Commentary on Lynne Rudder Baker’s Constitutional View vis-à-vis the Unity Argument

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In this supplementary paper I consider an alternative view to the substance view canvassed in my chapter on human beings and persons, i.e., ch. 4. For lack of a better term I will refer to the alternative view as the Achievement view. The reason for calling this the achievement view is best explained by David Boonin (2002). Boonin argues that you and I achieve moral significance only when our brains become fully functional to support organized cortical brain activity. Any earlier stage of brain development, such as brain waves or the development of the neural tube, does not count. “The collection of cells is not yet doing any of the sorts of things that brains do when we think of brains as morally important. The cells are merely constructing the structures that will later do those things” (Boonin, 2002, 105, emphasis mine to justify the sobriquet “achievement” view). Views of the sort where either, you and I do not come into existence or you and I do not achieve moral worth until a developmental milestone passes, count as Achievement views on my nomenclature.

The achievement view focuses on the fact that you and I have exercisable psychological capacities. The idea that I exist, or could exist, without any capacity for consciousness or thinking or rational thought strikes proponents of this view as counterintuitive. One proponent of this view is Lynne Rudder Baker who defends a constitutional view. On the constitutional view, two different things can possess the exact same monadic and polyadic properties at the same time and in the same space. This can occur if one thing possesses the monadic and polyadic properties derivatively and the other non-derivatively.

The human being on the constitution view, has psychological features derivatively, and physiological features non-derivatively. Conversely, the human person has psychological features non-derivatively, and physiological features derivatively. Lynn Rudder Baker thinks that this is a way to dispatch the absurdity of saying that two different things have the exact same properties. For, on her view, they do not have the
same properties in the same way – one set is possessed derivatively, the other non-derivatively. On the constitution view, you and I are constituted by the human being, but not identical to the human being; like how a statue is constituted by the lump of bronze but is not identical to it. If one melts the bronze statue, the lump of bronze continues to exist, but the statue clearly does not. So, when the statue exists, two things are occupying the same space at the same time, but in different ways: the lump of bronze possesses the properties specific to being a statute derivatively (such as being admired as a work of art) and the properties of being bronze non-derivatively (weighing 500 pounds). The converse is true for the statue: the statue possesses the properties of being bronze derivatively (weighing 500 pounds) and the properties of being the statue non-derivatively (being a work of art). The same thing is said concerning human being and person. Baker explains that you and I are essentially persons, our primary kind is person. “I have my primary kind of property non-derivatively (and essentially); my (non-derivative) body is a person derivatively, in virtue of constituting something that is a person independently.” More precisely, “[a]ny thought the thinking of which requires a first-person perspective is nonderivatively mine and derivatively my body’s.” (Baker, 2002, 38).

This much will have to do to explain how it is that two different things can still possess the exact same monadic and polyadic properties at the same time and in the same space. By itself the introduction of derivative and nonderivative properties appears to grant the dissociation between person and human being, and that is enough for the unity argument to be sound. How does the constitutionalist explain the unity among them so as to dodge the absurdities in the unity argument?

Baker explains that while my “body is a person and I am a person;… there are not two persons where I am. My body and I are the same person - I non-derivatively my body derivatively. …If a constitutes b and a is an F non-derivatively and b is an F derivatively, there are not thereby two Fs.” (Baker, 2002, 38). Elsewhere Baker notes that the Constitution relation is a third way between non-identity and complete separateness. She states, “For when x constitutes y, there is a unitary thing – y, as
constituted by \( x \); “As long as \( x \) constitutes \( y \), \( x \) has no independent existence”; “during the period that \( x \) constitutes \( y \), the identity of ‘the thing’ — \( y \), as constituted by \( x \) — is determined by the identity of \( y \).” (Baker, 2000, 46).

The argument for this view is straightforward. You and I are essentially persons. Persons are those beings who can exercise psychological capacities (which may include self-consciousness or cognition). Human beings do not necessarily exercise psychological capacities, such as human beings at the embryonic or fetal stage or those in a persistent vegetative state. It follows that person and human being are different things, and you and I are not human beings. We may be constituted by human beings (Baker, 2000), or are parts of human beings (McMahan, 2002, 92ff.). But we are not the same thing as a human being.

