obvious to any teacher of this subject that the answers which people will commonly give to the question *why murder is the kind of wrong we recognize it to be* are inadequate, and in the course of his book McMahan puts his finger on many of the difficulties.

We might not even be sure what an entirely adequate account would look like. Professor McMahan assumes, along with pretty well everyone else in the subject, that we more or less know what 'morality' would require of Martians (217, 222, 227), that we know for example what it would be for them to be 'morally sensitive'. This (Kantian?) assumption seems to me doubtful, and lays an unnecessary burden on philosophers who seek understanding in this area. We are introduced to the notion of 'agent-neutral reason', that is to say 'a reason which applies to any moral agent'. (217). Do we really have any conception of such a thing?[6] Not only are we supposed to know what a rational Martian would think, we are supposed to know what he (and we) would say about some pretty rum questions. What might universal ethics have to say, for example, about our duties, if any, to transform dogs into persons, if that option became available? (319) What respect might we owe to individuals who are half pigs and half people? (212) Should we expect to be able to answer such questions? Would you owe gratitude to something half way between a match box and your mother?

But that aside, we will have not got very far in our account of the ethics of homicide if we have to rely heavily on unexplained notions like 'a right to life', 'intrinsic value', and 'dignity'. And even more evidently if it is to turn on thoughts of distinctively 'moral reasons' and of 'impartial mattering', as will usually be the case. After many labours, McMahan finally reports that when it comes to the question 'of why certain forms of respect are due to some beings but not others' and 'how the bases of respect dictates the various require-

[5] See also Jeff McMahan, 'Killing and Equality', *Utilitas*, 1995, p. 1.

[6] If we did, it would not be what people would expect. Perhaps the best we could say is this: that any such agent, that is to say an agent that unlike a meteorite can have a reason to act, has a reason to do what is wise. Would that be informative?

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ments of respect' he 'joins a distinguished tradition in failing to solve or even adequately to address these problems' (260). This admirably accurate remark, it seems to me, is most significant. But there is an important consequence which McMahan would have done well to underline. It comes in the form of advice: that people should be very reserved when they accept the guidance of moral philosophers, both amateur and professional, on questions of homicide; these philosophers very evidently do not know their way about.

In this connection it is interesting to see the way McMahan handles the notion of *taboo*—as the word tends turns up in these contexts. Although he continually relies on what he calls 'intuitions', a taboo appears in his book to be something else entirely. A taboo against killing (let us say, against what is called the killing of the innocent) is something to be depreciated (391, 461, 463). To be sure it can be all right, indeed salutary, to retain a general 'aversion' to 'killing other human beings'. 'But the aversion should retain its grounding in the reasons we have for refraining from killing: it should not degenerate into an indiscriminate squeamishness' (462). Yet this superficially attractive appeal to reason is hard to square with McMahan's entirely realistic assessment of the reach of reason in these matters even on the part of philosophers. (The contrast drawn here between groundedness and squeamishness is a false one. An ungrounded conviction that one is not to kill a baby, on the part let us say of a surgeon quite used to blood and mess, need not reflect squeamishness in the least.)

Surprisingly, McMahan manages to rescue a liberating thought, despite this utter failure to understand 'the bases of respect': that at the very least, the 'congenitally severely retarded', as mentioned above, are not owed any of this respect (260), any more than are animals with similarly primitive powers. In an earlier article, he had said that 'severely retarded human beings and non human animals with comparable cognitive and emotional capacities must for the most part be treated with the same degree of consideration.'[7] He must since have had a change of mind (or heart) however, for in the book such an egalitarian conclusion is said to be "shocking". We are allowed here to discriminate in favour of human beings. Indeed, we may treat them 'as well as we wish'—assuming, he hastens to add, that this does not involve neglecting our duties (231).

Still, the thought from the same place in that article, that 'certain restraints which have hitherto governed our treatment of the pro-

[7] 'Killing and Equality', p.5

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foundly retarded should be relaxed', seems to be retained. This conclusion may seem to offend our intuitions, we are told, but there is nothing else for it: 'some very deep intuitions will have to be discarded if we are to achieve consistency without arbitrariness'. This raises a most material question. Given that our beliefs in this area appear inconsistent at what price must we iron out this appearance and 'achieve consistency'? Once again, we must return to the admission that our understanding in this area is very limited. There might, we are told, be 'spheres' of morality not yet taken account of, even in this enormous book (246).

Consistency can be valued in an unreasonable way. Professor McMahan, no doubt, has a 'deep intuition' that he must not kill his aunt for her money. If it seemed that he had to give up this intuition when confronted with an even deeper one, why would it not be rational for him simply to admit that there is one more paradox here which he has to live with, something which might someday be resolvable with the aid of an extra sphere or two? Of course the remedy would be better theory and less ignorance, but like other hoped-for remedies, we might not know how to provide it, and might not know for hundreds of years. People will say that a proper, non-religious, investigation of ethics is still in its infancy, etc. Naturally, McMahan is himself prepared to leave matters unresolved here and there (e.g. 491). People bullied by charges of 'inconsistency' and 'squeamishness' might well feel free to follow suit.

We need to ask what is to be proved on the basis of what. McMahan draws a 'lesson' from his discussion of human worth: 'if we are to postulate certain properties which are the basis of our worth, they had better be properties which we demonstrably have' (256). Does he mean that an independent demonstration must be possible. Surely all we can say is that it would be nice to have such a thing, and someday we might be somewhat nearer to it. Why could we not conclude in the meantime that we have such properties, whatever they might be, on the basis of a belief about worth?

