



Why Human Difference is Critical to a Conception of Moral Standing: An Argument for the Sufficiency of Being Human for Full Moral Status

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ABSTRACT: I argue that the claim that merely being born of two human beings in a condition that supports life is sufficient for full moral status. Not only ought we not to exclude any human being from full moral status because they lack the possession of what some have deemed to be morally relevant properties, we don't have a full grasp of what is morally relevant unless we include the many different possible lives humans live in their diverse bodies and minds. Our understanding of how we ought to treat nonhuman beings is not of lesser importance, but it necessarily depends on how we understand what is morally significant in human lives.

KEYWORDS: Full Moral Standing, Moral Persons, Cognitive Disability, Species Membership, Animal Welfare, Human Difference, Moral Relevance, Moral Equality, Congenital Genetic Variants

Introduction

When you don't see a person's full humanity you release any moral obligations to extend to that person the rights and respect given to other humans. And in this state, danger lurks. In this state, atrocities creep.

Charles M. Blow (2021)

In this article I defend the claim that being a *human being* suffices for full and equal moral status. I will refer to this as “the sufficiency condition.”¹ This means we need not, and should not, posit a set of necessary and sufficient conditions in the form of



“morally relevant intrinsic properties” to define moral personhood. Such a notion is unnecessary, and undesirable. Being human suffices but is not necessary for full moral status. The claim leaves open possibility that nonhuman animals are moral persons, or that we might in the future encounter some other being who we want to say has full moral status.

“Moral personhood” is a useful term to cover all that have full moral standing. Positing a sufficiency condition for human beings, I argue, does not mean that the category of moral persons is a grab bag of different conditions that are jointly sufficient and necessary. We can formulate such an inclusionary concept by taking human being as the paradigmatic case that then helps direct us to the morally significant aspects of nonhuman lives—some of whom may be thought just as morally significant as humans. The imperative to defend the sufficiency condition is metaethical insofar as it directs our attention to how we form important ethical concepts—in this case—what is “morally relevant.” Its normative importance is to dispute the exclusion of some human beings, especially those with severe cognitive disabilities, from the moral status we accord to ourselves.²

It is necessary to make some preliminary remarks about the terms as I am using them. First, what I mean by *full moral status* is the moral status that we bestow on ourselves. It is the basis of claims of rights, protections, and entitlements. It is captured (though not defined) by the United Nations Declaration of Human Rights and subsequent covenants such as the UN Convention on the Rights of Disabled People.³ Those who have full moral status are moral equals. The ideal of moral equality is that all moral equals are entitled to the care and the social, economic, and political rights and entitlements needed for flourishing. That some beings, and not all, have full moral standing does not entail that nonequals have no moral standing. Moral standing, on my view, is not so much graduated, as it is diverse.⁴ Different beings have moral status in accordance with their form of life and what is of value to them, that is—as far as we humans can discern this in the context of nonhuman life.⁵

When I speak of human beings to which the sufficiency condition for full moral status applies, I do not include *anything* human, such as human tissue; the condition is reserved for a *living human being*. By a *living human being*, I mean all those born humans who are in a condition that is compatible with life. The fetus is not yet a human being in this sense. It exists, even in later stages, because another human being houses it and makes its existence possible. This intricate relationship complicates determining its moral status relative to the human being to whom it is tethered. But we need not resolve the vexing question of the moral status of the fetus, nor need we reject or accept abortion rights, to accept the sufficiency condition.

The sufficiency condition applies to human beings who are in a state that is compatible with life. Most fetuses that would not be viable if born are aborted spontaneously, but sometimes one does survive birth only to die very shortly after, such

as anencephalic neonates.⁶ Anencephalic infants are missing a brain and are born with only a brain stem. They live at most a few weeks because a missing brain is not compatible with human life. Individuals who enter end-stage Alzheimers or other forms of fatal dementia are still in a condition that is compatible with life—though barely so. At the very end of end-stage Alzheimer’s, for example, once the brain is so damaged that the condition ceases to be compatible with life, the individual dies. One might want to make the case that each of these individuals should have some of the stringent protections, for example not being used for food, that those with full moral status do. One can make a plausible argument for the importance of treating even dead or “brain dead” human beings with a moral status that falls short of full moral status. One can argue that such a less robust moral status acknowledges that these people were all, at some time, “some mother’s child” (Kittay 2019b [1999])—that is, a human being nurtured by a caring other who has full moral standing (Scanlon 1998, 186).⁷ Still, one can proceed defending a sufficiency condition for full moral status with solely the following two restrictions: that the human being is born and is in a condition that is compatible with life.

Why Do We Need to Argue for the Sufficiency Condition?

Why argue for the sufficiency condition and its immediate implication, that all human beings are moral equals? Is this a proposition that needs argument?⁸ Should we not take it as a moral primitive? After all, the idea that all human beings are equal in moral worth is a principle most of us adhere to, even when we see it violated time and time again. It is a principle reiterated in the major world religions and has been enshrined as a basic philosophical principle since at least the enlightenment in the Western world. Breaches are called out in the name of the victim’s common humanity around the globe, even if not *universally* subscribed to (Kittay 2017). Within the Abrahamic tradition, the idea is enshrined in Scripture: Human beings are created in the image of God.

