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PERSONHOOD AS A NECESSARY IDENTITY CLAIM

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Personhood as a Necessary Identity Claim

Particularly contentious ethical debates frequently reduce to competing claims over the application of the concept 'person'. The term can denote a variety of meanings, including moral or metaphysical status, numerical identity, and humanity. The particular use of the term is generally determined by both the context and the aim of the speaker in employing it, as a result, there is a good deal of slippage in the literature between conflicting uses of the term and various efforts to pin down a specific meaning. It is of utmost importance for any serious inquiry into the uses and restrictions of the term 'person' to carefully specify both its aims, and intended meaning of the term. This paper is largely concerned with the relationship between moral and metaphysical personhood, but will attempt to distinguish the various types of personhood and outline the restrictions on the application and use of its various meanings.

Types of Personhood

If by 'person' we mean to designate 'human beings', the term is simply descriptive, and cannot provide an adequate foundation for any claims that need a warrant greater than species-membership. When used to ground larger claims, it is usually assumed that this form of personhood is co-extensive with moral or metaphysical personhood; i.e., all and only all human beings are also moral agents, or are also metaphysical persons. This move has been heavily criticized, since

unless the advocate provides an argument directly linking personhood in this sense to some exclusively human feature, it is merely a species-ist exclusion.

When used to indicate numerical identity, as is the case in the statement 'Frank today is the same person as Frank yesterday', it is largely a practical term, indicating when one is dealing with the same entity as opposed to a new being. Considerations of mental or physical continuity, consciousness, etc., fall under this category, as they are concerned with identifying an agent as being itself or something other. Such inquiries pursue the question, 'what makes S the *same person?*', and do not, without switching to different meaning of the term, attempt to give an account of what it is *to be* a person in the first place.

Moral personhood begins with the premise that one ought to act in a certain way toward persons, then concerns itself with identifying entities to whom we have obligations, duties, or imperative actions. The determination that an entity has moral personhood implies that we ought to relate to it in specified ethical ways that differ from our interactions with typical amoral entities, such as plant or mineral matter. It thus defines 'to be a person' as meaning 'to be an entity with certain moral duties and rights', centering the controversy over which criteria an entity must meet in order to be considered a 'person'. Candidates for such criteria range from behaviors, capacities, and subjective stances, to the more metaphysical possession of a soul, etc. Claims of moral personhood are frequently based on metaphysical personhood, but the two make separate assertions about the nature of the entity thus labeled, and should be considered as separate types of personhood.

Metaphysical personhood is frequently associated with religious identity claims, but though it encompasses statements concerning the spiritual substance of an entity, it is not restricted to such material. This type of personhood asserts that the *essential nature* of an entity fits a specified description. As a consideration of essences, it is concerned with the ontological status of a person, and evaluates behaviors only as indicators of metaphysical realities.

Of the four types of meaning for the term person (species, numerical identity, moral, and metaphysical), the moral and metaphysical claims are the most significant for ethical theory. The question pursued by this paper lies at the intersection of the two, and asks whether it is possible to sufficiently ground moral personhood without making an appeal to metaphysical personhood. In this context, personhood functions as a foundation for moral rights and obligations. To denote a being as a person is therefore to say that his being imposes some restriction on my action as a person. Thus, the rights of a person are binding to all other persons, answering questions such as ‘whom can’t I kill?’, ‘whom must I protect?’, and ‘where is the limit of my action?’. It is generally assumed that a person must also be a moral agent,¹ which I will contend is an unhelpful assumption, though it can safely be said that all persons are of moral import.² The means philosophers offer for establishing an entity’s claim to personhood vary

¹ This assumption factors significantly in both D. Dennett’s ‘Conditions of Personhood’, and H. Frankfurt’s ‘Freedom of the will and the concept of a person’.

² To be of moral import without also being a moral agent is just to say that a given S has some moral rights, but no duties. I argue that this is the case for certain irrational agents in a society (small children, patients with dementia, and the insane), as they each retain rights to life and freedom from torture, but are held innocent from unintended harm even to other persons.

depending on their pre-theoretic commitments, which in turn are largely determined by their views concerning the metaphysical status of human beings.

Conditions of Personhood

A committed theist, Kant argues that the unique metaphysical status of persons is reflected by their rationality, and hence any being displaying ‘rationality’ is properly considered a person, and deserves moral treatment as such.