III

It is characteristic of so much bioethical writing in this area to say, with considerable confidence, that there is nothing special—'morally significant' would be the phrase—about human beings as such; humans as such would not have to be treated with the kind of reverence which Kant talks about, the reverence which forbids us dispose of them (even tearfully and with sighs, and with talk of hav-

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ing no alternative) when they get in the way of what others want. 'Nothing special' is certainly the general drift here. See for example the discussion of what is called anthropocentrism (209-228). The rejection of anthropocentrism might seem to represent the attractive renunciation of a self-serving pride, a pride uncritically inherited from a benighted past. The compliment is undeserved. Those who say such things to one another consider themselves to be safely within the circle of respect: it is *other* human individuals, the very young or the congenitally retarded, who are excluded. No ethicist is under any danger of becoming young again. To be sure, he might someday cease to be what is here called 'a person' and the prospect might worry him. However it is 'probably true' that 'former persons remain within the scope of requirements of respect for persons' (485)—which is just what we all want to hear. Pride is not renounced. If anything, it is reinforced.

I should say: is reinforced *up to a point*, for although McMahan insists that 'persons' are owed this respect, he is no fanatic. If the existence of a genuine person *sufficiently* gets in the way of what others want, such a person can legitimately be disposed of, the demands of respect being 'overwhelmed'. (247.) This is not an innovation. It is more or less the received standard. What does appear to be an advance is what is said about moderate-sized children, those who lie awkwardly between the infant stage and later autonomy-as-persons. The teaching here is that they are 'neither freely violable in the service of the greater good nor fully inviolable' (265). Of course, one is grateful for the suggestion that the older ones are *on their way* to full inviolability. However, since even the respect owed to genuine persons can be 'overwhelmed' as we have just seen, it is not too clear what being 'fully inviolable' amounts to.

The thought that the coming of autonomy is the passport to respect is not a Kantian notion despite certain resonances. Leaving aside the 'mechanical' side of Kantian ethics—that is to say the decision procedure involving maxims and willing—the conviction of human worth and dignity, which Kant surely brings to his work rather than derives from it, does not turn upon respect for autonomy, at least as that would be understood, say, in modern medical ethics. This comes out very clearly when we reflect on Kant's vehement insistence that we must respect ourselves. It would be very unnatural to talk here of respecting one's own autonomy. If we break this particular link with autonomy, there will be no reason to suppose that Kantian respect would be owed only to those sufficiently developed or sufficiently undamaged to exercise informed choices. This of course proves very little. It is only worth mention-

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ing here insofar as some vaguely Kantian authority might be supposed to underwrite the thought that the 'profoundly retarded' lie beneath a threshold of respect. McMahan (252) who says that Kant is "the earliest source of our contemporary notions of worth and respect" omits to mention salient details. For it is noteworthy Kant says 'the offspring is a *person*' (his emphasis) and adds that 'as persons' children have an 'innate right to the care of their parents'. We can readily gather what his attitude to abortion would have been be from his comment on the 'crime against another' committed by pregnant women who kill themselves (*The Metaphysics of Morals,* Mary Gregor, trans. p. 98, p. 218).

But this exclusion from the circle of respect has another origin. As we have seen, McMahan makes an unfortunate (but totally usual) move. He attempts to 'deepen our understanding the morality of killing' by comparing 'the killing of persons with the killing of animals' (189-190). He says 'It is uncontroversial that the killing of an animal is normally less seriously wrong than the killing of a person' (190). Explaining this matter is something of a criterion of success in the whole enterprise (243). Here however we are immediately put on a wrong track—as with so much recent writing on the sanctity of life. Of course, people will prefer to say *less serious* rather than *more serious*, and the 'normally' might serve to disarm any remaining anxieties. They will be inclined to say that homicide is always a serious *matter* (as we might vaguely put it). Yet many will have doubts whether it is wrong to kill a non-human at all, save in special circumstances, especially if the killing causes the animal no distress. If they have these perfectly natural doubts they will already have been left behind by the discussion.

Readers of a book of this length will naturally be in a hurry to cover the ground. But this would be a mistake. In fact, the very first clause of the first sentence of the Preface is in itself instructive: 'We all accept *that killing is in general wrong*, but …' (vii, italics added). This is only true, and will only be accepted with an 'of course', because we naturally take it in a certain way. When we realise however that it is killing quite generally which is under discussion—the killing of no matter what organism—we will judge things quite differently. We will perhaps say: 'Killing covers a great range, and as we all recognise, is in general perfectly all right, but …'. It is very misleading to think of the killing of plants or germs as exceptional cases, as here. For that suggests that there needs to be a certain kind of account—an excuse—in the offing. We doubtless need an account of what makes it all right to kill someone in self-defence. There need not however be an account of what makes it all right to

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eat a cabbage. And this is not because killing is obviously all right in this second case, as of course it is; it is because there is no story to be expected. Leaving that aside, suppose we confine ourselves to animals, and not just to animals but to vertebrates. McMahan might have written: 'We all accept that killing vertebrates is in general wrong, but…' But think what an odd claim that would be! Suppose we write up a list of every vertebrate species and ask in turn whether it is typically wrong—that is to say what Plato or Mill would call 'unjust'—to kill members of the species in question the answer is nearly always going to be 'no'. No doubt Professor McMahan would like to argue us out of this narrowness. But he starts out by simply insinuating what he needs to show.

There seems indeed a broader assumption here: that it is prima facie wrong not just to kill an animal, but to cause loss to it, or even to allow such loss to happen, the comfort being, as is explained at great length, that the loss will be smaller than we might at first have expected. Since neither Aristotle nor Hobbes, nor Kant, nor any of a dozen 'contractualist' philosophers of our time, nor indeed the man on the Clapham omnibus, would find it natural to make such an assumption, one is asking for trouble, intellectually speaking, if one takes it for granted in a book on the ethics of killing. Worries about the killing of animals are in fact quite misleading. Such worries incline us to a loss account: that it is wrong to kill Smith just because he will lose out. However, it is obvious from the start that the core objection to murder does not turn upon the loss to the victim: it is just as much murder to kill a toddler in the exceptional case where the loss would be minimal, perhaps because someone else will certainly murder him later in the day if he is still alive. Professor McMahan however is prepared tirelessly to discuss various versions of the loss account over very many pages before, as is already obvious he must, he finally abandons it. But there is method in this madness. The loss account has a job to do, as we will shortly see.