Can we then say that it is a belief as fundamental and resistant to skepticism as G. E. Moore’s example of the proof of the existence of his two hands (Curtis and Vehmas 2016). No. Moore’s certainty of his two hands comes with his daily use of these. Most can do very well without the belief in the equal moral status of all human beings. There needs to be some reason to uphold it. Moreover, the idea that all human beings are morally equal and have full moral standing has been challenged—not only by vicious regimes such as Nazism, but by some contemporary philosophers. Also, one may suggest, by the rationing protocols that are invoked in the COVID-19 pandemic.⁹

In contemporary debates, concerns about the moral equality of all human beings have taken the following form: The view that all human beings are moral equals is re-

sponsible for our neglect of our moral obligations to nonhuman creatures, indeed to the entirety of the nonhuman world (McMahan 2003; Singer 2010). The sufficiency claim skirts the issue in question by not insisting that being human is a necessary condition. Some have argued that the defense of animal welfare and animal rights *depends* on excluding human beings without the requisite capacities from full moral status.¹⁰ At the very least, it is claimed, it is an indispensable pedagogical tool (Kittay 2019a).

However, the contention that there is a direct conflict between asserting the full moral status of all human beings and the rights (or welfare) of animals needs to be confronted. Many philosophers have already challenged this position. Perhaps the earliest and most well-known is by the Wittgensteinian philosopher Cora Diamond (1978). Elizabeth Anderson (2004) has done so with the concept of relational equality. Another Wittgensteinian approach (indebted to the metaphysics of John McDowell) by Alice Crary (2016) offers a book length response. Many more defend animal rights and welfare without relying on the sort pernicious choice offered by Singer, McMahan and others. My own approach and contribution to the discussion is beholden to the liberatory movements of feminist, BIPOC, and LGBTQI people's insistence on the importance of recognizing the diverse human possible lives in framing our moral discussions.

It has been by virtue of the theoretical and historical work of these movements that we have come to realize that the Enlightenment claim that "all men are equal," did not, in fact, profess the view that *all* human beings were equal. First, the Enlightenment proponents of equality generally meant men, not women. Beyond that, we know that the exclusion of black, brown, and indigenous people from full moral status was endemic in Enlightenment thought (Mills 1997). Excluded as well were the significantly mentally impaired. John Locke (1894, Vol. 3, 418) distinguished *Man* from *Moral Man*—the latter is a person and all persons, whether human or not, are those who possess reason and reflection and are the same self through time and space. One may be *Man*, but not *Moral Man*, and so will lack the same social and moral status as other human beings.

Kant, who has many disparaging things to say about Black people (Bernasconi 2001) and women (Mann 2006), nonetheless did maintain that having a rational nature is what determines moral status and that human beings, and *all* human beings, are the only beings in the natural world who have a rational nature. That is, a nature they retain whatever condition their minds or bodies are in at any particular time; they have a rational nature solely by virtue of being human beings. Having a rational nature is for Kant both necessary and sufficient for having the full moral status of an end-in-itself, and as all humans have such a nature, being human is at least sufficient for having a full moral nature, and being human includes having a rational nature.¹¹ Being an end-in-itself that has a rational nature may not necessitate

being human, but human beings fulfill both the necessary and sufficient conditions for moral status, even if a human is not in possession of their¹² rational faculties due to sleep, drunkenness, illness, or impairment. The rest of the natural world does not have moral status at all, although we are enjoined to treat nonrational creatures humanely to preserve our own humanity.

Kant is one exception to the rule that once one seeks grounds for our moral status based on intrinsic capacities, especially reason, some humans get left out. But the cost of doing so has been to exclude the rest of the natural nonhuman world from moral worth.¹³ So, we need to find a way to insist that all human beings have a robust moral status and moral parity, but to leave open the possibility that nonhuman beings may also have full moral status. Or, if not full moral status, then moral status sufficient to make moral claims on us.

But even if the sufficiency condition avoids excluding nonhuman beings from the possibility of having full status, critics may nonetheless attack it as a prejudicial preference for members from one's own group. To see why this criticism may have purchase, we need first to recognize that arguing for a sufficiency condition, one which is independent of a necessary condition, goes against the grain of a widely accepted philosophical view. Agnieszka Jaworska puts this way: "[M]oral standing must be a response to some valuable properties of the being in question, and similarly endowed beings should have similar standing" (2007, 462). Using this understanding, even if we insist that being human is such a valuable property but only a sufficient one, we are left unable to say that any nonhuman can be likewise endowed. If we accept the idea that moral standing must be a response to a property that all similarly endowed beings possess, then we are effectively saying that being human is a necessary as well a sufficient condition.

Notice that putting the matter as Jaworska does could be understood in two ways. One is that moral standing is an all or nothing matter. One either has the valued property (or properties) or not. But it is also possible that the valued property comes in degrees, and in that case, moral status is a graduated notion. Therefore, to argue both that being human, an all-or-nothing property, is sufficient for full moral status, but a graduated moral status relies on some *other* morally relevant property raises the question: What is the relationship between moral status in its full version and in its partial version? If we maintain that being human is the morally valuable property that picks out full moral status, but other properties are the basis for moral status of nonhumans, then we cannot have a unified understanding of what moral status responds to. I will argue that it is possible to both insist on the sufficiency of being human for moral status *and* to have a unified conception of moral status. But that position requires us to refuse the conjunction with which Jaworska's formulation lands us: that there is a morally significant property (or set of properties) that is both necessary and sufficient.

The property-based view that is dominant in philosophy is intended not only to provide a unified coherent conception, but also a nonarbitrary way of establishing moral status. The dominant view also excludes relational properties because, the claim is, such relational properties obligate those in the relationship. It cannot establish moral status *tout court*, even a relational property such as species membership. The species relationship is thus morally arbitrary and so is based only on a prejudice favoring our own kind. Such prejudice, it is claimed, is akin to racism or pernicious nationalism.¹⁴

In this account, I turn that attack on its head. I argue that the justification of racism, especially in its structural form, is rarely voiced as a preference for one's own group. When one group dominates another, the justification for its power, especially in the case of racism, is its claim to its intrinsic superiority. All despised or denigrated traits are attributed to the outgroup, while the ingroup assumes a monopoly on worthy traits and capacities.

