

WHAT, IF ANYTHING, RENDERS ALL HUMANS MORALLY EQUAL?<sup>1</sup>

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All humans have an equal basic moral status. They possess the same fundamental rights, and the comparable interests of each person should count the same in calculations that determine social policy. Neither supposed racial differences, nor skin color, sex, sexual orientation, ethnicity, intelligence, nor any other differences among humans negate their fundamental equal worth and dignity. These platitudes are virtually universally affirmed. A white supremacist racist or an admirer of Adolf Hitler who denies them is rightly regarded as beyond the pale of civilized dialogue.<sup>2</sup> However, a very simple line of argument developed by Peter Singer challenges our understanding of these platitudes and forces us to rethink the basis and nature of the moral equality of all humans.<sup>3</sup>

One might try to explain the equal moral status of humans by appeal to our common humanity—all humans are all equally human, after all. But mere species membership is not a sufficient basis for picking out some beings as entitled to greater moral consideration than other beings. If we were to encounter alien beings from another planet, something that looks like green slime but engages in complex behaviors, we would not be justified in failing to extend respectful treatment to the aliens merely on the ground that they belong to another species. If they proved to be like humans in morally relevant respects, then they should be treated the same as humans. Very roughly speaking, if the aliens showed a capacity for rational, autonomous agency, we would be required to include them within the scope of our moral principles. This thought experiment suggests a justification for our current practice of according all and only human beings a special moral status and relegating all nonhuman animals to a lower moral status. There is some intellectual capacity or set of intellectual capacities, call it X, that entitles the possessor of X to treatment as an equal member of the class of persons, to whom special moral principles apply. It turns out to be the case that all of the persons that we have encountered are humans, but for all we know, there may somewhere be nonhuman persons, who are not less worthy just in virtue of being nonhuman.

Several years ago Singer pointed out two flaws in this rationalization of our current practice of singling out all and only humans for specially favored treatment. One difficulty is that on any plausible construal of the cognitive capacities that constitute X, the test for discriminating persons from lower-grade beings, some humans will be found to possess less of the X capacities than some nonhuman animals. Jeremy Bentham noted this early in the nineteenth century: "But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day or a week or even a month old."<sup>4</sup>

Bentham's claim might arouse skeptical resistance because we have no clear idea of what would qualify as fair cross-species intelligence tests, but this sort of skepticism will not support a convincing response to Singer: If the intellectual abilities of humans and other animals are incommensurable, then the intellectual abilities of humans can only be judged different, not superior, and the claim that the unique cognitive abilities of humans entitle them to a moral standing above all other known animals collapses. The

claim then is that the rough and ready means of comparison that underwrite the idea that humans are smarter than chimps, apes, cats, dogs, lizards, tarantulas, etc. also support the idea that some individual nonhuman animals are smarter than some individual humans.

The second difficulty that Singer finds in the defense of special moral privileges for humans based on the superior cognitive abilities of humans is to my mind more troubling. The difficulty is simply that the appeal to the superior mental capacities of humans to justify according them superior moral status tends to undermine the case for the equal moral status of all humans, because the mental capacities that figure in this appeal vary by degree, and just as humans tend to be more capable than bonobos and chimps and gorillas, some humans tend to be more capable than other humans. The differing intellectual capacities argument that purports to justify the fundamental moral inequality of animal species also would justify the denial of the fundamental moral equality of all humans.

Singer's own response to this threat of elitism is to assert that "all animals are equal." By this is meant that that any interest of one animal comparable in quality and magnitude to the interest of any other animal should count the same in determining what actions and policies we should adopt. Only beings that have conscious experiences can have interests. A stone or a plant experiences nothing, so can have no interests: nothing is good or bad for it. One has an interest in something if attaining the something would be conducive to one's good or welfare, and only beings who have experiences can fare better or worse.

What I call the "Singer Problem" arises if one accepts that the morally significant cognitive capacities that are relevant to the determination of the fundamental moral status of a being vary from individual to individual by degree. The problem is to specify a moral principle determining fundamental moral status that assigns a superior status to humans compared to other animals on the basis of the superior cognitive capacities of humans but also assigns all human persons an equal fundamental moral status regardless of their differing cognitive capacities. More broadly posed, the problem is to specify moral principles that yield intuitively satisfactory implications for the treatment of human individuals and other individual animals given that cognitive capacities differ across species and individuals.

Singer's "all animals are equal" resolution implies that the pain of a toothache experienced by a rat that is the same intensity as a similar toothache that is experienced by a human should count the same in social policy calculation. The moral policymaker in Singer's view would be austere impartial in handling conflicts of interest of this sort between rats and people. If we must choose between imposing a painful toothache on a human child or a slightly greater toothache on a rat child, presumably social policy should tilt in favor of the rat. This result flies in the face of ordinary common sense, but Singer regards ordinary common sense as a poor guide. Singer's position does allow that humans generally have complex and rich interests that stem from their complex and rich mental life, and since nonhuman animals have no correspondingly complex and rich interests, the principle of equal consideration for equal interests as Singer interprets it allows for legitimate preference for humans when human and animal interests are in conflict.<sup>5</sup> If a human child has an interest in learning arithmetic, and nothing so fine can be attained by a rat, then the high quality of this interest renders its satisfaction more valuable than the satisfaction of nonarithmetical rat interests.

Once again one might raise a worry about incommensurability. If a dog is killed,

its rich future of smells and chases is cut short, and these interests may be more complex and rich than comparable smell and chase interests of humans,. Moreover, how does one compare the complexity of very different interests—a dog’s complex interest in sniffing versus a child’s complex interest in solving jigsaw puzzles?

Notice that this gambit by Singer might be regarded as reintroducing the elitism that he had seemed to want to disavow. For after all it is just as true that a creative genius has richer and more complex interests than those of an ordinary average Joe as it is true that a human has richer and more complex interests than a baboon. If the principle of equality is interpreted as equal treatment for equal interests, then the beings with fancier interests should get fancier treatment. Equal consideration for equal interests may not match what we had in mind by the slogan “equal consideration for all humans.” The degree to which utilitarianism becomes egalitarian or elitist in practice depends on the theory of value that is conjoined to it. At one extreme, if one holds that pleasure is the good and that pleasures differ only in magnitude, the interests in getting pleasure of all creatures capable of experiencing pleasure will count the same. At the opposite end of the scale, if one holds a theory of value according to which the very highest intellectual accomplishments greatly outweigh any lesser satisfactions in contributing to the goodness of someone’s life, then the interests of some persons will have very little weight, compared to the interests of other persons, in determining what should be done. (Both one’s capacity to have an interest of a given type and one’s capacities that enable one to satisfy this type of interest will affect the utilitarian calculation that determines whether or not one should be helped to satisfy the interest.)