It is suggested in this book that people are inclined to raise an objection to killing simply on the ground that the individual killed is a member of a certain species (210-1). Where the victim is a human being, as will usually be the case, they are supposed to say: 'Smith is a member of the species *H. sap.*, and that is all the story there is to tell!' Naturally, no example is given of anyone who has ever claimed such a thing. This no doubt is because it is plainly unintelligible as a reason. But as everyone knows it has become usual in moral philosophy to take this sort of worry seriously, and the author of this book finds it necessary to follow suit. (Indeed, he goes one better: we are treated to several, surely irrelevant, pages on

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the—perfectly real—difficulties connected with the concept of a species in biology.) There seems to be a certain confusion in all this, engendered by the notion of sufficiency. To come within a certain protection of the moral law it may be sufficient that one is a human being. But in explaining why it is sufficient it is obviously silly—i.e. *not* sufficient—just to reiterate that one *is* a human being, that this is the species to which one belongs. And a serious enquiry might easily run into an impasse. We are not very good at providing explanations in this area.

It took me some time to realise that 'murder' does not even rate an entry in the index of this 540 page book on the ethics of killing (though murder does get the occasional mention, e. g. 236, 303, 386, 458). McMahan does not pretend that the term murder is emotive, rhetorical, or purely legal—as one would expect to hear in a shallow book on this topic. The question does not come up at all. *Murder* seems not to be a significant category. What would we say of a book on the ethics of property which fails to mention stealing? No doubt murder will be considered by a modern writer to be an "anthropocentric" concept.

III

We have just been talking about (non-human) animals. In so doing we have made an assumption of our own, remarkably called in question in this book. A new proof of the permissibility of abortion is offered which relies upon a very curious claim in philosophical biology, a claim which at once confronts Aristotelians, Darwinists, and the man on the omnibus just mentioned. People, according to this claim, *are not animals at all*—that is to say they are not organisms belonging to the animal kingdom. To our great relief, abortion in the first two trimesters of pregnancy only kills an organism, something "unoccupied"—a technical term here meaning something like *unspooked*. People are not, as one might have supposed, animals with a rational nature. Instead, they 'have' animals, though not in the way in which they can be said to have pets or, in another sense, parasites. They are not, as we have carelessly thought, members of the species *H. sap.*; it is 'their organisms' which belong to this species (212). True enough, we will continue to say, speaking with the vulgar, that we are members of this species. But we would not be members of the species in the way certain trees really *are* members of the species *Quercus robur*. All this is very odd. Someone might wake up I suppose to find to his surprise that 'his

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organism' was a lion. (I am here following a hint that the property of having an animal of the usual species is not one of our essential properties, 216.) It is interesting here to note a contrast: how McMahan's predecessor, Michael Tooley, shows himself anxious, in his trend-setting article 'Abortion and Infanticide,' to avoid the suggestion that a human foetus, 'at least up to a certain point', might not be a human being. A 'liberal' would not want to be put in the position of having to maintain anything so bizarre. But times have changed.[8]

The ground for this astonishing biological claim is laid very early, for at the very outset we find Professor McMahan assuming that both he and his readers 'animate organisms' (4). The question then seems to arise whether what animates an organism can actually *be* that organism, and a sophisticated discussion gets under way. But do we so much as know what is going on here, either in regard to the assumption or the question? I have never heard anyone, even a philosopher, say that he animates an organism, and if I did I would not know what he was trying to convey. What *is* it to animate? What would it be to animate *oneself*? Could one animate a bit of one's brain? A bit of one's liver, even? Would one have a choice as to which bit?

The broad question which Professor McMahan sets himself in his first and foundational chapter on identity is very abstract, and this brings with it a preliminary difficulty. We are to ask 'what is necessarily involved in our continuing to exist?' and to ask this *without presuppositions*. Nothing is to be assumed at this stage about what kind of being we are dealing with (5). In particular, we are not for example discussing *personal* identity, for that assumes that we are people. Our vocabulary must, we are told, be 'neutral'. 'What is necessarily involved in the continued existence of this what-ever-it-is and things like it?' But is it possible to ask a question of this kind? Questions of 'identity over time' are enquiries into this concept or that. Merely pointing at something as it were, gives us no concept, as Wittgenstein was at pains to show. Nor is it any help to talk of a class of things 'like' the unconceptualised item towards which our hand is waving. We would want to be able to say in what respect *like*. If we are to have an issue of identity at all, we must first settle, or at least be entitled to assume, what concept is in play. We cannot leave this question till later. The point can be illustrated with the help of a much discussed example, which McMahan himself introduces (4): the lump of bronze which is also a statue. Asked what it

[8] 'Abortion and Infanticide', *Philosophy and Public Affairs*, 1972, p. 41.

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would be for 'this' to persist—where we have merely a presuppositionless pointing gesture to go on—is clearly not a sensible question. It would be left unsettled whether it is the mass of bronze or the statue which is under discussion, and the persistence conditions would be different. The bronze would survive melting down, the statue would not. Again, a valid ticket is also a piece of paper, but what makes it continue to be the one is not what makes it continue to be the other. So we need to be given a concept or to be able to assume one from the context, and yet Professor McMahan insists that we tackle his project in conceptual nakedness. And not just any concept will do. We subsequently find McMahan discussing whether this and that count as 'the same consciousness' (67). What could be meant? Consciousness is awareness, or is conceptually akin to it; would we understand the question whether today's sample of awareness is a reappearance of the very same awareness as last year's specimen?[9]

Professor McMahan seeks to support his notion that we are not organisms by discussing the case of the Hensel twins, Abigail and Brittany. These conjoined girls, born in 1990 and apparently able to cope with a fairly normal life, look like a two-headed doll. Each girl has her own heart and stomach and together they rely on three lungs. Between them they have two arms and two legs, each controlling the limbs of one side. McMahan would like to say that although they are two people they are only one organism, proving that people are not organisms (35-39).