Classification as a person is achieved by a reflexive identification: the agent recognizes in the Other those features which allow him to be rational and have a will. Having thus recognized the personhood of the other, Kant’s agent must act according to a universal maxim free from contradiction. Since as a rational agent he cannot both will that he accomplish his ends and that rational agents’ ends be disregarded, he must act on the maxim ‘I will treat every rational agent as an end in himself, and never as a means only’,³ thus ensuring the efficacy of his own will.

The personhood of the Other in this sense does not *deserve* certain rights; rather, the personhood of the agent *requires* certain constraints of action applicable to any entity reflexively identified as a person.

Hegel’s basis for personhood is functionally similar, but differs greatly in origin. Whereas Kant sees personhood as a metaphysical reality reflexively *identified*, Hegel argues that the identification itself *confers* personhood on the Other. As explained by R. Rawlinson, subjectivity and displacement make up the

³ I. Kant, *Groundwork of the Metaphysics of Morals*, p. 47 (4:429)

fundamental requirements of personhood.⁴ An agent views herself as *the* subjective until confronted with an Other whose similarity demands that she displace herself, granting the subjective stance to the Other, attempting to perceive the world from his stance.⁵ This displacement *is* what makes a being a person, and though the action can be disowned, it cannot be revoked. It also functions to provide the basis for moral rights, as one ought not violate the fundamental rights of a subjective Other. This account denies criteria for classification or displacement of persons, asserting that since personhood is conferred as an experiential fact, the distinction must be an *existential* one rather than one able to be outlined in terms of capacities and criteria.

The Capacities Account

Contemporary philosophers aiming to determine personhood based on universally applicable criteria typically assent to some variation of the Capacities Account, exemplified by Daniel Dennett's six 'mutually necessary but not sufficient'⁶ conditions for personhood. Skeptical about the existence of metaphysical personhood, Dennett's criteria are composed exclusively of observable behaviors and subjective stances. The first of these, which he derives

⁴ M. Rawlinson, "Alterity and Judgment", p. 166.

⁵ This idea is shared by Wiggins, who notes that we consider a person to be a living being "that which we have no option but to account as a subject of consciousness (or potentially such) and as an object of reciprocity and interpretation." (quoted in D. Birnbacher, *The Concept of Menschenwürde*, p. 152.)

⁶ D. Dennett, 'Conditions of Personhood', in *Brainstorms*, p. 269-297. These conditions will be referred to as 'the criteria' in this paper, and are taken as a representative of capacity definitions of personhood.

from Locke's definition of persons,⁷ requires that the entity in question be rational, that is, have the capacity to process thoughts. The second also borrows heavily from Lockean ideas, stipulating that one must be able to sensibly attribute consciousness to the being, which is to say that it is plausible that "*there is something it is like to be that organism.*"⁸ Third, one must be able to adopt a subjective stances toward it, e.g., it must make sense to ascribe intentional states to the entity.⁹ The fourth condition, the ability to reciprocate such a stance, seems to require that a system must have the capacity "*to exhibit higher-order intentions*",¹⁰ manifested in the apparent ability to intend to cause a belief in another person. Dennett's articulation here draws heavily from Frankfurt's account of second-order volitions.

Frankfurt offers three classifications for entities: *non-rational* (having only first-order desires), *wanton* (rational, with second-order desires but without second-order volitions), and *person* (a rational being with second-order desires and volitions). Frankfurt locates personhood in the capacity for second-order desires, which he defines as the 'desire to have a desire'.¹¹ To qualify as a *person*, the being's second-order desires must be efficacious; he must both prefer to and

⁷ Locke offers consciousness as the crucial feature of personhood, defining a person as "*a thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing, in different times and places.*" (Locke, II.XXVII.9, pg. 188)

⁸ T. Nagel, 'What is it like to Be a Bat?', in *The Mind's I*, p. 392.

⁹ Though this sounds similar to Hegelian displacement, the type of intentionality Dennett requires is that we be able to think of the entity *as though it could think*, while Hegel requires a more robust encounter.