To bring into relief the contrast with the substance view: the substance view holds that each of us is identical to a human being, there is no other thing that is a person and you and I are identical to it. Person and human being are, on the substance view, co-referring expressions, much like Morning star and Evening star refer to the same thing, namely the planet Venus. The Achievement view denies this. Human beings and persons are different things that are located in the same place at the same time and share the same biological matter (e.g., your body, cells, tissues).

The substance view has no issue with the idea that you and I are essentially persons. The key issue that separates the two views is the following proposition about persons.

(Cap): It is necessarily true that if \( S \) is a person at \( t \), \( S \) is able to exercise psychological capacities at \( t \).

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1 It may be the case that the notion of person has greater extension than the notion of human being. That is, it may be the case that there are alien life forms or rational parrots that manifest rational capacities (and therefore are persons) but do not have the same morphological features or developmental trajectory as human beings (and therefore are not human beings). Consider the creature in the story Five Children and It, where It is a Psammead whose eyes are on the ends of antennas like a snail’s eyes, whose body is like that of an arachnoid, and whose ears are like a bat’s. Intuitively, Psammeads are not human beings, but they manifest rational abilities. On the substance view, then, every human being is a person, but not every person is a human being.
Proponents of the Achievement View accept (Cap) – for capacity. Proponents of the substance view deny it. For the substance theorist, persons can be defined as follows. (Concreta): It is necessarily true that S is a person at T iff S is an individual with a rational nature at T. And, (Nature): if S is a human being at T, S is an individual with a rational nature. From (Concreta) and (Nature) it follows that if S is a human being at T, S is a person at T.² So the distinction between the two views is whether or not it is enough for you and I to exist that we are individuals with a rational nature, or must we be able to exercise rational capacities.

On the achievement view, you are that thing that can exercise rational capacities. How does the Constitution View relate to my Unity argument outlined in chapter 4? Here is a brief recap of that argument.

1. If the human being at the fetal stage (hereafter fetus)³ ≠ Me, then I came into existence sometime after conception (at Tc).
2. If I came into existence after conception then either the fetus dies, or continues to live.
3. Neither is it the case that the fetus dies nor does it continue to live. (The defense of this premise is made explicit below.)
4. Therefore, it is not the case that I came into existence after conception. (From 2 and 3, MT).
5. Therefore, it is not the case that the human being at the fetal stage is not identical to me. (From 1 and 4, MT).
6. I am the same thing as the human being at the fetal stage. (Negation rule applied to 5).

² For further defense of these claims, see Laura Garcia (2008), and Oderberg (2008).
³ Locutions such as “the fetus” can be confusing. Properly speaking, the fetus refers to the human being at the fetal stage of development. It is a phase concept much like infant, toddler, juvenile etc. are phase concepts. So, every occurrence of “fetus” should be understood as “human being at the fetal stage”. It would be too cumbersome and with no gain in clarity to state the latter for every occurrence of the former.
Defense of premise 3:

(3a) If the fetus died, then it died because it gained an ability to think, and this ability is the working out of the fetus’s self-directed development, and there is no corpse.
(3b) It is not the case that things die when they gain an ability and this ability is the working out of its developmental program, and there is no corpse.
(3c) Therefore, the human being at the fetal stage did not die. (From 3a and 3b).

(3d) If the human being at the fetal stage continues to live (and he/she is not the same thing as me), then there are two different things with the same physical (this body) and psychological features (this thought/ intention).
(3e) It is absurd to think that two different things can have the same psychological and physical features. (Snowdon’s arguments canvassed above).
(3f) It is not the case that the human being continues to live. (From 3d, and 3e MT.)

(3g) Therefore, it is not the case that the human being continues to live and it is not the case that it dies. (From 3c, and 3f, Conj.).
Premise 3: Neither the fetus lives nor does it die. (From 3g, DM).

Constitutionalists will challenge premise 3e. For them, it is not absurd to think that two different things can manifest the same physiological and psychological properties. Furthermore, constitutionalists argue that two things can manifest genuine unity even if they are not identical. The non-identity between A and B does not entail complete separateness on the constitutional view. How can the constitutionalist account for the non-identity between A and B and yet argue for their intimate unity? Constitutionalists, then, will reject the inference in 3d by saying that the two things in question, the human being and the person, do not have “the same” physiological and psychological properties, at least they do not possess these properties in the same way. Rather, the human being has the properties I do derivatively, and I have the properties
my human being does derivatively. Constitutionalist will attack premise 3e by pointing out that the Constitution relation maintains a genuine unity between human being and person that avoids the putative absurdity. There are not two things, but one thing, namely, person-as-constituted-by-a-human-being.