Let us accept that we have two people here. But what entitles McMahan to say that they are a single organism? McMahan, to be accurate, does not think it just *obvious* that the Hensel twins are a single organism, for he seems to countenance the possibility that two organisms might overlap (36). And the possiblity that being two organisms they might die at different times—as surely conjoined twins may do (he has to resort here to the idea that there are two senses of 'to die'. 37). This all seems a very sketchy basis to support such a remarkable conclusion. 'Twins' suggests two of something. At the early stage in their development, before (as McMahan would say) they were 'had' or 'occupied', they would of course have been one organism (on the current account) just like they are now. But

[9] Once we have a concept in hand, and we know that there are persistence conditions in regard to it, we do not have to know what these conditions are in order to perform re-identifications. Philosophers can easily re-identify their dogs even though they disagree as to their persistence conditions, and indeed as to their canine nature more generally.

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since they were not (again on the current account) human beings, what would they have been two of?

Suppose however that we have some inclination to talk of a single organism in such a case, as we might well allow. (People might even have an inclination to talk of a single human being. [10]) The concept of an organism seems not to be as determinate as one might expect a scientific concept to be. Just as we might say that the Hensel twins formed a single organism, so too we might say this of several connected strawberry plants. In this last case we are evidently not using the word 'organism' to mean 'either a plant or an animal'. The fact that a plant is an organism according to one usage, and is part of an organism according to another, has not proved particularly confusing in biology. It is something we can live with. Any pair of conjoined twins could be regarded as a single organism, on the analogy with the strawberry plants, but also as two animals, that is to say as two organisms in *that* sense. But this last is what McMahan seeks to deny. (Of course, there could be monstrous births too mixed and fragmentary to be classified as two of anything.)

Of course Professor McMahan does not merely rely on how we might be inclined to view conjoined twins. A supplement seems to be needed. We are invited to contemplate the human organism in the womb two weeks after conception (29). We are asked to grant that it *is* a human organism, and not something like a colony of cells, just as the mid-term foetus is undoubtedly a human organism. We are to ask ourselves: 'Could *I* once have been such a humble little entity?' I think we should find this bit of rhetoric unconvincing. It is not suggested that a human organism would have to have a rudimentary structure of organs—a beating heart, etc. It seems to be merely a matter of size. But mighty oaks grow from the tiniest and most humble of saplings. In any case, a neonate is also a humble little entity, but even the largest adult will hardly doubt he was once a newborn baby merely on that account. Professor McMahan clearly realizes that the 'Could I once have been …' will not have achieved much, for he follows it up with the following thought-experiment. 'Imagine that in some of us the process of biological development were somehow reversed'—that some people would take a strange turn and became smaller and smaller until the question arose

[10] Millie and Christine McCoy were a nineteenth-century pair of conjoined twins. The author of a book about them, Joanna Martell, writes: 'Millie-Christine was a remarkable woman—or women, depending on your point of view. I refer to her as one because she did so'. And the twins' mother, we are told, would refer to 'her' as 'my child'.

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whether a certain 'humble little entity' was still them. 'For my part', he says, 'I find it impossible to believe…'. But supposing other spectators found it possible to believe? Suppose (to elaborate the thought experiment) the shrinkage was regularly followed by renewed expansion? Perhaps many would then find it *easy* to believe. And then where would we be?

Another argument is on offer, this time from the other end of life. It is suggested that if we were animals we could easily prove that we continued to exist after our deaths, for the animal continues as a corpse. But since no one would take such a proof seriously, we cannot be animals at all (30). This argument is just a curiosity and should not detain us, for the corpse of an animal is not an animal—an organism in bad condition, say—except perhaps in the butcher's sense. A corpse, if it can be thought of as a single entity at all, does not have the matter-exchanging criterion of identity of an animal.

If someone is inclined to faint with astonishment when he hears said that people are not animals, Professor McMahan will tell him the doctrine is not as novel as all that. Christian theology, he says, already rejects the claim that we are animals (4). There are no references for this last, and for all I know there are as many disagreements among theologians as among philosophers. A brief check in the library showed me, for what its worth, that Aquinas uses the idea *that man is not an animal but uses an animal* as the terminus of a reductio, (SCG, II, Chapter LVIII). I believe however that Professor McMahan's discovery, if that is what it is, is much more radical than even he supposes. It would require a rewriting of countless biology texts. There is a suggestion here that people are *parts* of animals—each of us being a part of 'our' animal (92-4). This, if true, should obviously be written into the textbooks, perhaps with a labeled diagram: the heart here, the spleen there, the grocer up there, somewhere behind the eyes.

Professor McMahan would like to say that people are 'minds,' (e.g. 423). Or that they are 'selves' 279, 426. I shall leave this talk of selves aside. The *I* is surely a false god; a devotion to it, *ilatry*. Does anyone know, even roughly, what a self is? Or how such a thing, as claimed here, may 'exist partially' (279-80, 494)? (An infant, it would seem, is a self, though it is a "barely constituted" one (359). If we are to have a chance of talking sense we had better confine ourselves to the (difficult enough) claim about minds.[11]

The thought that people are minds seems to conflict with the idea

[11] Someone still under the spell of the elusive I-entity could usefully read Eric Olson, "There is no Problem of the Self', *The Journal of Consciousness Studies*, 1998.