By making the possession of certain properties, traits, or capacities criteria for moral personhood, these theorists first establish an ingroup, a "we" which, while not based on species membership, reproduces the same logic of ingroup claims to superiority. Their defense by its members of the resulting moral hierarchy is that theirs is based on properties that are relevant to the matter at hand: the recognition of another's full moral status.

Yet, herein lies the crux of my argument: the traits of the "we" are drawn from those already included in the "we"—but there is no case made that such traits as these exhaust all possible traits, capacities, relations, or ways of being in the world that are morally significant. That the capacity to reason, for example, is morally significant does not tell us that *only* reason is morally significant. The same may be said for any intrinsic property that is picked out, including the noncognitivist intrinsic property that Jaworska and Tannenbaum (2014) name, the capacity to be a caree in a care relationship.

Granted that we do begin our philosophizing from a "we." But to take this "we" as definitive is to say that only *this* human experience matters. The measure of what is morally relevant is taken to be that set of traits by which the "we" determines who is sufficiently like (in the morally relevant ways) members of their own group. Instead, we can truly understand what is relevant to us as moral beings—and consequently what is morally relevant at all—only when we draw our moral understanding from more than the narrow sampling of humanity that is represented by the "we." Confining the musings of the "we" to that ingroup reproduces a prejudicial understanding of what is worthy of moral consideration.

If we are not basing moral status on intrinsic properties that are morally relevant, how do we escape arbitrariness? The reasons I will adduce are key to understanding what is entailed in the sufficiency condition.

The Argument for the Sufficiency Condition.

The sufficiency condition states that:

1. Being a born human being, one who is viable and whose capacities are compatible with life, is all that is required for being accorded full moral status and that
2. The possession of properties recognizable to us in nonhumans also ought to serve to attribute moral status, perhaps even full moral status, to nonhumans.

The argument proceeds in two parts. In the first part, we begin as do other accounts, with a “we.” And we posit two propositions which are intuitively clear:

PT1a. That “we” (that is those reading this essay) consider ourselves to have full moral standing. This is so, even if we fail to agree on what “we” hold such a moral standing to entail.

PT1b. That all moral theories necessarily depend on our knowledge of our existence as human beings living among other human beings, and (arguably) with other nonhuman creatures, in the world we occupy. (Even if we believe that moral injunction and moral status are handed down to us by divine intervention or are rooted in natural law.)

Because we have no direct access to another source of moral knowledge, and because even the *need* for morality derives from the sorts of beings we are, we must conclude that:

C1. We ourselves serve as the measure of what is morally relevant.

Note that this does not mean that humans are the measure of all that is valuable to beings other than ourselves. As Korsgaard (2018) has argued, value for a being is, as she puts it “tethered” to the sort of being it is. From a different starting point but making a similar point, Frans de Waal writes: “Every species is uniquely adapted to its own ecology” (2017, 27). Each creature has its place in an evolutionary niche, and this niche is what determines what is of value to it. The claim here is that when we are talking about the moral universe, we are speaking from our, that is a human, evolutionary niche. But just as all beings have their evolutionary niche, so too are all beings related—however distantly—and so it makes sense to say that we recognize what we consider morally important features in a being who is not human.

So, what is morally important to us? How do we go from examining our own relationships with others to claiming that these are the moral features in human life? If we are not fixed on the morally relevant properties of the “we” with which our in-

quiry began but widen the scope of who and what “we” are, we acquaint ourselves with many aspects of being human that have moral relevance. This gives a more solid basis for understanding ourselves as moral beings than the original “we.”

Such a claim should sound familiar. We cannot make universal moral claims if we only look in the mirror. We have to look to the needs and concerns of others to discern what claims have wider, perhaps even universal applicability.

To get at the idea of enlarging the scope of human lives, the second part of the argument, like the first part, begins with a morally intuitive statement that the possibilities of any human being, in terms of their capacities, experiences, and relations to others, are possibilities for all human beings—for any of us. The direct implication is that:

PT2a. To exclude some human beings based on their intrinsic capacities as determined by looking only at those who are like “us” is to rule ourselves out of full moral status should we find ourselves living a human possibility without such capacities.

PT2b. Consequently, ruling out some human beings from full moral status is a *self-defeating claim*.

“We,” on the assumption that “we” are beings with full moral status, are creating criteria for moral status based on the lives this “we” lives and has lived. But these are criteria that will exclude us, should we find ourselves living lives whereby we (and arguably those we most care about) no longer meet these criteria. Therefore, creating moral status based on these limited human experiences would constitute a *contradiction in practical reasoning* itself, as we would rule ourselves out of moral consideration should we occupy a different possible human life.¹⁵

We can then conclude that if human beings are themselves the measure of what is moral, and it is irrational to exclude some humans from that measure, then:

C2. We must take being a human being as a sufficient condition for moral status.

As a corollary we add:

C3. The status of nonhuman beings is neither nil, nor necessarily inferior—instead, it is necessarily derivative, derived by analogy (or homology) from what we find morally relevant in human lives. And our moral commitments toward nonhumans should be commensurate with these understandings.

The Source of Our Understanding of Our Moral Standing.

The first step of the argument postulates that “we,” those reading this essay, all consider ourselves to have full moral status —although we may each specify full moral status somewhat differently. Full moral status, as opposed to moral status *simpliciter*, is a robust status shared equally by all who have such a standing. The moral requirements for those who are not among the “we” are not null, but they are always less stringent. Some moral theories hold that we have moral requirements only to those whom we regard as moral equals, and who can reciprocate in kind. But the idea that we have no moral claims to other beings conflicts with our strong intuitions that it is morally wrong to beat, without very good justification (if any), say, a dog or a horse.¹⁶ Or, for that matter, to wantonly destroy a forest to satisfy our greed.