¹⁰ D. Dennett, p. 277

¹¹ H. Frankfurt, 'Freedom of the will and the concept of a person', in the *Journal of Philosophy*, 10.

actually act according to them.¹² A wanton lacks this second-order volition, though he may be identical to persons in all other respects. In fact, because the critical distinguishing feature is a matter of the will, Frankfurt contends that if an individual allows himself to act for a time without preference, he ceases to qualify as a person, and becomes merely wanton. Conversely, if a wanton resolves his will and acts on it, he can earn the classification of ‘person’.¹³ The higher-order volition account therefore allows a gradual but perpetual shifting of the division between ‘persons’ and ‘non-persons’, allowing the same entity to move between the two classifications multiple times during its existence. Dennett incorporates Frankfurt’s analysis as just one of several conditions, but nevertheless is unable to escape the indeterminacy of the criterion. Additionally, it is not clear that all intuitive cases of persons would meet this criterion even if they fulfilled Dennett’s first three: whereas it is conceptually impossible to separate the first three conditions—being rational necessitates that the being is the proper object of intentional predicates, and thus its actions can be explained in terms of intentional states—it is at least theoretically possible for a being to be rational without apparently acknowledging any other beings as rational agents.

Dennett’s fifth condition, the capacity for verbal communication, originates from Grice’s theory of meaning: any utterance by the entity with the intent to impart a non-natural meaning to an audience fulfills this criterion, whether the speaker is

¹² Ibid., p. 12.

¹³ Ibid., p. 11, 13.

aware of his intention or not.¹⁴ The final condition, the capacity for self-consciousness, can be understood as having higher-order thoughts, or thoughts concerning one's thoughts.¹⁵ A being who meets all six conditions will supposedly be a rational agent, acting intentionally according to rationally selected desires, and capable of recognizing other persons. Unfortunately, in cases where a 'person' has done moral wrong, and thus all the theory concerning persons becomes relevant, the very facts which provide the grounds for saying the person acted immorally "*are in themselves grounds for doubting that it is a person we are dealing with at all.*"¹⁶

Objections to the Capacities Account

As a definition in terms of capacities, the consciousness account faces the difficulty of consistently classifying beings who, though they may possess the relevant capacities, do not display the characteristic behaviors. The criteria must be broad enough to justify the inclusion of temporarily unconscious entities (i.e. beings in dreamless sleep), but strict enough to justify the exclusion of entities that are either permanently or indefinitely unconscious (i.e. those in comas or persistent vegetative states). If a capacity-theorist desires to defend the inclusion of some entities not actively meeting the criteria, she must justify the simultaneous exclusion

¹⁴ D. Dennett, p. 280. Dennett notes that this requirement for verbal communication functions to exclude non-human animals.

¹⁵ D. Rosenthal, 'Two Concepts of Consciousness', in *The Nature of Mind*, p. 465.

¹⁶ D. Dennett, p. 285.

This is particularly evident in the case of homicide, since the agent chooses to act on a desire to destroy a being whom he recognizes as a person (thereby acknowledging her right not to be destroyed), which is grounds to doubt the agent's rationality, ability to recognize other persons, and volitional control—in short, any moral offense is grounds to doubt the being's qualification as a person in the first place.

of non-human animals that fulfill the criteria better than unconscious humans.

Dennett's criteria are particularly troublesome, basing personhood in the stance one takes toward an entity, which in turn is determined by one's goals in interacting with that entity. The result, as Wilson argues, is that Dennett's criteria fail to provide a consistent basis for metaphysical, or even moral personhood:

the membership roster of the moral community could vary not only from person to person, but for a single person from time to time—always depending upon his goals and his current explanatory skills. It hardly need to be remarked that any position which generates such a result must be seriously mistaken.¹⁷

Even if the 'stance' condition was not problematic, the criteria's reliance on observable behaviors makes it incapable of denoting metaphysical realities.¹⁸

Unless supplemented with an argument proving that to cease displaying the behavior is to cease having the capacity to behave in the specified way, and further that such a capacity *is* what it *is* to be a person (rather than simply being *indicative* of one's status as such), at most Dennett's six conditions can function as a pragmatic, functional means of identifying persons. It is noteworthy that Dennett's treatment of personhood as a behavioral label results from his prior conviction that *if* personhood even has any metaphysical meaning, it is unverifiable.¹⁹ Approaching the problem with the assumption that a person is just a complex intentional system,

¹⁷ D. Wilson, 'Functionalism and Moral Personhood: One View Considered', *Philosophy and Phenomenological Research*, Vol. 44, No. 4. (Jun., 1984), 527.