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that they are parts of animals. True enough these minds are said to be 'embodied' or 'realized' (67) or 'supported' (423)—and the resulting item is said to be 'occupied' as we have seen. But surely it is the biological item which the mind is embodied *in*, or occupies, or is supported by, which is part of an animal? Professor McMahan supposes this to be a bit of the brain, perhaps several bits. The brain indeed might be simultaneously 'occupied' by more than one mind (67). I am not sure whether the several minds would have to occupy different bits, or whether they could be, as it were, compresent. All this has rather a Cartesian feel to it. The notion of a 'soul' of a somewhat Cartesian kind seems to haunt these pages. It is curious then that whenever the Cartesian concept turns up in the discussion Professor McMahan seems a little more dismissive than one might expect, as if there were something to be exorcised. He exhibits an animus against the anima.

'All of the plausible understandings' agree, we are told, that either the mind is a part of the brain or is caused by part of the brain. Professor McMahan is content to leave the matter undecided (88). But this disjunctive uncertainty, even if we go along with it, suggests that we just do not know what we are talking about. Do we even know what category a mind would belong to? Could the mind simply turn out to be 'a reification of individual spirituality' in McMahan's not very clear phrase (210)? We cannot even be sure that the question 'What is a mind?' is a sensible one to ask.

In this book, mind is said to have a 'defining' property: 'the capacity for consciousness' (423). This threatens to be unenlightening, for capacity is a notoriously difficult notion, and philosophers are at sixes and sevens about consciousness. However, if this talk of a defining property means that whatever has this capacity is a mind, it cannot be correct, for it is surely an organism which has the capacity for consciousness—it is the organism which can, let us say, see and hear—and whatever a mind may be, no one has ever suggested that an organism can actually be one. It has indeed been seriously proposed that consciousness is not restricted to organisms, that for example a thermostat might have such a capacity, but a philosopher of this opinion is hardly going to conclude that a suitable thermostat (or a part of it) is a mind. The suggestion that someone's *mind* might have the capacity for consciousness is hard to construe. Perhaps it will be replied that a mind is not something which *has* this capacity, but just *is* this capacity? But then it is obvious that people are not minds—no one invites a capacity to dinner. And how strange it would be to say that one of these capacities 'has' an animal. Surely it would be the animal which has *it*? Professor

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McMahan however would disagree with this last: 'a mere organism lacks the capacity for consciousness' he boldly says (305). That sounds like an extraordinary discovery, Nobel prizewinning stuff. One is surprised that it has not yet got into the newspapers: DOGS CANNOT TASTE THEIR DINNERS, PROFESSOR SAYS.

The impetus for saying that we are not animals, but instead 'have' animals, stems in this book from the thought that we are somehow essentially psychological beings. It is thought perhaps that this could not be true of an animal. But animals such as dogs or rabbits are essentially psychological beings, they are by nature seeing and hearing kinds of thing. And someone who maintains, in line with a long tradition, that human beings are rational animals—that is to say animals with a rational nature—would have already built in a psychological element. One might expect people to have trouble with the 'rational' part of this description. 'People are so *ir*rational!', 'Is a newborn baby *rational*!' they will say. McMahan, by contrast, has trouble with the uncontroversial bit. Of course I am using the notion of a nature here which is connected, with the concepts of defect and development. Professor McMahan must want to use the word *nature* in another way for he talks as if 'severely retarded' human beings—or 'their animals'—do *not* have a rational nature (215-6).

Could we sensibly say that human beings are embodied minds? Well, if they are thus to be described, this will not necessarily be an alternative to our saying that they are a kind of organism, a rational animal. It would depend upon what we are to count as embodying a mind. If being 'minded' simply involves having a rational nature, which seems an entirely possible account, then every human being however damaged or undeveloped is an embodied mind—*and* an organism. I notice incidentally that McMahan tells us with casual confidence 'There is, after all, no morally significant essence that all the members of the human species have in common' (225). Well, this is very often said. However, in view of the confusion which reigns in moral philosophy, and in particular in regard to human dignity, do we know enough to say that having a rational nature is not 'morally significant'? Of course, there would be something to be explained, and we might not be very good at explaining it.

We might at the very least harbour certain doubts about this claim that we humans are not, as we had supposed, animals—are not, as the textbook would have told us, organisms belonging to the animal kingdom. This is surely the bit of evolutionary biology which we can all agree on. And I think that Professor McMahan would not dismiss such doubts out of hand. But I think he would

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want to issue a warning. The thought that we are such creatures, coupled with the natural thought that these creatures begin to exist from early on during the pregnancy of their mothers, might have implications for abortion freedom that we would be reluctant to accept. So perhaps we ought to go along with the revolutionary claim, and suppress our doubts. I am here falling in with a suggestion in Professor McMahan's article "Wrongful Life". In this article we encounter something of a difficulty, and a way out is suggested. This would be to admit after all 'that we begin to exist when the human organism begins to exist, shortly after conception'. But this way out is rejected on the ground that this admission would have implications for abortion 'that many will be reluctant to accept'. I am not saying that this represents a mistake. It simply illustrates a point I made earlier: that the elaborate metaphysical machinery tends to be adjusted to deliver an outcome in which those involved in the discussion, and their friends, have an interest.[12]

When one gets into a conceptual hole it is time to stop digging. Professor McMahan however digs on regardless. It is not just that *we* are said not to be animals. There is an even more extravagent claim in this book: that what we have *called* animals from childhood on—rabbits, cats, giraffes, etc, anything that walked into the ark—are not in fact animals either, at least if an animal is a kind of organism as everyone will naturally suppose, in line with our 'rough definition'. This startling result is not made much of, but is implicit in what is said, and surfaces here and there (92, 453). So dogs *can* taste their dinners after all, but only because they are not organisms! All this is of course on the assumption that (non foetal specimens of) these animals, while awake, are 'conscious'—an assumption defended here (18). Perhaps a jelly-fish *really* counts as an animal. There would be deep puzzles about earthworms. We would not know *what* they were, and would have no prospect of finding out. I say that this claim about rabbits, cats, etc is startling, seeing that 'cats are animals' is presented by Putnam, Kripke etc, as a standard example of a near analytic truth. *Now* we find that far from being more or less analytic, it has been false all along, except of course in regard to 'unoccupied' foetal cats. What we see, when we think we see a cat, is nothing but a cat's animal.