When we turn a reflective eye to these intuitions, we ask: What about *us* gives “us” that full moral standing? The answers we give pertain first to our existence with other human beings and should also include our co-existence with nonhuman creatures and the world within which we are embedded. Still, our initial considerations are not how lions or floods treat us, but how other human beings do, and how we ought to treat them.

Moral Theories Depend on Our Knowledge of Our Existence as Human Beings

How then do we come to determine what about us gives us full moral status? McMahan proposes that we first consider what it is about “us”—the author and readers—that gives us full moral status (McMahan 2003). This is as good as any beginning. There is a “we” to whom we have already attributed full moral status. He then suggests that we interrogate our reasons for this attribution by reflecting on our morally relevant properties, that is, those that justify full moral status. This much is available through armchair philosophy.

But if knowledge of what is morally relevant includes, as I believe it must, participating in moral interactions with those who may be importantly different from ourselves, then what those who are not “us” are like, what capacities and ways of experiencing the world they possess, are important to fully understand the human lives we live, might live, or might have lived in altered circumstances. For this empirical knowledge is critical. There has to be a “fittingness” between facts and moral values.¹⁷

The Role of the Empirical Knowledge

In considering what it is about us that gives us our moral standing, we already deploy a set of background conditions that are taken for granted facts about “us.” All those who are “us” can be imagined to be in a Room A. But what if there is a Room B and

the universalizing scope does not apply to the occupants of that room? The capacity for pleasure and pain is nearly universally acknowledged to be something morally important about us and about those upon (or with) whom we act. Yet, were we, or some of us, mere brains in vats, would the capacity to feel bodily pain and pleasure—sensations not possible without the rest of the body—still be morally significant? Were some of us capable of flight, but not others, what might our moral codes look like? Our moral theories would bear little resemblance to what they are today if injuries to our bodies were to invariably and immediately heal themselves, were we unable to form close attachments to other mortal creatures, or were we not born utterly dependent and remain dependent for many subsequent years. Morality is for the sort of creatures we are. And while some of that information can be had by doing armchair philosophy—gathering normatively important information from our own existence¹⁸—this philosophizing nonetheless rests on empirical information.

Now instead of speculating about the sort of creatures we are not, let us consider plausible cases. Take the Kantian procedure of universalizing the maxim of my actions. Say the maxim is: “As long as I am not depriving another of needed food, I alone decide what I want to eat.” If the scope of the universal is the familiar “we” who are reading this essay, universalizing the maxim seems unproblematic. Should I become aware that some individuals do not have any internal controls on their appetite (either because of traumatic damage to their brain or because of some genetic variant) and so will fail to know when to stop, even eating until their stomachs burst, then we cannot simply universalize such a maxim. We either would have to add a rider, “in the case of those who have some control of their food intake,” or alter the maxim to be, “as long as I am not depriving another of food, and as long as unsupervised eating will not harm me. . . .” In a kingdom of ends, or behind the Rawlsian veil of ignorance, I may, after all be a person without this control. I could not want to will a world where my lack of control over appetite is such that I would die because in this world autonomous decisions are deemed valuable. It would of course be irrational for me to eat myself to death, and one could say that the maxims apply only to those who are rational agents. But say my impairment robs me of rationality in this regard—then how am I to fare in a world whose maxims do not include me? The point here is that without considering some people who are not species typical in mind or body, whose lives are importantly different from our own, attempts at universalization fail—or they fail to be universal—or worse, are harmful to some.

If the above examples are not sufficiently convincing, consider Kant’s view that we could not will a world in which promises are not kept when it is inconvenient to honor them. The presumption is a world in which everyone can make promises or rescind them; that all understand what a promise means; and furthermore, that they are able to act against those who do not keep promises. It doesn’t presume a world in which some do not understand what a promise is or have disabilities that affect

their ability to make viable promises. We are not asked how to include these people within the important social and moral practice of promise making.

Similarly, Rawls's veil of ignorance envisions representatives of people who are rational and reasonable. On the Rawlsian account, those who are least advantaged are those who are least advantaged economically. He does not recognize having a nontypical body or mind as placing one in a least advantaged position, except insofar as it results in material hardship. Therefore, the laws chosen may not be ones that pertain to choosers who should find themselves with atypical bodies or minds. Neither the Kantian categorical imperative nor the conditions of the veil of ignorance yield laws or principles which can protect us when our bodies and especially our minds are atypical and especially vulnerable—that is, at those times when we are most in need of protective and enabling laws and policies.

Thus, even if we adopt the most rationalist of moral theories, as, for example, we reason about what sort of legislation we decree for a kingdom of ends, we begin with default empirical knowledge of what such ends-in-themselves require, what makes them suffer, what is beneficial and desirable, and in which relations they participate. Darwall criticizing the role that Kant gives to autonomy in practical reasoning writes:

Kant's idea seems to be that if we see our thinking or judgments in any area as simply directed from without, we will not be able to regard ourselves as reasoning or making rational judgments in that area. No doubt this is true, but it doesn't follow that the reasons on the basis of which we judge are not themselves drawn from features of our judgment's object (and hence, in practical deliberation, from properties of the objects of our desire and volition) . . . (2006, 46)

Kant's reversibility test and Rawls's veil of ignorance are under constraints that render them inapplicable to certain human beings. These constraints still apply to Darwall. The properties of human beings who might be "objects of our desires and volition," are not always the sort of rational agents that can stand in the authoritative relation of the second-person standpoint.