Notice that one could concoct a version of utilitarianism that would reject the norm of equal consideration for equal interests. One might hold that if a being possesses some threshold level of cognitive ability, that being has enhanced moral status, and the satisfaction of its interests counts for more than the satisfaction of the interests of lesser beings that are the same in quantity and quality. Call this view Threshold Utilitarianism. It would hold that other things equal, obtaining the pleasure of sucking a piece of candy for a small human child is morally more valuable, a matter of greater moral urgency, than obtaining an in all respects essentially similar pleasure for a monkey or rat. Threshold Utilitarianism does better than utilitarianism of fitting our common-sense moral judgments balancing the interests of humans against the interests of nonhumans of lesser cognitive abilities, but runs against the Singer Problem.

What I am calling the Singer Problem applies to many different moral theories though not to all. Singer makes the generality of the problem clear in his own writings on it. For example, a Kantian morality holds that all rational agents must always be treated not merely as means, but as ends in themselves. Possession of the capacity for rational agency confers an equal fundamental status on all persons as opposed to all other creatures, who lack rational agency. But if the capacity for rational agency is a capacity that varies continuously in magnitude, one wonders how one picks out some threshold level of the capacity such that variations in rational agency capacity above the threshold do not generate corresponding differences in fundamental moral status. On the face of it, the Kantian account of rational agency is like an account of moral status that identifies height as the characteristic of living beings that determines their moral status, proclaims that tall is better than short, and identifies beings over six feet tall as the first-class citizens of the moral universe. The story so far is not incoherent, but one needs an answer to this worry: If being taller is better, and tallness determines moral status, why should not being taller than six feet confer a superior moral status over

those who are just barely six feet tall?

A similar worry attaches to a Lockean view according to which morality commands respect for individual human rights that express the idea that each person should be left free to do as she chooses with whatever she legitimately owns so long as she does not thereby harm others in certain specified ways. The Lockean rights attach only to beings that possess certain traits. Robert Nozick identifies these as rationality, free will, moral agency, and "the ability to regulate and guide its life in accordance with some overall conception it chooses to accept."<sup>6</sup> By exercising this ability a being gives meaning to its life, and only beings with this ability can have meaningful life, Nozick adds. Again, the ability to pick a conception of value and guide one's life by it evidently admits of degrees, and no reason has been offered so far to suggest that the stringency of the protection afforded by rights should not vary with the degree to which one possesses the capacities on which rights are based.

An example of a moral doctrine that does not face the Singer Problem is egoistic contractarianism as developed by David Gauthier.<sup>7</sup> According to egoistic contractarianism, moral constraints are constraints on unimpeded utility-maximizing behavior that it is rational to agree to, and to dispose oneself to conform to, because one's expected utility is thereby increased. This doctrine need not be encumbered by any principle of treating all humans or all persons according to the same principles which accord all a fundamentally equal moral status. The constraints it is rational for the egoistic contractarian to agree to will very likely differentiate among beings according to their individual capabilities, given their circumstances, of imposing costs and conferring benefits on others. Beings that have little or no capacity to make credible significant threats and offers will receive little or no consideration in a contractarian morality. Some may regard egoistic contractarianism's avoidance of the Singer problem as a sleek advantage of this theory. Others may see this doctrine as jettisoning baggage that any adequate moral theory would have to carry successfully.

In this connection we might roughly distinguish earned and unearned worth. Moral theories that assert the fundamental moral equality of all human persons need not deny that in various ways some people act so as to be more deserving, more creditable than others. For example, if all individuals have Lockean rights, individuals can forfeit their rights by bad conduct. Some human lives as actually lived are more worthy than others. That individuals vary in their earned worth is compatible with asserting that all have equal unearned worth in virtue of their status as human persons. But since not all sentient beings have equal inherent unearned worth, the trick is to specify the characteristics that qualify a being for membership in the class of equally worthy persons.

An attractive response to Singer's puzzle would be to specify a threshold feature that determines moral status, in a way that does not vary significantly by degree, at least once the threshold is passed. The specified feature would have to be such that having more rather than less of it plausibly fixes a significant difference in moral status. The specified threshold of the feature would have to be nonarbitrary, and such that it is plausible to suppose that having more or less of the feature above this threshold should not affect one's basic moral status.

Another strategy of response would be to specify a moral feature that is normatively significant, separates the beings we want to think of as persons from nonpersons, and does not vary by degree: Either one has the feature or one does not. If we succeeded in locating such a feature, we would have dissolved the Singer

Problem. If the basis for according beings the enhanced moral status of persons (rights-bearers) is X, and X does not vary by degree, then everyone who has X at all possesses it to the same extent, so there is no evident ground for denying an equal fundamental moral status to all X possessors.

#### A RANGE PROPERTY AS THE BASIS OF EQUALITY

John Rawls pursues the first, threshold type of strategy in his A Theory of Justice.<sup>8</sup> he proposes that possessing moral personality above a threshold level renders one entitled to the equal basic moral rights of moral persons. The features constitutive of moral personality are a capacity for a conception of the good and for a sense of justice.

The features of moral personality that Rawls singles out are surely relevant to the moral status of personhood. One might quibble with their details, but they surely are on the right track, in the neighborhood of the solution. The difficulty with Rawls's proposal regarding the basis of equality is that no plausible reason is given for regarding the possession of more or less of the Rawls features once one is above the threshold as irrelevant to the determination of one's moral status. For simplicity, consider just the sense of justice. This is a steady disposition to conform one's conduct to what one takes to be basic norms of fairness along with some ability reasonably to identify these fairness norms. But the disposition to be fair obviously admits of degrees; one can be more or less committed to behaving as one thinks fair. And the ability to deliberate about candidate norms of fairness and select the best of them also varies by degree. Offhand the task of specifying some threshold level of these abilities such that further variations in the abilities above the thresholds should have no bearing on moral status looks hopeless. A further clue that something is amiss is that Rawls makes no attempt to specify the relevant threshold. Rawls stipulates that these features of moral personality are range properties. Once one is above the threshold, one is in the range, and no one, whatever his exact levels of the moral personality capacities, is in the range to a greater extent than anyone else with above-threshold levels. But it is not at all clear where one might nonarbitrarily place this threshold such that all beings above it are persons and all beings below are nonpersons.

It might be thought problematic that according to a range view, it matters immensely whether one is just above or just below the threshold that marks the line separating persons and nonpersons. This problem arises from conceiving of the threshold line as very thin, so a tiny difference in possession of a capacity makes a disproportionately huge difference to one's moral status. But one need not conceive the threshold line as very thin. The line separating persons and nonpersons might be very thick, such that below the lower boundary of the line it is clear that beings in this range are not persons and above the upper boundary of the line it is clear that beings in this range do qualify as persons. Beings with rational capacities that fall in the gray area between the upper and lower boundaries are of indeterminate status. My worries then are that even if the line separating persons and nonpersons is taken to be thick, it seems arbitrary where exactly the line is placed, and that above-threshold differences are stipulated not to affect fundamental moral status.