But the really remarkable thing is yet to come: that an abortion doctor might be expected to dismember an 'unwanted' child with Down's syndrome on the basis of such philosophizing. There is something very important here for the practical ethics movement as

[12] 'Wrongful Life', p. 226-9, revised version, p. 457-459.

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a whole. It is brought out by this book more than by any other. A proof that abortion is all right comes to you from someone who has also just proved, beyond peradventure to twelve men honest and true, that no one has ever seen anyone else, or indeed a rabbit, a cat, etc. And in saying this, we can accept that *seeing* is a somewhat versatile concept—that we talk of seeing Smith 'on television', or that we say that we see Smith when for the most part we merely see the clothes he is wearing, or that we saw Smith when all we saw was his dead body, etc. Seeing Smith is certainly not seeing an as yet unidentified bit of his brain. And if it were, we would not know whether we had seen him, for which bit would we have to have been looking at?

I suppose we will also have to insist that people (and cats) cannot literally be killed. For killing is something which it is only possible to do to an organism. After all, people (and cats) would not on this view be alive. They would not even be at the margins of life—like a virus. If people in particular cannot be killed they cannot be murdered; so *no one* can be murdered. Since the objection raised against abortion is that it involves murder, we have discovered yet another proof that abortion is all right, to add to the long list. Someone can be expected to reply that this claim about people and cats *properly understood* does not have these consequences. But then, what further consequences that seemed at first to follow will fail to follow? Professor McMahan assures us (as we saw) that 'die' has two senses, and that we sometimes die before 'our animal' does. He says this cannot be nonsense as he has told this tale to students over many years, and they seem to understand it well enough (425). That seems an insecure test. To be sure, we talk of the death of a policy and the killing of a plan. We might say that one colour quite kills another with which it clashes. We could even say that a man's fame predeceased him. The question remains: is a glancing sense of this kind the thing we need when considering the ethics of the matter? Professor McMahan really needs another word when discussing his hybrid brain-parts—'evicting' perhaps or 'exorcising'.

If we can lay aside the practical implications and retreat into the study, the claim that we are not animals, but only 'have' them, is simply a delight—the wonder is that we only 'have' one apiece. The reader naturally wants to join in. It would seem that we can very simply prove, for example, that none of us have heads. Only animals have heads, and we are not animals, so… Perhaps we should confine ourselves to a more qualified assertion: saying that *philosophically*, or *metaphysically*, or *technically*, or *academically*, or *bioethically*, or *strictly speaking*, or *in the last analysis*, no one has a head, just to

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avoid being laughed at. It would be nice too to be able to demonstrate that an oak tree is not a plant. We might argue as follows: If an oak tree were a plant, it would be a plant essentially—the tree could not therefore persist after the plant ceased to be. Now an organism such as a plant ceases to be when it dies. But an oak tree often *does* persist—a dead oak tree can stand in a field for many years. Oak trees can therefore outlast the organisms we thought they were. So oak trees are not organisms, and hence are not plants. To be sure, an oak tree, the ones we are familiar with any rate, 'has' a plant, and we might *loosely* say that trees have leaves… Soberly speaking or course, arguments of this kind and their many cousins are to be regarded as patients waiting in a queue for treatment. Reading this book gives the impression that the queue is a long one.

IV

There is a certain amount of discussion in this book of the concept of interests, or better perhaps, of the concept of *being in someone's* interests. And that is entirely appropriate, for it is an important and difficult concept and strange things have been said about it. It is an important notion for us in regard to our present topic, as there must be some connection—difficult to describe—between our duty not to kill others and the idea that killing is harming.

It is important for another reason which comes closer to home. It has been quite usual in the abortion-justifying community to claim or pretend that certain human beings simply do not have interests in the relevant sense, do not have a good and cannot be harmed, or (more modestly, if such a term has application in this context) that they cannot be harmed *by being killed*. It is important for us to document and meditate on this tendency, and I have attempted to do so in another place. It is remarkable how easily this unlovely story has been accepted among philosophers, philosophers who will elsewhere pride themselves on their sceptical reserve, and this needs carefully to be noted. Professor McMahan has found a slightly less paradoxical way of ensuring more or less the same result. He attempts to show that although these individuals can indeed be harmed by being killed, they can only be harmed a little.

McMahan has in fact two ways of justifying abortion. Indeed the reassuring effort expended in showing us that an unborn child in mid-term pregnancy is merely an 'unoccupied' organism, and is hence not 'one of us', is somewhat wasted. The other justification is more comprehensive and could give us, if it is sound, all that we

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(adults) could possibly need, including freedom to kill the newborn, and even the not-so-newborn. This second justification is based on McMahan's account of the concept of having interests or a good.

It is suggested that what is in someone's interests can be assessed not only by crudely considering what opportunities might lie ahead, but in another more complex way, one which will suit us better. Suppose we are judging what is in Smith's interests, and we think in particular of the loss he would suffer if he were killed. According to McMahan, we can adopt a concept of ill-luck which will sometimes cut down the quantum of misfortune considerably. We first come to some notional view of what Smith would lose. Then we take account of certain psychological disunities that would have marked Smith's life were he to have lived, and apply a discount. Since the amount of disunity to be expected will vary with the time in someone's life at which the killing is proposed, our assesment may be said to be time-relative. We are said to be assessing Smith's 'time-relative interests'. If Smith is still a baby at the time at which the measure is made, the discount could be enormous. Its mental life could only be "one great blooming, buzzing confusion", at least if we are to believe William James, and no doubt a different buzzing confusion from day to day. Much is made of this idea of the discount, apparently in reaction to the Marquis article mentioned earlier, which was so unkind as to remind us that a baby we might hope to kill will probably miss out on many future joys.