The utilitarian rendering of quality-of-life measures, the QALY, is a notorious example of the failure to consider the situation and point of view of disabled lives. QALYs are intended to be used in rationing scarce goods, such as healthcare. But while nondisabled people believe that they would have a lower level of quality of life were they to become disabled, the so-called "disability paradox" is that disabled people rate their lives as having the same quality as nondisabled people do. It is a "paradox" only from the perspective of the able bodied (Reynolds 2021). Utilitarian calculations that are based on a restricted "we" will fail to render valid precepts for moral behavior on its own terms. To become aware of those other human possibilities—the other pos-

sible lives a human being might live, we need to move beyond the armchair—our solipsist self-reflections—and encounter difference.

The armchair philosopher has one thing right. We must start our moral understanding by reflecting on “our” lives, but the “our” must incorporate human experience beyond that which we currently have. What they have right is that humans are themselves the measure of what is moral—only we must leave the armchair to fully understand what that measure is.

Fitting the Empirical and the Conceptual Elements of Moral Relevance

Mary Ann Warren remarks:

In making judgements about the moral status of living things, we are not (or should not be) seeking to estimate their value from the viewpoint of the gods, or that of the universe. We are not gods but human beings, reasoning about how we ought to think and act. *Our moral theories can only be based upon what we know and what we care about, or ought to care about.* (Warren 1997, 43, emphasis mine)

I agree that our moral theories can only be based on what we know and what we care about. Yet the last clause in Warren’s remarks speaks of what we “ought” to care about. How do we decide what we not only do, but what we *ought* to care about? We can know empirically what we care about, but not what we *ought* to care about. This concern lies behind the Kantian claim that our capacity for moral action comes not from the empirical, but from the rational. Korsgaard clarifies Kant when she claims that the ought, nonetheless, derives from what actual people do care about, what ends their actions have. As we attempt to coordinate our ends with those of others so that we can live productively and in harmony with them, we also need to understand that we may be in a condition similar to the other, if not at this moment, then sometime in the past or future; if not us, someone whose well-being we care about as much as we care about our own (for whatever we are, we are relational beings who could not exist without someone’s care and caring).

Crucial to these considerations is that the possible lives we may have, (except perhaps in a science fiction contrafactual) are *only* human lives. We may wake up to find ourselves being called “vermin,” but we will not wake up *being* vermin. We may find ourselves after an accident to be thought of as having the intelligence of a dog, but we will not find ourselves *to be a dog*. Having morally significant properties does not pick out humans with moral significance. Instead, we understand moral significance only through our own suffering and joys, and that of other human beings—as humans live their lives with others in a moral community. If this is the case, and I

cannot see how it can be otherwise, being human, or rather being a human being is the source of moral significance as we humans understand it—it is itself the source of the “ought.” If what is morally significant is drawn from our lives as human beings, there are not a priori grounds of moral significance by which we determine if some other human being has morally significant attributes required for full moral status. Being a human¹⁹ is all we should need.

The Possibilities of Any Human Being is a Possibility for All Human Beings—For Any of Us.

I have argued that Kant, Rawls, and Darwall, like Hobbes, Locke, and contemporary utilitarians, along with moral philosophers of many stripes, provide us with moral and political theories that are limited by the restricted scope of the applicability of their moral theories. The view is vividly captured in Stephan Darwall’s notion of the second-person standpoint. Borrowing from Puffendorf, Darwall writes: “Genuine obligations can result only from an address that presupposes an addressee’s second-personal competence” (2006, 30). Yet in only a moment, our status may change dramatically from the typical participant envisioned in these theories to those who have been left on the sidelines.

To return to our separate rooms metaphor, “we” now may occupy room A—the room we have designated for all to whom we attribute full moral status. Who occupies room B? Charles Mills (1997) and others have given us convincing evidence that much of Western liberal thought about matters of morals and justice has not considered questions of race or colonialism, even as many in room A were complicitous with the oppression, domination or exploitation of the Black, Brown and Indigenous peoples who were shut out of Room A. Women and gender minorities have made these arguments, and disabled people and their advocates have more recently raised their voices. The claim has also been that as more people are seen as moral equals, the very room itself will be altered. At the very least moral ramps must be installed.

I have claimed that as the possible lives lived by occupants of both rooms are all human possibilities, *they are possibilities for us.*²⁰ And the moral importance of recognizing this is no less, and still more, compelling than any other conception of who has or lacks morally relevant capacities (for example, the Rawlsian veil of ignorance).

We may well find ourselves in Room B, a room designated for those not deemed worthy of the same protections we assumed we had when we were in Room A. But how might we find ourselves in Room B? The occupants most unlikely to have what it takes to be in Room A are those who have been born with severe congenital cognitive impairment. I have maintained that *all* humans must be included in the determination of what moral life is, and in any consideration of what morally relevant properties are.

One may protest: How is this a possibility for me? Well, you *might* have been born thus. Again, the retort can be “Is that morally important? *I* would not be that person—the psychological makeup I identify as constitutively mine could not be the same.” To respond we need to ask what excludes these individuals from the same moral importance I attribute to myself?

Well, one might argue (and many have argued) that the person with congenital severe cognitive impairment, lacks the psychological properties needed for full moral status. They don’t get to belong in room *A* *just* because they are human beings. Species membership, goes the argument, is foremost a *biological* category, not a normative one. Isn’t it conceivable that the properties and experiences of some human beings, especially human beings who cannot engage in moral life in ways that are species typical *should* be excluded in constituting the measure? If so, why shouldn’t these humans be sized up to see if they measure up to a standard set by those who can engage in moral life?

My response is first to say that if philosophy is to be true to itself and help us understand both who we are and what it means to be human beings living with other human beings in a world with other creatures, then theories that leave out some human lives cannot fully grasp what, if anything, about the human condition is morally important. As I have lived my life with one so excluded, I have become increasingly convinced that by ignoring her truth, we distort our own.