¹⁸ *Ibid.*, 523. Dennett himself acknowledges that if there is such a thing as metaphysical personhood, it is both necessary for moral personhood and beyond the scope of his criteria. Wilson quotes him as saying "there seems to be every reason to believe that metaphysical personhood is a necessary condition of moral personhood."(p. 269)

¹⁹ D. Dennett, p. 285.

Dennett emerges with a checklist of behaviors indicative of the right level of complexity.²⁰

This is insufficient as grounds for moral claims, which require at *minimum* an account capable of generating consistent duties and obligations. An individual's claim to moral recognition could be formulated in one of at least three possible ways:

- (1) Persons claim moral rights in virtue of their personhood.
- (2) Persons claim moral rights in virtue of displayed behaviors.
- (3) Persons claim moral rights in virtue of their metaphysical essence.

While claims of moral status are generally understood to be derivatives of either (1) or (3), Dennett's claim is clearly a version of (2), implying that if the entity in question ceases to display the specified behaviors, he loses his claim to any moral rights. Though some have unflinchingly embraced this result, to accept Dennett's criteria as the only grounds for or definition of personhood is to reject (1) and (3), restricting personhood considerations to a reductively behaviorist question. If one accepts such reduction the problem cases²¹ are possibly less troubling; if 'person' denotes only behaviors, classification as a non-person does not imply that the entity may be exploited as an object. Several scholars have suggested that a level of respect only slightly below that of personhood to be extended to non-persons,

²⁰ This can be contrasted with Chisholm's methodology, who, committed to the idea that personhood denotes a metaphysical reality, constructs a logical proof for the necessity of continuing personhood independent of behavioral functions.

²¹ 'Problem Cases' refers to entities considered human though they do not meet the criteria (temporarily unconscious), entities meeting the criteria but not considered human (intelligent animals), and borderline entities (humans that are very young, severely mentally handicapped, or in persistent vegetative states).

proportionate to their degree of sophistication and development.²² However, it is doubtful that this treatment extends sufficient protection to borderline entities.

Since personhood is taken to be a necessary precondition for moral action, non-persons cannot be moral agents, and thus, according to most theorists, can neither have moral duties nor impose moral obligations. Such entities may be protected by basic respect for life, but there is no ultimate: one may protect, defend, or even make sacrifices for a non-person, but one may also opt not to. It is certainly the case that the rights of a non-person are incommensurate with the rights of a person; Mary Warren explains,

that an entity is probably sentient provides a reason for avoiding actions that may cause it pain. It may also provide a reason for respecting its life, a life which it may enjoy. But it is not a sufficient reason for regarding it as a moral equal.²³

The rights of persons are understood to be obligations for which every agent is responsible, but particularly when conflicting interests are present, the privileges offered non-persons do not have the same power, and thus do not afford similar protection. In the cases of late-term abortion or care for dementia patients, if these humans are classified as ‘non-person’, the costs associated with sustaining their lives are simply too high to guarantee that these individuals will be treated with the respect or care that would be afforded them by classification as persons. These considerations show that there is a substantial gap between the status of ‘person’

²² S. F. Sapontzis, ‘A Critique of Personhood’, *Ethics*, Vol. 91, No. 4. (Jul., 1981), 615. Sapontzis himself takes this argument a step further, advocating the abandonment of the concept of ‘personhood’ in favor of a respect for entities showing morally praiseworthy characteristics.

²³ Mary Warren, ‘The Moral Significance of Birth’, in *Hypatia*, Vol. 4, No.3, Ethics & Reproduction, (Indiana University Press, Autumn, 1989), p. 52.

and that of ‘non-person’, thus it is worth evaluating whether one can develop a classification within personhood for entities that are not also moral agents.