The liberating relief in regard to abortion and infanticide afforded by this idea of a discount are evident. McMahan has recourse to a metaphor. 'While the infant's objective loss is great, the infant itself is too shallow a vessel to contain that loss' (163). To be sure, McMahan insists that we often have a duty to consider what will be in someone's so-called 'time-relative interests' in the future, and this seems once again to threaten us with an unwelcome burden. But help is at hand. The killing of an infant, a genuinely 'occupied' human, neatly ensures that the question will not come up. 'One can prevent later possible time-relative interests from constraining one's present action by preventing them from arising' (488).

As our analogy of the debate among cigarette manufacturers might suggest, this conjecture about the disunity discount should be subject to heightened scrutiny, for it would obviously suit us to believe it. It is however hard to appraise it, since it is not at all clear what counts as being psychologically joined-up. Would someone who has an unchanging propensity to change his mind suffer from continuity or discontinuity? And even where we have what might be supposed a psychological discontinuity it is hard to make sense

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of the idea of a discount. One loses consciousness once a day—indeed rather more frequently when one reaches a certain age. This is no doubt a considerable hiatus. Suppose now that a child dies and thus misses its impending birthday party. It would be scarcely *intelligible* to claim that because the death occurred at bed-time rather than the next morning the loss was less of a misfortune. The loss caused to a baby if it is killed will depend to some extent, we might suppose, on whether it would have had rich educational opportunities. But education seems enormously to *increase* psychological discontinuity. That so to speak is what education is all about. A child goes to school with some thoughts and comes out at the other end with different thoughts. Change in belief is said to count as significant for discounting purposes (170). And think of language learning. The child goes to school speaking one language and comes out speaking three. All this represents a remarkable discontinuity of mind. Should we say: the death of a baby is not so tragic as it used to be, since nowadays we have such rich educational opportunities? Do we at least have to apply a reduction on account of the expected psychic novelty?

Professor McMahan considers that some discontinuities are much more significant than others (74). The mere occurrence of a different thought at the same time each day would not count for much. Perhaps we have to confine ourselves to particular discontinuities to do with memory. But here we must be careful not to be misled. People enjoy reminiscing. Such a possibility is part of a good life. This then will be a relevant fact when we are assessing or guessing what he is likely to lose on being killed. If he has an unusually bad memory he will likely lose less than we might otherwise have expected. But this is clearly not the sort of circumstance McMahan has in mind. This finding involves our gross estimate of the loss before the discount is applied. It is only this last which concerns us.

So let us try again. Let us think of absent mindedness. This seems to be the sort of thing that might be thought relevant to the discount. Let us suppose that a young man is wondering whether to kill himself rather than face some sorrow. We are seeking to dissuade him by describing what he will miss out on. Would it be relevant for him to reply: 'You are forgetting how absent minded I am'? Again, let us imagine that someone is run over and killed and that we are sad about it. If we then find out that he was absent minded can we think to ourselves 'Well then, it was not so bad as we thought'—as we certainly could think if we found out that he suffering from some rather nasty terminal condition? And yet again,

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suppose that someone faced the near certainty of death. We might have a drug to hand which would cause this patient absent mindedness in later life, if, against all expectations, he happened to survive. Would it be a point in favour of administering this drug that it would render the patient's death less of a misfortune?

Why should one even be tempted to believe this story of the disunity discount? —I mean apart from its apparent usefulness. We are given the following reason. People often think that death is less of a misfortune if it occurs early in one's childhood rather than in one's teens. On the assumption that it is reasonable to suppose this, we are invited to explain the difference by the invoking this disunity story. Had the child lived it would have been somewhat detached psychologically from the subsequent grown-up. However Professor McMahan, in his admirably thorough way, also offers other quite natural accounts. Teenagers will have invested effort in their education which now will go to waste, or they have developed hopes and ambitions which will now be unfulfilled, and so on. These explanations are treated by Professor McMahan as distinct from the discontinuity story. And they would seem to be quite sufficient. Apart from that, we are clearly influenced by the thought that though parents (often) love their newborns, they come to love older children in a different way, akin to deep friendship. It is difficult to leave this out of account. Given all this, we can hardly appeal to the conviction that death of a baby is less tragic than the death of a teenager to support the distinctly odd theory of the disunity discount. There is no longer an explanatory gap to be filled.

The curious idea of a disunity discount, if by extraordinary chance it were to catch on, might be of practical interest—to compensation lawyers, for example, who might cunningly be able to adapt it to their purposes. Even more evidently, bereavement counselors could make a fine use of this material, especially when comforting the parents of small children run over in the street. There is one way, however, in which a practical interest would be lacking. This doctrine, even if we could bring ourselves to believe in it, would scarcely be relevant to the abortion controversy, at least as it goes on in the real world. Jews and Christians who in the ancient world objected to the exposure of infants were clearly not thinking about 'loss', as they thought that such a child would be going on to a better life. People who object to abortion in the usual way, as murder or 'the killing of the innocent', never (or hardly ever) suppose that the procedure is permissible when the individual has little to lose by being killed, perhaps because, for medical reasons, it has a short life-expectancy. Nor would they judge the killing of a new-

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born to be 'not quite so bad' if it took place where life expectancy is lower, in Bangladesh say rather than Japan—or at least if they so judge they would suppose this to be something incidental.