My daughter is severely, perhaps profoundly cognitively disabled, but her truth is that she defies the philosophical representations and expectations of people such as her.²¹ My daughter, for instance, may not be able to do much more than a very young child, and in some regards, cannot even do what an infant of six months can do—roll over, for example. Her understanding, however, outstrips her manifest physical abilities. For example, she spends her weekends with us (until COVID-19 interfered with our usual routines) listening and thrilling to music ranging from Bach to Mahler and from Louis Armstrong to Bob Dylan.²² When a favorite Schubert and Beethoven pieces play, she tries to catch my eye so I will hum along. And engaging her ability to choose between two options, she has indicated to me, as best as I can tell, that she prefers to be regarded as a young woman, not a child. Again, let me be clear, my daughter has no measurable IQ. While there are surely those who are still more disabled, she is already in the category of those most disabled. On what defensible, non a priori or question-begging grounds do we to exclude her from the measure of what it is to be a fully morally significant being like myself?

Those skeptical of my position may reply “does she, can she, engage in morally responsible conduct?” If she cannot, that is a non-question-begging reason because if she cannot, how is she a member of our moral community? We can reply that first, our moral community consists of those who have *interests*, not only those who can

act in a morally responsible fashion—we consider the killing of an infant or young child murder even though we cannot expect moral conduct from them. We expect that a person with schizophrenia or other mental illness or dementia to be subject to the protections we grant to those of “sound” mind. We cannot have the same expectations of them as we do of ourselves, but they remain firmly in our moral community.

Furthermore, we often cannot know whether someone can act morally unless we treat them as moral beings. I never expected anything from my daughter, yet when I decided to borrow a favorite coat of hers, I thought to ask her if I can. I provided the choice to her by presenting one hand of mine for, “can I borrow your coat” and the other for, “do you want me not to borrow the coat.” She clearly and immediately reached out to touch the first hand that I could. That is an act of generosity—a morally significant gesture. I would never have known that she is capable of generosity had I not asked. Another time we lent her bed to a friend who was ailing and needed the assistance of a hospital bed. This was on a weekend night when she normally is home with us. She had to spend the night in the group home where lives during the week. We thanked her for lending her bed to the friend. She smiled in response. We told her it was one way she can care for us as we care for her, and her smile widened and gave a small giggle of delight.

But let us grant, counterfactually, that she cannot engage in the life of the moral community. If what puts her in room B is the requisite psychological makeup that translates into the presence of requisite capacities, then she would not sit in that room herself. For example, people who acquire dementia would join her, as would those who have been sufficiently brain injured in an accident or people who undergo a mental breakdown that renders them unable to act on reasons we can all accept.

Although we cannot now become congenitally impaired in the relevant ways, we can find ourselves with the same incapacities, that is, lacking those very capacities that we insisted were critical to full moral status. If the congenitally affected individual is excluded only because she belongs to a group of individuals who have severe cognitive disability by virtue of a genetic variant, then that is blatant discrimination of these individuals—no less than racism.²³ If she is excluded by virtue of the absence of capacities that the “we” have deemed necessary and sufficient for full moral status, then that is a condition any one of us could find ourselves in—*it is a possible human life for any of us and for those whom we love.*

The Moral Status of Nonhuman Life

What I have argued does not deny that a nonhuman individual may act in a way that we think is moral or not. Frans de Waal (2006) has given us portraits of chimpanzee social life, some of which closely resemble what we take to be moral, or at least moral-like behavior. Similar findings have been found in elephants and arguably other

creatures (O'Connell 2015). Domesticated pets partake in our social life in ways that are more than utilitarian. On a birthday celebration where I was serenaded and handed gifts, my standard poodle went to get one of his stuffed animals and placed it in my lap. (Then, he promptly took it back—he only got a part of what gift giving is.)²⁴

Yet my argument for the sufficiency claim for humans does suggest that such a sufficient condition will apply only to human beings. I would say that, as of now, that is the case. As we agree that some nonhumans also have full moral status, we may use aspects of their lives—ones that may differ from human lives to reveal parts of a moral universe we previously did not recognize. So *for now*, while we may lack consensus about whether and which nonhuman beings should be accorded the full moral status we give to humans, the sufficiency claim applies only to humans. The reason is that we recognize what nonhumans do to be within a moral domain only because we first recognize these as having moral relevance in the lives of human beings. Our acknowledgment of morally relevant features of other beings is derivative. No less important—but derivative.

Another reason to assume that the sufficiency condition applies only to human beings is that humans are related to other human beings in ways that carry moral obligations within our social worlds. My daughter is *my daughter*. As such I have responsibilities to her that any mother has to a daughter. To carry out these duties, I need social supports, supports that at once recognize her as not only my daughter but a part of human society. But it is not just that we have the same obligations to her that we have to any other mother's daughter because we have obligations to me, an individual with full moral worth. It is because *for me to raise her as my daughter, I require the recognition of her full moral worth*. Only such an equal status will provide me with the ability to do my duty by her.

Still another reason is one I have already put forward. Any human being could find themselves with the disabilities my daughter has through an accident or a disease affecting the brain. Anyone could have a child, or grandchild or great grandchild, with a variant on a gene that results in extensive impairments. Having her disabilities is within the range of human experience—it can be “our” experience, and our moral vision must embrace such a possibility—must retain or not diminish the moral status we have when we find ourselves living that possibility.

It is important that all human beings are accorded an equal moral status, not only because it does a grave injustice to those who are left out, but also because it is consequential for “us” if *our* condition changes—that is, if “we” who have the privileged position of deciding what is morally relevant *tout court* find ourselves off that privileged perch. We may not find ourselves to be a different race, or to possess a genetic mutation that curtails our intellectual capacities, but we can find ourselves

recast as a member of a despised minority and find ourselves in a very inhospitable world—a world in which “we” would then become morally insignificant. We can rage against that—but on what grounds will we be able to object? We will have defined ourselves out of moral significance.