Mult-Level Personhood

I propose that a non-agent person should be recognized as having moral import, though it remains unable to act as a moral agent. Such entities include those arguably possessing metaphysical personhood, but not displaying all of the behaviors generally taken to be indicative of personhood.²⁴ As persons, they would be afforded the most basic of the endowments of human dignity: a right to life, freedom from undue suffering, and minimal self-respect.²⁵ Rights or responsibilities dependent on rational decision-making faculties, such as the rights of self-governance and autonomy would be suspended until the entity in question displayed the pertinent qualities. These ‘rights of a rational agent’ are properly understood as the privileges which *must* be granted to any entity on the grounds of displayed capacities for reason and self-regulating actions, and thus should be seen as ‘earned’ by any individual displaying the relevant capacities. Basic personal rights, on the other hand, are the foundation of human rights, and are imperative for any person *in virtue of personhood alone*, not any additional faculty.

²⁴ This category includes the very young, the insane, the mentally retarded, as well as beings in comas, persistent vegetative states, and at either extreme of the spectrum of development. For the purposes of this paper, I take ‘persons’ to be human beings, but this pragmatic focus should not be taken as an exclusion of the possibility of non-human persons.

²⁵ D. Birnbacher, “The Concept of Menschenwürde”, p. 110.

In order to adequately justify these moral claims, one must assert some version of metaphysical personhood. As such a claim necessarily asserts that an entity's personhood is ontologically significant, it is impossible to change an its classification from person to non-person without altering its identity. Lynn Rudder Baker and Roderick Chisholm have each presented an argument for the necessity of personhood taking roughly this form:

- 1) If the property of being an F is ontologically significant, then the property of being an F determines the F's persistence conditions.
- 2) Since things have their persistence conditions essentially, the F could not have existed before the instantiation of the property of being an F.
- 3) Personhood is an ontologically significant property.²⁶

Chisholm concludes, "*Our definition has the consequence that, if an individual thing x is a person, then in every possible world in which x exists, x is a person from the moment it comes into being until the moment it passes away.*"²⁷ If personhood is coextensive with an individual's existence, it must be counted as a person both before and after it ceases to meet the criteria.

Future Agents

As a metaphysical entity a person must have a beginning in time,²⁸ but in the whole process of human development, the emergence of a unique DNA during

²⁶ L. R. Baker, 'The Ontological Status of Persons', *Philosophy and Phenomenological Research*, Vol. 65, No. 2, (Sep., 2002), 378-380.

One should note that Baker's argument differs slightly from the form employed by Chisholm, but the precise nature of these disagreements is beyond the scope of this paper.

²⁷ R. Chisholm, *Person and Object: A Metaphysical Study*, Muirhead Library of Philosophy, (Routledge: London, 2004), 137.

²⁸ D. Oderberg, 'Modal Properties, Moral Status, and Identity', *Philosophy and Public Affairs*, Vol. 26, No. 3. (Summer, 1997), 4.

fertilization appears to be the only relatively distinct moment of beginning. This is the first time a zygote is distinguishable from either parent, and assumes an identity that it will, in the majority of cases, retain throughout adulthood. There are difficulties even with this definition, however, and Peter Singer presents a common argument against fetal personhood grounded in the indeterminate identity of any particular zygote.²⁹ At multiple stages in the post-conception early development of a human being, a given zygote can spontaneously abort, proceed developing normally, or twin, resulting in the development of two embryos. Consequently, Singer argues, it is impossible to identify a zygote as a potential human, since it might be two non-identical humans, or even fail to develop. If he is right, it seems that the zygote is not actually the earliest state in development, and fertilization cannot be the point at which a new human comes into existence.

Oderberg's response highlights Singer's conflation of two separate metaphysical identity claims. He contends that though it is true that a twinning cell cannot be identified as a particular future human being prior to the actual twinning, it nonetheless is a countable instance of identity. The most that Singer can claim is that a twinning cell is a potential human that ceases to exist without *dying*, since it is eliminated when twinning occurs, becoming instead two cells, each identifiable as

This is not a generally controversial point even in the personhood debate, so I shall not argue for it in this paper. Oderberg is also content to allow the assumption in his paper, though he says he argues for it in his article *The Metaphysics of Identity over Time* (Basingstoke: Macmillan, 1996).