McMahan, by contrast, argues that the objection to the killing of a new-born baby, as opposed to the killing say of a six-year-old, could only be in terms of loss, incidentals apart.[13] It is this more elementary thought, rather than the idea of a 'discontinuity discount', which represents the chief difference between the author of this book and those who call themselves pro-life. Think of the way people *not* opposed to abortion would regard the killing of a new-born baby as murder even if the baby was destined in one way or another to die quite soon in any case, as indeed the law would regard it. From what we are told in this book, there would be very little reason not to kill such a child. Death saves nursing costs. This illustrates very well the way we are being asked to abandon the idea of 'a fundamental moral equality between human beings'.

V

To be sure, the attractions of a kind of moral equality prove too strong for Professor McMahan to resist—we find it reinstated by fiat in a later chapter (232 etc.), but now safely restricted to human beings old enough to earn the metaphysical admission charge. Think of the use of 'our' in the phrase 'a moral status inferior to our own' (vii). Nearly all the categories excluded as arguably *not like us* are categories of human beings. Still that leaves 'ourselves'. How it comes about that there is even this limited equality of worth among 'us' is left quite unexplained—apart from the fact that something called 'liberal egalitarianism' insists on it (240, 243).

Professor McMahan offers us a "two tiered" account of the ethics of homicide: one account for us, and another for them—moral equality being something the top people enjoy among themselves only. Only people above a certain threshold are entitled to the respect which people naturally invoke in regard to the sanctity of life. It is surprising that he can have any confidence in this matter, for as we saw above, he professes himself baffled—alongside other philosophers in a 'distinguished tradition'—as to how this notion of respect in relation to homicide is to be understood. After all, it has been very usual in history for peoples not to recognise any such

[13] I am here neglecting the possibility of 'other spheres' mentioned above.

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equality. The difficulty for a 'liberal egalitarian' moralist is to be dogmatic enough to reject certain quite viable opinions (as uncivilized perhaps) while being sceptical enough of other claims about human equality and dignity sufficient to allow us to represent as civilized the killings we have become so used to and which are so convenient to us. It is not however a serious difficulty for anyone of sufficient philosophical energy and cunning.

It is a matter of some surprise that McMahan fails to note how Hume has long ago offered us a two tiered account. I would like to suggest that Hume provides, in effect, one more assurance that abortion is permissible. It is in fact a more convincing argument than those we are offered by modern writers and it is a matter of some surprise that it has gone unnoticed. About beings wholly within our power, Hume argues—in what is surely a well known passage—that 'we should be bound by the laws of humanity to give gentle usage to these creatures, but should not, properly speaking, lie under any restraint of justice with regard to them' (*An Enquiry Concerning the Principles of Morals*, Section 3, Part 1). This seems to suggest that one cannot wrong a helpless baby, which appears to be the desired result. And as for the so called laws of humanity we need only note that an abortion can often be performed in a fairly gentle way; certainly in a way more gentle than that other option, birth.

If there is this limited degree of moral equality—and it must in fairness be said that McMahan is not quite sure about it—it is, he supposes, something which only holds between 'us', that is to say those mature enough to make more or less rational choices, that is to say 'persons'. In introducing the term *person* early on, McMahan invokes the dictionary with its talk of 'rational beings'. But there would seem no implication in this dictionary use that such beings are mature enough to make rational choices. McMahan mentions Locke in particular (6). It is characteristic of such philosophers to show gratitude to Locke for having introduced this notion of person which has proved so indispensible to them. It is readily forgotten that Locke, quite unsurprisingly in my view, regarded a baby as a rational being (*Second Treatise of Government*, Sec. 61). He did not suppose of course that a baby was born a miniature philosopher. It is perhaps because Locke considered a baby to be a rational being that he judged infanticide to be 'the most shameful action, and most unnatural murder, humane nature is capable of' (*First Treatise of Government*, Sec 56).

The idea that the only reason we have not to kill a newborn baby, a non-person, is the minimal concern which it is appropriate to have

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for its severely discounted interests runs into a striking difficulty a few pages from the end of this book, where McMahan is discussing our apparent duty to 'euthanize' (his word) certain animals. It seems that we need to take into account here in an *undiscounted* way what might possibly happen to the animal if we do not kill it. However, he says, this 'would be fatal to my earlier argument for the permissibility of late abortion'. People can be expected to have this uncomfortable thought: that 'the interests in having goods a foetus would later have if it is not killed can ground a reason not to kill it' (489). Something must be done to keep such ideas under control. He prefers to leave the matter of animal euthanasia unresolved. 'An animal's possible future suffering clearly matters but exactly how or why it matters is hard to say' (493). And do a baby's future joys 'matter'? The joys it might have if we do not kill it?

In this book we are expected to know that it is bad to kill a baby *via* some philosophical account. But it is noteworthy that McMahan himself is prepared to reject a view he calls 'consistent elitism' (I need not describe it here) which seems to pass all the tests he thinks relevant: no 'discrimination', attention to 'morally relevant considerations', sensitivity to adverse 'side effects' and to 'relational characteristics'—that sort of thing. This view he rejects on the ground that 'it is so deeply repugnant that it need not be explored in depth. It is not really an option' (207). I fancy many people will reject so many of his own conclusions in much the same way. In April 2005, a woman's conviction for murder was quashed in the UK Court of Appeal. Her lawyer later said outside the court that his client had wrongly been convicted of 'the worst possible crime a mother could be convicted of—murdering your own babies'. I do not suppose that he was merely echoing Locke, but the thought seems to be the same. That evening John Snow, anchorman of Channel Four News, more or less adopted the lawyer's remark in introducing the item, referring to this 'most heinous of crimes'. One does not have to go along with these remarks to the letter to recognize that there is something correct in their spirit. It is a spirit conspicuously absent in the academic subject calling itself "bioethics", and in particular in this book which is such a canonical specimen of it.

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