If this is correct, and I believe it is, then humans, “what they know and care about,” are themselves the measure of what is morally relevant. As I said earlier this is not to say that humans are the measure of all value—only the measure of one value (or set of values)—those we identify as *morally* significant.²⁵ What we identify as morally relevant properties derive from that measure. Nonhumans can (and doubtless ought to be) included in our moral vision—but they do so insofar as humans recognize in them what we respond to or believe we ought to respond to in other human beings. As we learn more, pay more attention to these, our moral universe expands. It is this sense in which man is the measure. And a measure is not in turn measured or it wouldn’t be the measure.

A Word About Modality

In speaking of possible lives humans may have, it appears that I am arguing for a form of *modal personhood*. And in a sense, I am. But this term has been used by Shelly Kagan (2019) in a way that differs from mine.²⁶ The premise of his modal conception is that “they” (those without the qualifying intrinsic properties thought necessary for personhood) could be like “us” in some possible world. That is, if, say, by altering a “defective gene,” those lacking the requisite properties could, in some possible world, become us (“they may be us”). My use of modality works in reverse—rather than say, “they could be us,” I say, in some possible world that “we may be them.” In some possible world *I* (using Kripke’s rigid designation) could be someone who lacks these capacities. In Kagan’s version, I take my myself as the moral norm, and grant that in other circumstance the excluded “they” could be repaired so that they can measure up to the norm set by the “we.”

In my formulation, the moral measure is the totality of human possibilities. It is not because someone like my daughter could be “normal,” given some scientific advance—that is, could fit the Procrustean bed set by the “we,”—but because in modal terms what defines humanity and sets the “normative profile of the human being” is her profile just as much as it is mine. Kagan collapses the “us”/“they” distinction by placing “them” under the penumbra (modally speaking) of “us.” I refuse the distinction because, on my view, there is no “us” and “them”—there is only the human being in different states or conditions of being. Furthermore, if the possession of criterial properties is essential to personhood, I do not see why the speculation that this lack could possibly be remedied in some other space or time qualifies them for full moral worth (that Kagan denotes by “personhood”) here and now.²⁷ And as far as I can see,

this is not a question that Kagan answers. Simo Vehmas and Benjamin L. Curtis (2016) utilize Kagan's conception of modal personhood and regard the possibility that "they could be us" as an intrinsic property that has relational significance and secures the full moral status of people with cognitive disabilities. But their account suffers the same problem as Kagan's: Why should this possibility of a cognitively disabled person exert any moral claim on me?

Being Human is Itself Morally Relevant

If the reason for the sufficiency condition that covers humans is that we may share the fate of any other human being, we can say that there are many fates we share with nonhumans. Death is one. Certain diseases are another—how many have lost a much beloved pet to cancer? Scientists now worry that deer can get COVID-19. We know that within our human world, all of these conditions are significant, regardless of whether they are significant for a particular individual. But whether anyone of these conditions—and the many more we can imagine—have the same significance they have for humans, is epistemically opaque to us. For example, I will not know how a dog experiences a disease to which we are both susceptible. I am likely to know if my dog is in extreme pain, but I may have no idea of whether or how my dog is experiencing what for me would be a dull on-going pain. It is difficult enough to understand pain from the view of a human being other than myself, but our inferences have ways of being tested and adjudicated in ways not generally available with many nonhumans. For all our similarities we are different *sorts* of beings. While I may share the condition of having a cancerous growth with my dog, I cannot become a dog with cancer. But unlike the case of the diagnosis I share with my dog, if I come to share my daughter's diagnosis of severe cognitive disability, I do become a severely cognitively disabled human being. Once again, this does not mean that nonhumans lack moral status, but what is important to them, in a way that should oblige us morally, is something that we discern only by drawing from our human experience and our knowledge of their species-specific way of being in the world.

Conclusion

Identifying the morally relevant properties of a human being, I have argued, is not needed to accord a born and viable human being with full moral status. Nonetheless, identifying morally relevant characteristics is not pointless. We can identify moral qualities and endorse their cultivation. We can name them to decide if someone has been accorded what is due to them in the context of such morally relevant

properties, intrinsic or relational. The claim I have defended is that we cannot and should not use them to determine which humans measure up and which do not.

I have also readily granted that what we recognize as morally relevant properties, both relational and intrinsic, may be observed in other beings. These prompt us to respond to their species, whether the properties are analogues or homologues to our own: sensing pleasure or pain, avoiding death, relationships to other members of their own and other species, etc. We can grant with Spinoza and Hobbes that all creatures try to persevere in their own being. We can ask whether they have environments in which they thrive. Or whether they endure circumstances in which they fail to thrive as individuals or as a species. The more we come to learn about other species, the more we have moral access to their lives, and so to our own obligations to them. As we expand our moral perceptions, we find that many of the same moral imperatives can become gateways to those obligations we owe to nonhuman beings.