What shall we say of this view? Assume that you are either an animal derivatively or non-derivatively. For something to be an animal derivatively there must be something else that is an animal non-derivatively. So, if I am a human animal derivatively, there is another human animal that exists non-derivatively. There are now two animals: the animal I am derivatively and the animal that exists non-derivatively. Andrew Bailey states the point thusly,

I am a human animal derivatively only if there is something distinct from me (to which I’m appropriately related) that is a human animal non-derivatively. And where would this human animal (distinct from me) be, except somewhere in my immediate vicinity? (Bailey, 2016, 209).

Since there is only one human animal in my immediate vicinity - there is only one human animal that is sitting in my chair, thinking my thoughts, and digesting my food - it is not the case that I am a human animal in the derivative sense. For if there were, there would have to be a distinct human animal that exists non-derivatively. But there cannot be. Therefore, I must be a human animal, neither derivatively nor non-derivatively.

In response, Baker may repeat what is quoted above, namely, if x constitutes y, and x is a human being non-derivatively whereas y is a human being derivatively, there are not two human beings (there are not two Fs). I suggest that if Baker’s comment here is correct, the unity argument is untouched by her understanding of constitution since it would be consistent with her view that x’s existence be co-extensive with y’s. Person and human being, that is, could on such an understanding come into being at the same time. To argue against this possibility, Baker would have to argue (Baker, 2005) that one thing (the person) comes into existence after the other thing (human being). Even if the modes derivative and non-derivative do not justify inferring that there are two different things,
only different persistence conditions would justify that. But the relational property of being derivative or non-derivative do not specify persistence conditions.

In any case, I do not think that Baker’s comment can be correct. To avoid the result that there are not two human beings, possessing a property derivatively or non-derivatively cannot be essentially differentiating. The basic gist of my argument that follows is that to have a difference between things, there must be a difference maker. If that difference maker is the possession of a property derivatively versus non-derivatively such that the persistence conditions are different, then there are two different things. The absurdity is still apparent. If there is no difference maker, it is consistent to assert that human being and person come into existence at the same time. So, either the constitution view is impaled by the too-many thinkers problem, or it is a view innocuous to the conclusions reached in the chapters on abortion and human embryo destructive research.

Here is how to think about the issue. Suppose that $x_i$ possesses H (is a human being) derivatively. If $x_k$ possesses H non-derivatively, can we say that $x_i = x_k$? Not on the constitution view. Necessarily, if $x_i$ is a human being derivatively and $x_k$ is a human being non-derivatively, $x_i \neq x_k$. One and the same thing cannot possess H both derivatively and non-derivatively. And since H in both cases represents ‘is a human being’, it follows that there are two human beings: one that is a human being derivatively and another one that is a human being non-derivatively.

To argue that $x_i = x_k$, having H either derivatively or non-derivatively cannot be understood as identifying separate kinds of things. But this is exactly how the constitution view understands those relations. Hence, the constitution view does not avoid the Unity argument. Either the Unity argument is avoided, at the expense of granting the possibility that a human being and a person come into existence at the same time; or, derivative and nonderivative properties pick out different kinds of
things, in which case there are two different things that have the same psychological and physiological features.\(^4\)

Before concluding this section, I wish to outline some other miscellaneous objections to the constitution view. Though I have labeled these objections miscellaneous they are important to consider since they show that there is no reason \textit{for} the view that outweighs the reasons against the view \textit{vis-à-vis} the Unity argument. We shall see that, on balance, the weight of philosophical argument favors the substance view.

The first problem with the constitution view is the initial point at which Baker reifies the ability of taking a first-person perspective. By reify I mean that she makes personhood dependent upon having this ability. A human person, for Baker, is an embodied being that has the capacity for first-person thoughts. She defines first-person phenomenon relevant for being a person as follows: “For strong first-person phenomena, it is not enough to distinguish between first person and third person; one must also be able to conceptualize the distinction, to conceive of oneself as oneself.” (Baker, 2000, 64). And she notes further on that having a first-person perspective is relational, by which she means that “it would be impossible for a being truly alone in the universe to have a first-person perspective” (Baker, 2000, 70); and that “self-conception is impossible without the ability to contrast oneself with other things that are not oneself.” (Baker, 2000, 72).