#### SECOND-ORDER VOLITIONS AND EQUALITY

Harry G. Frankfurt has proposed that the feature that distinguishes persons from other beings is that persons have second-order volitions. That is to say, persons have desires about their own actual or possible desires to act and be various ways, and some of these second-order desires are volitions: one desires that one's second-order desire

become one's effective will and give rise to action proceeding from the associated first-order desire. . Persons are distinguished from a lower grade of agents called "wantons." Frankfurt offers this definition: a wanton is an agent that has first-order desires and possibly second-order desires but lacks second-order volitions.

A being either has second-order volitions or not, and there does not seem to be an associated continuously varying property that underlies the presence or absence of second-order volition, which would threaten to fragment the uniform status of person into a hierarchy of many degrees corresponding to variations in this property. To this extent Frankfurt's proposal provides an attractive way of characterizing a uniform class of full moral agents possessing equal fundamental moral rights. This initial attraction fades on closer examination. The reason is that having or lacking second-order volitions does not seem to be a sufficiently morally significant matter to be a plausible basis for fixing moral status.

Frankfurt asserts that a being capable of second-order volitions must have sophisticated perceptual and reasoning capacities. He supposes that a being with second-order volitions is a being that reflects about the kind of being it wants to be and the kind of motivations it wants to have and to determine its actions. Such a being cares about the quality of its desires and motives. It has a certain psychological depth.

But it is not clear that the requirement that a being have some second-order volition really carries this load that Frankfurt associates with it. A creature might just have a desire about one of its desires, a bare desire that just occurs and does not emerge from any process of reasoning or evaluation. Perhaps when the animal is in heat, and feels sexual craving, it feels a wave of revulsion against its ordinary desires to graze and eat. This revulsion might issue in a passing momentary will that these ordinary desires should cease. This wrinkle of the agent's volition need not have any further consequences; it neither proceeds from reasoning, analysis, reflection, nor contemplation; nor does it give rise to any of these processes. Suppose there were two subspecies of deer that were essentially alike except that one type experiences, and the other lacks, the second-order volition just described. Call the former "Frankfurt deer." It would not be plausible to suppose that the difference between Frankfurt deer and its near relatives corresponds to a fundamental difference in moral status that would warrant conferring the honorific label "persons" on the beings on one side of the line.

A similar point holds in the other direction. We can imagine a race of creatures, perhaps beings evolved on some distant planet, who have complex perceptual and reasoning powers which they exercise to determine the good and the true, and who almost always act according to their conception of these best reasons that point to a preferred course of action. Since the cognitive and affective features of these agents tend to be in harmony, they aren't given to second-order reflection about their desires, and they altogether lack second-order volitions. Although we would want to be told more about such beings before we could confidently characterize them, as the story has gone so far, I would suppose that the agent's cognitive abilities and their ability to conform their actions to their considered idea as to what is best incline us to count them as full moral agents entitled to the full moral rights associated with personhood. Having second-order volitions does not then render one a person and lacking second-order volitions does not render one a nonperson.

This last claim is open to challenge. One might hold that the ability to engage in moral reasoning as to whether it is appropriate to act on a given desire or just to engage in any reasoning concerning the quality of one's desires presupposes higher-

order reflection and volition. Having second-order volitions would then be necessary though not sufficient for personhood. But this challenge, even if correct, still leaves the door closed on the possibility that the normative basis of the moral equality of persons could be their shared possession and exercise of the capacity for second-order volitions.

According to Frankfurt, what is crucial to personhood is having second-order volitions, not merely having the capacity for second-order volitions. Frankfurt's category of wantons would encompass both agents that are incapable of forming second-order volitions and agents that have this capacity and fail to exercise it. The wanton does not care what sort of desire motivates his actions; perhaps he cannot care. The question arises whether exercising a capacity that pertains to rational autonomy should be regarded as placing one in a significantly higher status than beings that have but do not exercise the capacity. If exercise does matter in this way, does more exercise of a capacity enhance one's status more than a lesser degree of exercise? The same questions arise if perceiving reasons and setting oneself to act as they dictate is thought to be the more pertinent capacity.

Notice that once the issue is raised, it is far from obvious that how one exercises a capacity should be deemed irrelevant to the determination of the fundamental moral status that is invoked when it is asserted that humans have a privileged place in the moral community. Suppose that biologists of the next century were to discover that a species of animal, a type of mouse, by some evolutionary accident was endowed with a dual nature. It has on one side of its brain unused rational abilities comparable to what humans have and on the other side a set of mouse-like cognitive capacities along with an iron disposition to desire only to exercise the capacities that issue in familiar rodent behavior. It is not clear that we should hold that the never used capacities would propel this creature to a moral status at the same level as humans enjoy.

#### EQUALITY, MISFORTUNE, AND THE PRIORITY VIEW

A recent essay by Jeff McMahan illustrates the difficulty of finding a stable resolution of the Singer Problem.<sup>9</sup> McMahan is considering the application to severely cognitively disabled individuals of moral principles that call for compensation for bad luck in the set of genetic traits that individuals inherit. An individual may find herself disadvantaged in life by unfortunate formative circumstances, which might include an unlucky genetic inheritance of traits that develop into talents and an unlucky formation by early childhood socialization experiences. This individual starts adult life with poor prospects for well-being that have befallen her through no fault of her own. Several types of principles of distributive justice will tend to favor redistribution of resources in these circumstances to offset the disadvantaged individual's initial unchosen circumstances. McMahan does not offer a characterization of the class of principles of justice that concerns him. He mentions the principle that Derek Parfit calls the Priority View, which holds that "benefiting people matters more the worse off these people are." According to the Priority View, the moral value of obtaining a small increase in well-being for a person is greater, the lower the person's well-being level prior to receipt of this benefit.

The Priority View implies that if we can give an ice cream cone to either of two persons who would enjoy it equally, and one of the persons is far worse off than the other, then we should give the benefit to this worse-off person. But the Priority View also would seem to imply that if someone is very severely cognitively impaired, and so is cut off from most sources of significant well-being, then even if we have already expended a lot of resources to alleviate the plight of this unfortunate person, he will

remain at a very low level of well-being, far below what an ordinary person can expect, so the Priority View would seem to continue to attach a much higher moral value to achieving further gains in well-being to this severely cognitively impaired person than to achieving gains for the more fortunate. This implication McMahan wishes to resist.

McMahan argues that the appropriate baseline for determining whether a given person is unfortunate or not is the shortfall between the person's actual well-being and her maximum potential well-being, provided that the person is not on the way toward fulfilling her potential but is failing to realize it. Also, there is a double aspect to the idea of potential well-being. We distinguish a capacity for well-being that the person actually develops at some time in her life and potential capacity that the person has not developed yet, but might. I have a capacity to walk if I can walk now; I have a potential to walk if I could undertake a course of action or undergo an education that would develop a latent capacity I now have so that at some time in the future I could walk at that time if I chose to do so. The double aspect affects McMahan's proposal in this way: in measuring an individual's shortfall, we should give more weight to a loss of capacity than to a loss of mere potential.