²⁹ P. Singer and H. Kluse, 'Individuals, Humans, and Persons: The Issue of Moral Status', *Embryo Experimentation*, pp. 65-89. This argument is also the key premise in Peter K. McInerney's 'Does a Fetus Already have a Future-Like-Ours?' in *The Journal of Philosophy*, Vol. 87, No. 5. (May, 1990), pp. 264-268.

particular human beings, but neither identifiable as the previous single cell. This does not eliminate the possibility that the cell was an identifiable potential human until the actual twinning. More importantly, even if one were to grant Singer's contention that twinning cells have no identity as a potential human prior to the split, this does not affect the vast majority of cells which never split, and are thus identifiable as particular future humans throughout their development. The possibility of twinning cells destroys neither the present identity of any cells, nor the future identity of any non-twinning cells, and therefore poses no threat to fetal personhood.³⁰

Past Agents

Though the ascription of personhood to a fetus is intuitive to some in virtue of the expectation that it will become a clear case of a person in the future, this move cannot be repeated in cases concerning the elderly, or individuals who *used to* meet the criteria, but no longer exhibit the relevant behaviors. Defining specifically *when* the person ceases to exist has been complicated by modern medicine, and becomes even more difficult in mind-altering illnesses such as dementia, which are perceived as conditions "*in which the sufferer experiences a loss of self.*"³¹ One possible standard for establishing continuing personhood emerged in a study on dementia patients. The research showed that spouses caring for the afflicted maintained a persistent notion of the individual's past and

³⁰ D. Oderberg, 274.

³¹ JoAnn Perry; Deborah O'Connor, 'Preserving Personhood: (Re)Membering the Spouse with Dementia', *Family Relations*, Vol. 51, No. 1. (Jan., 2002), pp. 55-62.

continuing identity, locating this both in the Other and in themselves as spouses of the *same* continuing person.³² Frequently, the spouse also compensated for the failing mental abilities of the afflicted, acting as an external center of consciousness and providing continuity of memory. This has significant implications for any philosopher subscribing to the Hegelian displacement account of personhood: as long as the spouse considers the patient to be a person, *the same person* as previously, the spouse remains that person. Or, more precisely, as long as the patient *can* cause such displacement, regardless of whether he continues to cause it, he remains a person. Theoretically this would result in the ascription of personhood to an individual until he either dies or permanently loses consciousness.

Inconsistent Agents

The third controversial group consists of entities that inconsistently meet Dennett's 'personhood' criteria. These pose no problem for a multi-level view of personhood: whatever rights are due a person are always due an entity that has once been classified as a person. This is because if a being exhibits those behaviors taken to be symptomatic of the metaphysical reality of personhood, it can be assumed that regardless of whether such behavior is consistently displayed, its essential makeup does not alter, and the individual remains a person. Since it is possible for an entity to become or cease to be a moral *agent* without altering

³² Ibid., 56. The authors note that the spouses continued to define themselves in relation to the patient, referring to the patient as '*my* husband' or '*my* wife', recognizing not just the continuing personhood of the afflicted, but also asserting continuation as the *same* person.

identity, rights due specifically to moral agents may be suspended when the entity does not display the relevant behaviors. This approach to personhood seems fairly intuitive, and is the *de facto* approach adopted in the daily practice of many western cultures.³³

It appears that a view of personhood such as the one I propose, that takes 'person' to be a necessary identity claim but allows for a graduated view of moral agency, is able to satisfactorily handle the standard problem cases of personhood. The last group to be evaluated is composed of persons who are also moral agents, which make up the vast majority of non-controversial cases. Easily recognizable as persons under any standard definition, they have basic moral import, and hence the rights to life and freedom from undue suffering, and are also rational agents capable of moral reasoning, thereby qualified to demand autonomy. As agents, they also inherit duties towards other beings of moral import and therefore are responsible for their actions. Since this view of personhood deals with standard entities successfully, and can address controversial cases without devaluing either the marginal entities or the concept of personhood, it should be considered a viable theory, and a possible alternative to the capacities account.

³³ The temporary suspension of rights of autonomy without also suspending rights to life and freedom from undue pain may be readily observed in multiple societal structures, including suicide intervention, criminal incarceration, guardianship of minors, etc.

DECLARATION

The above essay is all my own work: the source of all material used in its compilation has been duly cited, and all help received is acknowledged. The essay does not substantially duplicate material previously or simultaneously submitted to academic staff at any institution.

This essay/thesis follows very closely to the proposal which I submitted to SCIO staff and which was approved by them.

Signed _____

Date _____

WORDCOUNT: 3825

(Excluding front matter, subheads, declaration and works cited.)

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