There are at least three problems with this suggestion. First, whereas I think Baker might be right in regard to the conditions of having a first-person perspective, I see no reason to identify an entity (such as persons) with the \textit{ability} to have a first-person perspective. Abilities do not exist without an entity that has those abilities. Second, if being a person requires having a first-person perspective and taking a first-

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\(^4\) Another plausible argument to the same conclusion is to note that substances are identified with respect to their persistence conditions. Since the human being and person have different persistence conditions on the constitution view they are different things. And yet, they apparently share the same nervous system and brain. Once again, two different things end up having the exact same psychological and physiological properties, and that is absurd.
person perspective requires the existence of other persons, it follows that it’s impossible for there to exist one person. But clearly it is possible for one person to exist. Whether I exist or not does not seem to depend on whether someone else exists -- unless one believes in God and finds the ontological argument plausible; but that is an entirely different matter.

Third, Baker’s position suffers from a clear counterexample. Evidence exists that severely autistic adults do not have the capacity to think of oneself as oneself (Frith and Happe, 1999). The fact that they do not have this ability should not preclude them from being persons for clearly they are.

A second miscellaneous objection to Baker’s view is that it entails that a new thing comes into existence when it acquires an ability that endows it with a significant set of causal powers. Baker states the idea as follows, “the fundamental idea of constitution is this: when a thing of one primary kind is in certain circumstances, a thing of another primary kind - a new thing, with new causal powers - comes to exist” (2002, 32). This too, is an implausible result (here I follow Eberl, unpublished). Consider a steel anvil. Suppose that I use the steel anvil as a doorstop. Simply in virtue of using it as a doorstop, another entity has entered the universe. Eberl responds as follows,

If I take an anvil and utilize it as a doorstop, I could cease to call it “Anvil” and start to call it “Doorstop.” Doorstop has an essential property, stopping a door from closing, which Anvil does not have. Anvil can exist even if it is not stopping a door; Doorstop cannot. Hence, Doorstop is constituted by Anvil, but is not identical to it (Eberl, unpublished ms, 28).

It seems that if we can do this for steel anvil’s we can do this for chairs, tables, newspaper etc. When I get out of my chair and step on it to reach a high place, it becomes a stool. When I sit back down on it, it turns back into a chair. These results are absurd. It appears much more plausible and without any damage elsewhere to our understanding of the world, that there is one chair, but that one thing has numerous dispositional properties such as the ability to be sat on or stood on, or to be used as a shelf for one’s baggage.
To avoid such implausible results Baker provides some criteria for what kinds of causal powers are relevant. The new causal properties an object must acquire in order to enter into a constitution relation must make an ontological difference to the universe. And here too, Eberl’s criticisms are instructive. He considers the causal powers of human reproduction. Human beings at a certain age of puberty develop the power to reproduce other human beings. This potency is obviously a new set of causal powers that make a significant ontological difference to the universe, namely begetting other human beings. Clearly, however, a new thing does not come into existence when one of us reaches puberty. Rather, one and the same human being develops the reproductive capacity in accordance with the developmental program prototypical of human nature. Consider also an eaglet. When an eaglet develops wings sufficient for flight, it acquires a significant set of causal powers different from what it possessed previously. But in virtue of acquiring the exercisable ability for flight a new entity has not come into existence. Rather, it is much more plausible to say that an eagle has developed to a point at which it can now fly. The development of an entity does not entail the creation of new entities. Notice the contrast here with artifacts such as statues and flags. A piece of wax does not develop into a statue. A piece of cloth does not develop into a flag. The point is that the cases used to motivate the constitution view appeal predominantly to artifacts, but the transfer to organismic substances, like you and me, is fallacious. When a human being develops the ability for consciousness, and slowly over time, more and more cognitive abilities, new entities do not come into existence with each developmental milestone.

The lesson learned in all of these examples is that we should resist reifying a thing’s powers or capacities into a substance. If we keep our ontological categories straight, it is much more plausible to say that one human being develops the powers its nature disposes it to have. There is no reason to reify into a separate thing the power to take a first-person perspective.