According to McMahan, the scope of egalitarian theories of justice should be set so that they are limited to compensating for misfortune and whether people are suffering misfortune is not determined merely by whether or not their well-being level is low but by the extent of the shortfall between their actual well-being and their potential and capacity for well-being. This innovation yields the result, welcome to McMahan, that a person whose genetic inheritance renders him severely cognitively impaired, and who has only a small potential for well-being, is not suffering misfortune if he leads a life that is low in well-being but captures a high proportion of his potential. McMahan asks us to imagine that cognitively blessed Bertrand Russell, at the height of his powers, is suddenly brought low by accident or disease, can function only at the level of a severely retarded person, and from now on has correspondingly low prospects of well-being. Compare Russell's plight to the condition of (a) a congenitally severely retarded person and (b) a person who had normal mental powers at birth but suffered an incapacitating injury before his mental powers developed. Both the (a) and (b) individuals are able to function cognitively about as well as stricken Russell and have well-being prospects that are the same as Russell's current reduced prospects. McMahan aims to elicit agreement that Russell's condition constitutes a worse misfortune than the condition of either of the other two individuals, because he is so badly off now as compared to his potential and former capacity for well-being. For the same reason we are asked to judge that the (a) individual, impaired from conception, is in a less unfortunate condition than the (b) individual, who has lost so much of her potential.

McMahan supports the idea that whether one is unfortunate depends on the extent of the gaps between one's actual well-being and one's potential and capacity for well-being by noting that we would find it counterintuitive to suppose that egalitarian theories of justice would hold that an animal of very limited cognitive powers is unfortunate in virtue of the low prospect of well-being to which its genetic endowment consigns it. A rhinoceros lacks the potential to enjoy the opera, read the novels of Tolstoi, or fall in love in the way that humans do. These lacks do not render the rhinoceros unfortunate. Why not? McMahan's answer is that "[w]hether a being is well or badly off depends on how its level of well-being compares to the range of well-being made possible by the highest cognitive and emotional capacities that it has actually

achieved or that it natively had the capacity to achieve. Call this the Native Potential Account of fortune." McMahan adds the further thought that the individuals whose treatment is regulated by principles of justice are persons, beings who have certain properties and capacities that are sufficient for moral agency. This restriction on the scope of principles of justice excludes nonhuman animals (except perhaps for the great apes) and also excludes humans whose severe cognitive impairments preclude even minimal agency.

We can see that McMahan is wrestling with the Singer Problem. He seeks a principled way to reconcile two different effects that differences in natural endowment may have on the treatment that an individual is owed under egalitarian principles of justice. On the one hand, other things being equal, the worse one's natural endowment, the more compensation one is owed according to principles that require that justice should to some extent redress the accidents of good and bad luck that give people vastly different prospects of well-being in ways that are beyond their power to control. On the other hand, the worse the potential for cognitive ability that one's natural endowment fixes, the less one possesses of the traits that are relevant to personhood and that determine whether one should be included within the scope of principles of justice at all. McMahan also wants to find a principled way to determine the moral status of individuals that does not rely merely on species membership but is instead responsive to traits of the very individual whose status we are considering.

The defects in McMahan's proposal provide testimony to the intractability of the Singer problem. I have no quarrel with the idea that beings below a threshold of certain cognitive capacities and properties (leave aside for now just what these are) fall outside the scope of principles of justice that regulate relationships among full persons. But the Native Potential Account goes astray in holding that whether one is unfortunate and hence owed compensation according to egalitarian justice depends not merely on one's prospects for well-being but also on one's potential for well-being as established by one's native intellectual and emotional endowments. This proposal gives people a variable right to well-being depending on their native intelligence and charm. But the fundamental idea of the class of egalitarian theories of justice that McMahan claims to accept is that the inheritance of traits is like the social arrangements that determine inheritance of wealth and the distribution of favorable childhood socialization experiences. Both genetic and social inheritance distribute prospects for human well-being in ways that are arbitrary from the moral point of view. More specifically, the results of genetic and social inheritance cannot be rationalized by any notions of deservingness. One cannot take credit or claim to be praiseworthy for one's genes or for the quality of early childhood care one received from parents or guardians. Nor can one claim to deserve any enhanced prospects of well-being that these confer. So in principle there is no bar to redistribution engineered by society to offset the initial distribution of favorable prospects to render it more fair.

In the light of this beam of thought, consider again McMahan's Native Potential account. Let's simplify by imagining that social inheritance just amounts to inheritance of initial bank account wealth, and genetic inheritance just amounts to one's capacity for intelligence and charm. Now consider three persons on the brink of adulthood in a society regulated by egalitarian justice as interpreted by McMahan. One is poor and has little capacity for intelligence or charm. One is poor, intelligent, and charming. A third is rich, and was initially blessed with extraordinary potential for intelligence and charm, which have blossomed to fruition in the course of very favorable childhood experiences.

Unfortunately, person number three recently suffered a bad accident through no fault of her own, and now her potential charm and intelligence have been reduced to ordinary proportions. Person number one now has a low expectation of well-being, and persons two and three have identical high expectations of well-being. But three, though she can look forward to a good life, suffers by far the greatest shortfall between her current well-being expectation and the highest well-being that she could have achieved given her highest intellectual and emotional capacities that she achieved or natively had the potential to achieve. McMahan's principle for identifying society's truly disadvantaged persons, those whose misfortune is greatest, picks out person three as the most unfortunate member of society. Egalitarian justice will then call for redistribution to remedy misfortune, which in this three-person will require taxing persons one and two to enhance the well-being prospects of person three. But this result is crazy, or at least highly counterintuitive. McMahan's proposal amounts to giving individuals rights to well-being that are greater, other things being equal, the greater the shortfall between the goodness of the life they could have lived given the potential of their genetic inheritance and the goodness of the life they can expect now given intervening vicissitudes that have curtailed or enhanced this potential. But then it becomes a requirement of justice that since my native potential for well-being was higher than yours, other things being equal, I should have more well-being than you, and if my expectation of well-being falls as low as yours in a way that was beyond anyone's power to control, then there is at least a prima facie justice case for compensating me to boost my well-being expectation.

McMahan's Native Potential Account is intended to apply just to human persons and to restrict the scope of Prioritarian justice that is to regulate the terms of cooperation among human persons. Ironically, the Native Potential Account is most satisfactory if we construe Prioritarianism as a more general fundamental principle that regulates relations among animals, humans included. The Native Potential Account applied generally would have it that the bonobo, born (let's assume) with lesser capacity for the good than a normal human, is not suffering misfortune, compared to the human, because the shortfall between capacity and expected benefit is not greater for the bonobo than for the human. There the account yield a plausible result. But applied on its home ground, to the issue of how to identify degree of misfortune among humans, the Native Potential Account yields weirdly elitist verdicts such as those I have criticized.