Out of the multiple possible lives a human being might inhabit, the multiple circumstances that could be a human circumstance, we come to develop our moral insights and our understanding of what is morally relevant. Too much of the history of Western philosophy is one in which what was envisioned reflected the world and concerns only of those with the privilege to write philosophical treatises. It has resulted in moral world created in their own image—excluding people who did not resemble them in color, culture, or capacity. Sometimes the extension of ideas in the philosophical canon, ideas of equality for example, to those previously excluded appears to be relatively seamless—but other extensions, in this case to cognitively disabled people, are not. They require a more fundamental rethinking of who we are and what is morally significant about us. They require a modification of what we take as our “species-being” and what a “truly human life” is.²⁸

ENDNOTES

- 1 I would like to thank the editors of the *Journal of Disability and Philosophy* for their comments and suggestions. I also would like to thank the faculty and graduate students, especially Courtney Miller, in the Department of Philosophy at SUNY/Binghamton, for their insightful questions.
- 2 For a discussion of the dispute between those who want to include and those who want to exclude the very significantly cognitively disabled human beings from full moral status see (Wasserman et al. 2017).
- 3 See Quinn and Arstein-Kerslake (2012).
- 4 See especially Nussbaum (2006) and Donaldson and Kymlicka (2013) for a similar view on the diverse rather than hierarchal nature of the moral status of all beings.
- 5 See also Korsgaard (2018) for a view of relationship between the value of all creatures and considering them as ends with moral status.
- 6 I thank Michael Smith for raising the issue. For an overview of neural tube defect of which anencephaly is the most serious, see (Avagliano et al. 2018). For a discussion of one anencephalic infant who lived for 28 months, see (The Medical Task Force on Anencephaly 1990), also (Dickman, Fletke, and Redfern 2016). Some anencephalic infants do have some brain tissue that has developed on the brain stem but may not be enclosed by the skull (Radford et al. 2019).
- 7 See Shewmon and Miller (2021) for an up to date discussion on brain death, *Hastings Bioethics Forum*, <https://www.thehastingscenter.org/revising-the-legal-standard-for-determining-death/>. Also see Truog and Miller (2014) who propose that “once brain death is recognized as a social construction not grounded in biological reality, we [can] better serve organ donors and recipients alike.”
- 8 Clearly many efforts have been made to accord all human beings, and perhaps some nonhuman beings, with full moral status. Most all look for necessary and sufficient conditions or provide several conditions that *jointly* are necessary and sufficient. In Kittay (forthcoming) I will entertain some of these alternative positions. Here I want to argue for a sufficiency condition that pertains to human beings. Having such a sufficiency condition, as we will see, can point us to the need to consider the moral standing of beings who are not human.
- 9 See Guidry-Grimes et al. (2020) and Stramondo (2021).
- 10 Yet the fact that one does not need to exclude some human from the full moral standing to promote the wellbeing of nonhuman animals is attested to by several different philosophers, among them Lori Gruen (2021), Delon and Purves (2018), Donaldson and Kymlicka (2013), Willett (2014), Warren (1997), Crary (2016), Korsgaard (2018), among others. They propose reasonable theories that can be used to make moral claims on the part of nonhuman animals without invoking colorful images that align and limit the interests of humans with cognitive disabilities to dogs or pigs. These analogies are not backed by the experience of those who live with and intimately know these folks—a knowledge that the neo-Lockeans proponents seem to have no interest in gaining. (Kittay 2010).
- 11 See (Korsgaard 2018, 77–96).

- 12 I will use “their” as the singular possessive pronoun.
- 13 Korsgaard (2018) attempts to correct this. I discuss this below.
- 14 See McMahan (2003, 221) and a response by me, Kittay (2006).
- 15 Kant writes: “So this principle is also its supreme law: Always act on maxims whose universality as laws you can at the same time will” (2005). It may appear that I am using Kant against himself, but as Kant maintains that humans are by nature rational even if they are not able to reason at any particular time, a presumably a rational agent must entertain the possibility that she could lose her ability to reason and would not will a universal law that is disadvantageous to one who cannot act according to reason. Therefore, using this Kantian formulation should be entirely appropriate.
- 16 Kant held the influential view that there is a sharp divide between those whom we owe the same level of moral duty and those to whom we have no such moral duties. He reconciled his view with the strong intuition that we should not beat a hapless animal by arguing that that we have an indirect duty not to act cruelly toward animals. We wrong ourselves by debasing ourselves with gratuitous cruelty. But our moral intuitions are not in line with this view, as Korsgaard, a Kantian who defends the moral status of nonhumans, notes. She writes: “Even people who believe our duties to animals are rather weak—that all that we owe to the animals is to avoid ‘unnecessary’ cruelty—think we owe that duty, such as it is, directly to the animals” (2018, 102).
- 17 To borrow and adapt a notion cited in (Smith 2012, 228).
- 18 See (Smith 2012).
- 19 See my earlier discussion of what I refer to when I speak of being human.
- 20 One may add: in this world or in some near possible world.
- 21 For an interesting defense of listening to the intuitions of parents and caregivers of people with cognitive disabilities see (Graber 2021).
- 22 For a demonstration of Sessa’s engagement with a piece of classical music, see <https://youtu.be/xFTVReArZDU>.
- 23 For a discussion of the frequency and moral significance of genetic variants see Kittay (2020).
- 24 Korsgaard (2018) tells us that Kant was correct in saying that only humans could be moral creatures, because humans don’t only act, they act on principle. Was Sessa formulating a principle that she ought to lend me her coat; that she ought to care in whatever way possible? Was my dog *not* acting on any principle when he saw everyone attending to me in a way that he wanted to participate? Do animals who rescue people or other animals have no idea that this is a good thing to do? I am confounded when philosophers make categorical remarks on these subjects as we lack the epistemic access that would give us definitive answers.
- 25 Nor does it mean that only human beings have rights that can be violated. Whether or not other beings have rights, we human beings can only recognize such moral values because we accord rights to ourselves.
- 26 Kagan’s concept of modal personhood has been widely discussed. See McMahan (2016), Brouwer and van der Deijl (2020), Singer (2016), DeGrazia (2016).

- 27 This critique has been lodged by several commentators on Kagan's work. See for example, DeGrazia (2016).
- 28 Nussbaum (2000) uses this term to speak of the need for governments to make possible all the capabilities on her list of capabilities. But I am appropriating it for different purposes—for the purpose of alerting us to human possibilities we are still to encounter.

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