One issue that unsettles our responses to McMahan's cases is where to set the line that separates persons from nonpersons. If we imagine Prioritarianism applied to extremely cognitively impaired humans, such as those in advanced stages of dementia or the equivalent, the idea that other things being equal, attaining a unit of benefit for such an extremely impaired human has far more moral value than attaining a comparable benefit for someone else looks far-fetched. But what may be tugging at our intuition here is that we are in fact imagining the impaired human as falling below the line separating persons and nonpersons. If we confine attention to cases of conflict of interest among individuals all of whom are clearly above the line, the practical implications of Prioritarianism may not be so counterintuitive as McMahan supposes, and may not be counterintuitive at all. Notice that a cognitively impaired or mentally ill person often is a poor transformer of resources into well-being. A unit of some resource that might be applied to increase the well-being of an impaired or a nonimpaired persons often tends to produce more well-being if applied to the nonimpaired. On the other hand, insofar as there is overlap between the class of impaired persons and the class of persons who are very low in expected well-being over the course of their lives,

Prioritarianism, favoring the worse off, will hold that it is morally more valuable, other things being equal, to gain a one-unit increase in well-being for a person, the lower the person's lifetime well-being prospects prior to the receipt of the benefit. Keeping in mind that the two effects that impairment can have (reducing one's capacity to benefit and increasing the moral value of the benefits one gets) may offset one another, and that both need to be considered independently, the supposed implausibility of the Prioritarian View if it is applied without qualification according to the Native Potential Account disappears. Suppose that a schizophrenic person or a mentally retarded person is able to benefit at a reasonable rate from some resource we might confer on her. She has low well-being prospects, but a vacation to Bermuda would significantly raise her well-being. I find it plausible to say that if we are choosing between gaining this benefit for a badly off person or for an already advantaged person, it is morally a matter of greater urgency to help the badly off person. The fact that the badly off person is impaired from birth by mental illness or retardation, hence her shortfall in expected benefits is not large, does not at all diminish the moral value of securing aid for that person.

Holding fast to the assumption that all human persons have the same fundamental moral status, so that having less cognitive capacity does not make my well-being increments morally less valuable than the comparable increments that accrue to others with greater cognitive capacity, I do not find McMahan's rejection of Prioritarianism to be plausible. For whatever it is worth, I also find plausible the implications of Prioritarianism applied to choices of whom to benefit when we are choosing among members of the same animal species. Other things being equal, it is morally more valuable to secure a one unit gain in well-being for a badly off bonobo than to secure an identical gain in well-being for a bonobo whose expected well-being over the course of her life is higher. Prioritarianism starts to yield implausible implications for conduct if we apply it across the divide separating persons and nonpersons. If we can benefit either a normal person or a human who is so impaired as to fall below the threshold of personhood, the claim that it is morally a matter of greater urgency to benefit the being who is worse off rings false. The same point holds if the choice of whom to benefit includes persons and nonperson animals whose well-being prospects are low because their capacity for well-being is low. But this is not a difficulty that the Native Potential Account as developed by McMahan is designed to solve. The underlying, perhaps intractable puzzlement that motivates McMahan to embrace the Native Potential Account in fact leads straight to the Singer Problem and could only be resolved by a satisfactory resolution of it.

The difficulties that McMahan's position faces indicate an important respect in which the Prioritarian family of moral principles resembles Kantian and Lockean views and differs from utilitarianism. According to the Priority View, something matters other than the aggregate sum of utility, namely, how utility is distributed across persons. According to Singer's utilitarianism, one can in principle determine which of the available acts or policies is best to choose without knowing anything about the number or identities of the beings that are affected. One just needs to know the quality of each interest that is satisfied, hence the quality of the satisfaction, and the total sum of satisfactions. According to the Priority View, the moral value of a utility gain depends on the prior utility level of the person who gets it, with moral value increasing as the prior utility level of the person decreases. On this view, the distribution of utility matters, but the only feature of a person that affects the moral value of his gains and losses is his

prior utility level. All persons are equal on this conception.

Utilitarianism can dispense with a theory of human equality; the Priority View cannot. In this respect it differs significantly from utilitarianism and is not, perhaps contrary to appearances, merely a slightly amended version of it.

#### KANT AND EQUALITY

Some readers of this essay will have become impatient by now, because they believe that the problem that perplexes me has been definitively solved by Immanuel Kant. It is certainly true that Kant held strong opinions on this matter. In an often-quoted passage, he reports a personal conversion from elitism:

"I am myself a researcher by inclination. I feel the whole thirst for knowledge and the eager unrest to move further on into it, also satisfaction with each acquisition. There was a time when I thought this alone could constitute the honor of humanity and I despised the know-nothing rabble. Rousseau set me straight. This delusory superiority vanishes, I learn to honor men, and I would find myself more useless than a common labourer if I did not believe this observation could give everyone a value which restores the rights of humanity."<sup>10</sup>

What Kant learned from Rousseau was the proposition that the basis of human equality is the dignity that each human person possesses in virtue of the capacity for autonomy (moral freedom). This moral freedom has two aspects, the capacity to set ends for oneself according to one's conception of what is good, and the capacity to regulate one's choice of ends and of actions to achieve one's ends by one's conception of what morality requires. According to Kant's psychology, brute animals are determined to act as instinct inclines them, but a rational being has the power to interrogate the inclinations it feels, to raise the question what it is reasonable to do in given circumstances, and to choose to do what reason suggests even against all inclinations.

The question arises whether Kant's psychology is correct, or remotely close to correct. Perhaps something like the conflict between conscience and inclination is experienced by social animals other than humans. Perhaps the freedom that Kant imputes to human on metaphysical grounds can be shown to be either empirically nonexistent or illusory. For our purposes we can set these questions aside and simply presume that the human psychological complexity envisaged by Kant does describe a capacity we possess, whether or not it is shared with other animals. My question is whether Kant's characterization, if it was correct, would have the normative implications he draws from it.

It might seem that the Kantian picture helps to show how moral freedom is a range concept, which does not significantly admit of degrees. If one has the capacity to set an end for oneself, one does not possess this freedom to a lesser extent just because one cannot set fancy ends, or because other persons can set fancier ends. If one has the power to regulate choice of ends by one's sense of what is morally right, one does not possess this freedom to a lesser extent because one cannot understand sophisticated moral considerations, or because other persons can understand more sophisticated moral considerations. Moreover, one might hold that it is having or lacking the freedom which is important, not having or lacking the capacity to exercise the freedom in fancy ways.<sup>11</sup>

But the old worries lurk just around the corner.

The Kantian view is that there are indeed capacities that are crucial for the ascription of fundamental moral status that do not vary in degree. One either has the

capacity or one does not, and that's that. If the crucial capacities have this character, then the problem of how to draw a nonarbitrary line on a continuum and hold all beings on one side of the line full persons and all beings on the other side of the line lesser beings does not arise. The line separating persons and nonpersons will be nonarbitrary, and there will be no basis for further differentiation of moral status. One is either a person or not, and all persons are equal. Consider the capacity to set an end, to choose a goal and decide on an action to achieve it. One might suppose that all humans have this capacity except for the permanently comatose and the anencephalic. So all humans are entitled to a fundamental equal moral status.

This view is strengthened by noting that there are other capacities that do admit of degrees that interact with the nondegree capacities. Individuals who equally have the capacity to set an end may well differ in the quality of their end-setting performances. Some are able to set ends more reasonably than others. But these differences in performance do not gainsay the fundamental equal capacity. It is just that having a high or low level of associated capacities enables or impedes successful performance. So the fact that individuals differ in their abilities to do arithmetic and more complex mathematical operations that affect their ability to make rational choices should have no tendency to obscure the more basic and morally status-conferring equality in the capacity of each person to make choices.

In response: First of all, if several of these nondegree capacities were relevant to moral status, one must possess all to be at the top status, and some individuals possess more and others fewer of the relevant capacities, a problem of hierarchy, though perhaps a manageable one, would emerge anew.

More important, I doubt there is a plausible nondegree capacity that can do the work this argument assigns to it. Take the capacity to set ends and make choices. Consider a being that has little brain power, but over the course of its life can set just a few ends and make just a few choices based on considering two or three simple alternatives. It sets one end (lunch, now) per decade three times over the course of its life. If there is a capacity to set ends, period, not admitting of degrees, this being possesses it. The point is that it is clearly not merely the capacity to set ends, but something more complex that renders a being a person in our eyes. What matters is whether or not one has the capacity to set sensible ends and to pick among alternative end at a reasonable pace, sorting through complex considerations that bear on the choice of ends and responding in a rational way to these considerations. But this capacity, along with any similar or related capacity that might be urged as a substitute for it, definitely admits of degrees. The same point would hold if we pointed to free will or moral autonomy as the relevant person-determining capacity. It is not the ability to choose an end on ground of consideration for moral considerations merely, but the ability to do this in a nuanced and fine-grained responsive way, that is plausibly deemed to entitle a being to personhood status. In general, we single out rationality, the ability to respond appropriately to reasons, as the capacity that is pertinent to personhood, by itself or in conjunction with related abilities, and rationality so understood admits of degrees.

Kant may well have held that the uses of reason that are required in order to have a well-functioning conscience that can tell right from wrong are not very sophisticated and are well within the reach of all noncrazy nonfeebleminded humans. Ordinary intelligence suffices. His discussions of applying the categorical imperative test certainly convey this impression. But commentators tend to agree that there is no

simple all-purpose moral test that easily answers all significant moral questions. Thus Christine Korsgaard cautions that the categorical imperative test is not a “geiger counter” for detecting the presence of moral duties,<sup>12</sup> and Barbara Herman observes that the application of the categorical imperative test to cases cannot be a mechanical procedure but relies on prior moral understanding by the agent and on the agent’s capacity to make relevant moral discriminations and judgments and to characterize her own proposed maxims perspicuously.<sup>13</sup> These comments confirm what should be clear in any event: Moral problems can be complex and difficult, and there is no discernible upper bound to the complexity of the reasoning required to master and perhaps solve them.

But suppose I do the best I can with my limited cognitive resources, I make a judgment as to what is morally right, however misguided, and I am conscientiously resolved to do what I take to be morally right. The capacity to do what is right can be factored into two components, the ability to decide what is right and the ability to dispose oneself to do what one thinks is right. One might hold the latter capacity to be the true locus of human dignity and worth. Resisting temptation and doing what one thinks is right is noble and admirable even if one’s conscience is a broken thermometer.

However, one might doubt that being disposed to follow one’s conscience is unambiguously good when one’s conscience is seriously in error. For one thing, moral flaws such as a lazy indisposition to hard thinking and an obsequious deference toward established power and authority might play a large role in fixing the content of one’s judgments of conscience. A conceited lack of healthy skepticism about one’s cognitive powers might be a determinant of one’s strong disposition to do whatever one thinks to be right. Even if Kant is correct that the good will, the will directed unfailingly at what is truly right, has an absolute and unconditional worth, it is doubtful that the would-be good will, a will directed toward what it takes to be right on whatever flimsy or solid grounds appeal to it, has such worth. Take an extreme case: Suppose a particular person has a would-be good will that is always in error. This will could be strong or righteous, so that the agent always does what he thinks is right, or weak and corrupt, so that the agent never does what she thinks is right. If the will is always in error, the odds of doing the right thing are increased if the would-be good will is weak and corrupt. Some might value more highly on consequential grounds the weak and corrupt erroneous will, even though the strong and righteous invariably erroneous will always shines like a jewel in its own right. And some might hold that quite aside from the expected consequences, acting on a seriously erroneous judgment of right is inherently of lesser worth than acting on correct judgment of right.

Even if the disposition to do what one thinks morally right is unassailable, its purported value does not provide a sound basis for asserting the equal worth and dignity of human persons. The capacity to act conscientiously itself varies empirically across persons like any other valued capacity. A favorable genetic endowment and favorable early socialization experiences bestow more of this capacity on some persons and less on others.

If we think of an agent’s will as disposed more or less strongly to do what she conscientiously believes to be right, different individuals with the same disposition will experience good and bad luck in facing temptations that exceed their resolve. Even if we assume that agents always have freedom of the will, it will be difficult to different degrees for different persons to exercise their free will as conscience dictates. Moreover, individuals will vary in their psychological capacities to dispose their will to do

what conscience dictates. One might retreat further to the claim that all persons equally can try to dispose their will to do what is right, even if they will succeed in this enterprise to different degrees. But the ability to try is also a psychological capacity that we should expect would vary empirically across persons.

At times Kant seems to appeal to epistemic grounds in reasoning from the goodness of the good will to the equal worth and dignity of all human persons. We don't know what anyone's inner motivations are, even our own, so the judgment that anyone is firmly disposed to do what is right can never be confirmed. But surely the main issue is whether humans are so ordered that we ought to accord them a fundamental equal moral status, not whether, given our beliefs, it is reasonable for us to act as if they are so ordered.

The idea that there is a threshold of rational agency capacity such that any being with a capacity above the threshold is a person equal in fundamental moral status to all other persons prompts a worry about how to identify this threshold nonarbitrarily. It might seem that only the difference between nil capacity and some capacity would preclude the skeptical doubt that the line set at any positive level of capacity could just as well have been set higher or lower. Regarding the proposal to identify any above-zero capacity as qualifying one for personhood, we imagine a being with barely a glimmer of capacity to perceive the good and the right and to dispose its will toward their attainment. The difference between none and some might be infinitesimal, after all.

However, a threshold need not be razor-thin. Perhaps there is a line below which beings with rational capacities in this range are definitely not persons, and a higher level such that all beings with capacities above this level are definitely persons. Beings with rational capacities that fall in the middle range or gray area between these levels are near-persons. The levels can be set sufficiently far apart that the difference between scoring at the lower and the higher levels is undeniably of moral significance. But the difference between the rational capacities of the beings just above the higher line, call them marginal persons, and the beings at the upper end of the scale who have saintly genius capacities, is not thereby shown to be insignificant. At the lower end we might imagine persons like the villains depicted in the Dirty Harry Clint Eastwood movies. These unfortunates are not shown as having moral capacities which they are flouting, but rather as bad by nature, and perhaps not entitled to full human rights. No doubt this is a crass outlook, but the question remains whether the analysis we can offer of the basis for human equality generates a refutation of it. Suppose someone asserts that the difference between the rational agency capacities of the most perceptive saints and the most unreflective and animalistic villains defines a difference in fundamental moral status that is just as important for morality as the difference between the rational agency capacities of near-persons and marginal persons. What mistake does this claim embody?

#### CONCLUSION

My search for a resolution of the Singer problem has led to disappointing results. In conclusion, I briefly consider further avenues that might be explored.

Speciesism. Perhaps we should reconsider the claims that belonging to the human species is per se morally relevant and that all humans, whatever their cognitive abilities, share an enhanced equal status above that of all nonhuman animals (at least, those that are nonpersons). According to speciesism, even if my individual cognitive abilities are less than those of many chimpanzees, apes, and bonobos, I nonetheless

retain the status of person with full human rights, the same rights as other humans possess, whereas the other animals do not share this status, because they are not members of the human species. No doubt current common-sense morality is speciesist, as can be seen by noting its solicitous attitude toward severely retarded and demented persons along with its tolerance of practices toward nonhuman animals including primates that would be seen as horrific if practiced on any humans.

Robert Nozick suggests the desirability of defending speciesism. He writes, "Even supposing a particular severely retarded individual turns out to be no more rational or autonomous and to have no richer an internal psychology than a normal member of another mammalian species, he nonetheless is a human being, albeit defective, and must be treated as one."<sup>14</sup> Nozick does not mention the problem of explaining why Arneson and Einstein should have the same basic moral rights despite their very unequal cognitive powers; one presumes he would invoke the fact that the two humans are both equally of the human species, hence entitled to the same basic rights. He cautions that we should infer "nothing much" from "our not presently having a theory of the moral importance of species membership that no one has spent much time trying to formulate because the issue hasn't seemed pressing."<sup>15</sup>

The warning is salutary, but cuts both ways. Nozick's words were written in 1983, and in the intervening fifteen years to my knowledge the theory of speciesism has made very little progress. Perhaps the issue still is not salient. I myself am skeptical about the prospects of such a theory. Consider two suggestions made by Nozick. He suggests that a moral requirement to favor members of the human species might apply only to members of the human species. This would be a form of morally allowable partiality; it might be thought to follow from a general principle that each species of persons may favor the members of its own species.<sup>16</sup> Species partiality might then be assimilated to partiality to one's family, clan, tribe, or nation. But besides inheriting all the doubts that attach to partialist moralities in general, the proposal that morality allows one to favor one's fellow species members is most plausibly construed as just that, a permission not a requirement. The version of species-partiality needed to resolve the Singer problem, however, would have to take the form of a strict obligation to favor one's own species. What is needed, then, is a morally allowable partiality that takes the form of a strict requirement: all species members must favor their own species whether or not they wish to do so. The implausibility of this doctrine becomes evident if one imagines that it is being applied against humans: the Martian would prefer to save ten ordinary humans rather than one demented Martian, but recalling the dictates of "morality," he reconsiders, and favors his kind against his impartial sympathies.

Nozick also suggests that it might be a mistake to insist that there must be some simple bright-line morally significant differences between the human species and other animal species. Perhaps the morally relevant difference will consist in some complex pattern. In general, "it may be a mistake to expect there always can be a succinctly formulated distinction based on a manageably small set of properties. Sometimes the distinction between situations will lie in their differing places in a whole intricate tapestry (or in two separate tapestries whose extremities bear some resemblance)."<sup>17</sup> The trouble with this suggestion is that if it works at all, it works too effectively. Asked to justify favoring a demented human over a cognitively better endowed nonhuman, one responds that we see the human against a different tapestry of complex associations than we see the nonhuman animal. But by the same token, asked to justify discriminating in favor of Aryans and against Jews, the would-be discriminator can

respond that there is no simple morally relevant distinction, but rather a difference so complex as to be effectively unstateable. We see the Jew placed in an intricate tapestry that is quite different from the Aryan tapestry. Of course Nozick is correct that there is no guarantee in advance that morality is uncomplex. An intricate web of principles may be needed to capture the judgments we wish to endorse after full reflection. But surely we should prefer simpler explanations other things being equal, and should insist that the differences between beings that we take to justify significantly different treatment of them should be capable of being characterized in plain language. What we initially intuitively believe to be a morally significant difference that proves resistant to explication may turn out to be a prejudice that should be discarded, if all attempts at explication fall short.

*Deflating the issue.* Another possible avenue to explore would involve querying the idea that any fundamental norm of human equality is needed for a humane and decent ethics. In place of an equality norm we substitute the idea that differences in the treatment of people should be based on morally relevant and sufficient reasons—either reasons based on differences among the persons or on other considerations. To this formal norm we might add a substantive presumption in favor of equal treatment: in the absence of reasons to treat people differently we should accord them equal consideration. The third ingredient in the pragmatic deflation of the issue would be to note that very often we are in a poor epistemic position to differentiate reliably among humans when significant benefits and burdens are being distributed. Assuming for the sake of the argument that discrimination among persons on the basis of the degree to which they possess and exercise capacities of rational autonomy would in principle be justifiable, one finds that in practice our attempts to sort people on this basis would be highly unreliable. The traits that are morally important and relevant for discrimination are complex and multi-dimensional and do not reveal themselves in behavior in ways that facilitate accurate measurement. The individual who scores high on one dimension might for all we know score badly on other dimensions, and a high or low score on one occasion might not be a true indicator of the individual's capacity even for that single dimension of rational autonomy being reviewed. Along with acknowledging our epistemic liabilities we should also acknowledge that we are often not able to be unbiased judges of other people's rational autonomy capacities but are swayed by myriad forms of prejudice and distorting emotion. These points apply with particular force to the realm of politics and governmental functioning, so they support ideals of equal citizenship and equal protection of the laws for all members of society as practical guidelines. Perhaps ideals of the fundamental equal moral status of humans are best seen as useful guides to the fulfillment of other more basic nonegalitarian moral principles rather than as morally foundational in their own right.

The pragmatic deflation strategy is worth further exploration. Its plausibility evidently hinges on the plausibility of the particular nonegalitarian principles that take the place of any substantive equality norm and their ability to match our considered judgments. I doubt, however, that most people's allegiance to a substantive ideal of human equality consists of nothing more than respect for a useful tool that is not valued for its own sake. Nor do epistemic liabilities entirely constitute our grounds for insisting on equality. In a Lockean framework, I will suppose my right to live as I choose so long as I do not harm others wrongfully should count for as much as any other person's similar right, even though it is undisputed that I am less intelligent and less disposed to be moral than many others. According to the Priority View, if I am badly off, getting

benefits for me is morally a matter of greater urgency than securing extra benefits for those already well off, even if their intelligence and rational autonomy capacities far exceed mine. The current understanding of the constitutional equality norm of equal protection of the laws would have this norm fully applicable to severely retarded and demented individuals even though there is very little serious epistemic uncertainty concerning their reduced cognitive status. The pragmatic deflation strategy will end up revising our current common sense understanding of the reach, scope, and importance of substantive equality norms and not merely altering our understanding of their rationale.

*Reconsidering utilitarianism.* The intractability of the Singer Problem within the framework of standard alternatives to utilitarianism provides indirect support for the normative adequacy of utilitarianism. Initially I regarded it as a black mark against utilitarianism that its doctrine of equal consideration for equal interests does not include a sufficiently robust substantive equality norm. If the nonutilitarian moralities with robust substantive equality ideals cannot be made coherent, utilitarianism's weakness in this regard becomes a strength. Utilitarianism supposes that if a being is capable of having an interest of a given quality and strength, the satisfaction of that interest counts the same as the satisfaction of any other interest of the same quantity and quality. On this view there is no need to distinguish among types of beings and discount the interests of some in favor of others. Nor does it become imperative to establish that all or virtually all humans fall into a single type whose interests should count the same. That utilitarianism avoids or resolves the Singer Problem is not a decisive defense of this doctrine, which has attracted many powerful and diverse objections. But to my mind utilitarianism's comparative success on this score is a nontrivial advantage.

*Affection not cognition.* This essay has assumed that the factors that morally distinguish human persons from other animals and which might distinguish some human persons from others concern cognitive powers. This might not be so. Perhaps we revere humanity partly for the capacities of humans to feel sympathy, solidarity, cheerfulness, friendliness, love, and so on. Have we perhaps gone astray by seeking the normative basis of human equality strictly in terms of cognitive capacities?

The relevance of affective capacities to moral status becomes evident if we consider popular culture science fiction stories of beings of incredible intelligence but entirely predatory and ruthless desires. Notice that in positing rational autonomy capacities as decisive for moral status, I have not entirely ruled out disposition to desire as irrelevant. The agent who is capable of being rationally autonomous is capable of being moved to action by her perception of good reasons for action including moral reasons that attend to the interests of other beings. This in my view is an affective not purely a cognitive capacity. No doubt we might complicate the story of the basis of equality by widening the sorts of affective capacities that are to count as relevant to a being's fundamental moral status. However, I doubt that rendering the account more sophisticated in this way will in any way diminish the force of the Singer problem. After all, if I am very cognitively deficient by comparison with the Einsteins of the world, I am also very affectively deficient by comparison with the planet's Mother Therasas.

<sup>1</sup> . For helpful comments on earlier versions of this essay I thank Steve Yalowitz, David Brink, and Dale Jamieson.

<sup>2</sup> For a clear recent statement of the view that any plausible morality must include a commitment to some substantive ideal of human equality, see Amartya Sen, *Inequality Reexamined* (Cambridge: Harvard University Press, 1992), "Preface" and chap. 1.

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<sup>3</sup> . Peter Singer, Animal Liberation 2<sup>nd</sup> ed. (New York, Random House, 1990). This basic arguments originally appeared in a 1975 New York Review of Books essay with the same title.

<sup>4</sup> . Jeremy Bentham, Introduction to the Principles of Morals and Legislation, chap. 17. Note also Joel Feinberg's comment along the same line: "Human beings suffering extreme cases of mental illness, however, may be so disoriented or insensitive as to compare quite unfavorably with the brightest cats and dogs." See Joel Feinberg, "The Rights of Animals and Unborn Generations," in William T. Blackstone, ed., Philosophy and Environmental Crisis (University of Georgia Press, 1974).

<sup>5</sup> . One might suggest that every interest of a cognitively more complex being is more complex and hence finer than the seemingly comparable interests of beings with simpler mental life. On this view rat pleasure from simple sensation is quite different from human pleasure taken in simple sensation because the human will be aware of the simple pleasure as one in a complex array of goods among which it has a choice. I myself doubt that this point really shows that the pleasure I take in eating crunchy granola is really a finer thing than the pleasure a cat takes in eating kibble, but I am not sure how to argue the point. Notice the suggestion does not eliminate the problem of this essay, for the pleasure Einstein takes in eating his breakfast cereal will be a mentally more complex phenomenon than my comparable pleasure, just as mine is more complex than the cat's.

<sup>6</sup> . Robert Nozick, Anarchy, State, and Utopia (New York: Basic Books, 1974), p. 49.

<sup>7</sup> . David Gauthier, Morals by Agreement (Oxford: Oxford University Press, 1986).

<sup>8</sup> . John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971), pp. 504-512.

<sup>9</sup> . Jeff McMahan, "Cognitive Disability, Misfortune, and Justice," Philosophy and Public Affairs, vol. 25, no. 1 (Winter, 1996): 3-35.

<sup>10</sup> . Kant's words cited in J. B. Schneewind, "Autonomy, Obligation, and Virtue: an Overview of Kant's Moral Philosophy," in Paul Guyer, ed., The Cambridge Companion to Kant (Cambridge: Cambridge University Press, 1992), p. 336.

<sup>11</sup> . For a clear short statement of this idea, see Christine Korsgaard, with G. A. Cohen, Raymond Geuss, Thomas Nagel, and Bernard Williams, and ed. by Onora O'Neill The Sources of Normativity (Cambridge: Cambridge University Press, 1996), pp. 92-93. She connects the capacity to set and end, as opposed to the capacity merely to respond to stimuli, with self-consciousness. The human animal alone is aware that it has desires, and to choose to act it must take some desire or another consideration it is aware of as a reason for selecting some course of action.

<sup>12</sup> . Christine Korsgaard, "

<sup>13</sup> . Barbara Herman, The Practice of Moral Judgment (Cambridge: Harvard University Press, 1993), chapter 7. It should be noted that Herman herself wants to sustain the Kantian ideal that the reasons that determine how any agent should act must be transparent to that agent rather than assigned a secret or esoteric status by morality. See Herman, pp. 161-162, disavowing the strategy of "indirection."

<sup>14</sup> . Robert Nozick, "Do Animals Have Rights?," reprinted in his Socratic Puzzles. (Cambridge: Harvard University Press, 1997), p. 307 (originally published as "About Mammals and People," New York Times Book Review, November 27, 1983, p. 11).

<sup>15</sup> . Nozick, p. 308.

<sup>16</sup> . This suggestion is also made by Steinbock, in "Speciesism and the Idea of Equality." It is unsatisfactory for the reason cited in the text.

<sup>17</sup> . Nozick, p. 308.