

A Pluralist Account of the Basis of Moral Status^{*}

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Abstract

Standard liberal theories of justice rest on the assumption that only those beings that hold the capacity for moral personality (CMP) have moral status and therefore are right-holders. As many pointed out, this has the disturbing implication of excluding a wide range of entities from the scope of justice. Call this the *under-inclusiveness objection*. This paper provides a response to the under-inclusiveness objection and illustrates its implications for liberal theories of justice. In particular, the paper defends two claims: first, it argues that both the CMP and the potential capacity for moral personality (PCMP) are bases of moral status. This pluralist account of the basis of moral status can broaden the scope of justice and provide a solid philosophical justification for the common-sense intuition that almost all human beings have a moral status that is *different* and *superior* to that of nonhuman animals. Second, contra what is commonly suggested, it contends that potential and actual moral persons have different and unequal rights, other things being equal.

Key words: animal ethics; moral equality; moral status; potentiality; value theory

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1. Introduction

The conception of the person as an autonomous agent is one of the most fundamental commitments of liberalism. Traditionally, liberals hold that the possession of the capacity for moral personality (CMP) grounds persons' moral status *qua* rational and reasonable agents to impose a duty of respect not to interfere with how persons exercise this capacity, so long as they do so consistently with others' rights.¹ Accordingly, much of the debate in liberal political philosophy has focused on working out the most plausible theory of justice that is entailed by a commitment to moral personhood and the principle of respect as non-interference, whereas relatively little attention has been paid to the objections that have been pressed against these underlying assumptions of liberalism.

This paper aims to fill this gap by considering the *under-inclusiveness objection* against the liberal commitment to moral personhood. On the one hand, many observed that if moral status is grounded in the possession of the CMP, then it is unclear how liberal theories can justify the existence of moral obligations that are *owed to* infants and children, as well as to those human beings who are severely cognitively disabled (Jaworska, 1999; Kittay, 2005; Nussbaum, 2006). On the other hand, it has also been forcefully argued that the liberal emphasis on the CMP obscures the value of nonhuman animals' lives, and thus is unable to condemn those practices that cause the death of, or an enormous amount of suffering to, nonhuman animals (Regan, 1983; Singer, 2011).

In response to the under-inclusiveness objection, this paper argues that liberals can, and indeed should, broaden the scope of moral status by maintaining that the potential capacity for moral personality (PCMP) is also *a* basis of moral status. This paper, then, defends a pluralist account of the basis of moral status which has the theoretical resources to make moral status more inclusive while, at the same time, providing a solid philosophical justification for the common-

¹ For prominent contemporary liberal views, see Dworkin (2000), Rawls (1971), and Raz (1986).

sense intuition that almost all human beings have a moral status that is *different* and *superior* to that of nonhuman animals.

To be sure, the belief that the PCMP is a basis of moral status is quite widespread among liberal political philosophers. This, for example, clearly emerges in Rawls when he claims that: “one should observe that moral personality is here defined as a *potentiality* that is ordinary realized in due course. It is *potentiality* which brings the claims of justice into play” (Rawls, 1971, p. 505; emphasis added).² Nevertheless, it is fair to maintain that most liberal political philosophers have more or less implicitly relied on the notion of potentiality as the basis of moral status with neither explicitly addressing some pressing objections that have raised against this concept, nor examining the implications that a pluralist account of the basis of moral status entails for theories of justice. The second aim of this paper is to shed some light on these issues: in particular, this paper shows that actual and potential moral persons have different and unequal rights, other things being equal.

The paper is structured as follows: section 2 presents a liberal conception of moral status and it introduces the *Intrinsic Value* condition, which states that a property must have intrinsic value to be a suitable candidate for the basis of moral status.

Section 3 discusses Rawls’s liberal account of moral status. It argues that while Rawls’s view is a plausible account of moral status because the CMP meets the Intrinsic Value condition, the CMP-account runs up against the under-inclusiveness objection.

Section 4 argues that an appeal to those properties that are often considered to be the basis of moral status – such as, consciousness and sentience – can only avoid the under-inclusiveness objection at high moral costs. This is because these status-conferring properties entail that some nonhuman animals have a moral status that is superior, or equal, to that of a wide range of human beings. And, this, I submit, is a conclusion hard to accept. Call this the *nonhuman animal superiority objection* (NASO).

² An appeal to potentiality is also present in the work of Scanlon (1998, p. 185).

Section 5, then, contends that the PCMP is a plausible candidate for the basis of moral status because it satisfies the Intrinsic Value condition. Being a status-conferring property that almost all human beings possess, but nonhuman animals lack, the PCMP allows us to broaden the scope of moral status without falling prey to the NASO.

Section 6 concludes by discussing two objections so as to sharpen the argument and illustrate its implications.

2. Moral Status and the Intrinsic Value Condition

Moral philosophers have long debated the question of what it means to have moral status. Frances Kamm, for example, distinguishes between two different senses of moral status. The “broad sense” of moral status refers to “what is morally permissible or impermissible to do to some entity” (Kamm, 2007, p. 227). Thus, for instance, a rock may have moral status in this broad sense, as that entity to which it is morally permissible to do anything. The “narrow sense” of moral status, instead, indicates entities that “count morally in their own right” (Kamm, 2007, p. 227). There are, however, different ways to count morally: first, an entity may count in its own right in the sense that it may give us reasons to constrain our actions toward it. For example, we may think that we should preserve a piece of art, independently of the pleasure that it can bring to people. Second, an entity can count in its own right and *for its own sake*. So, saving a bird, as opposed to preserving a piece of art, is something that can be done for the bird’s own sake because saving the bird would be good *for the bird* (Kamm, 2007, p. 228). Finally, an entity counts morally when it is the object of a “directed duty” – that is, a duty that is *owed to that entity*, in particular, in virtue of the entity that she is.³ And, as Kamm notes, “a directed duty is typically correlative to a right held by the entity to which the duty is owed against the person who owes it” (Kamm, 2007, p. 230). To appreciate this, imagine that Tom slaps Jack in the face. According to this narrow sense of moral status, Tom

³ For a useful discussion of these different kinds of moral status, see also Christopher W. Morris (2011).

has violated his directed duty *owed to* Jack – or, alternatively, Tom has failed to respect Jack’s right not to be harmed. Furthermore, in doing so, Tom has not simply done something wrong, but he has *wronged* Jack, in particular, because he has violated a duty *owed to* him.

It is this last sense of the narrow conception of moral status – the moral status of a right-holder, or the object of directed duties – that is most salient for the question at hand. Indeed, liberals commonly hold that having moral status consists in being a right-holder, or being the object of directed duties, in virtue of the entity that one is (Carter, 2011; Liao, 2015; Sangiovanni, 2017). And, the aim of this paper is to examine what account of the basis of moral status liberal theories of justice should rest on.

Now, if having moral status entails being a right-holder, then it seems reasonable to hold that the possession of moral status presupposes one’s intrinsic value. This is because it is unclear why A has directed duties that are *owed to* B, in particular and for its own sake, if B is not valuable in and of itself. In short, being valued for its own sake presupposes being intrinsically valuable.⁴

To see this more clearly, consider the speciesist account of the basis of moral status, which maintains that human beings have equal moral status in virtue of their membership in the species *Homo sapiens*.

As many observed, the problem with the speciesist account is that a purely biological feature has no intrinsic value and, as such, cannot generate rights. Why should the possession of a specific DNA in and of itself confer any moral value on its holder, and thus ground her moral status to be the object of directed duties? Speciesism, then, should be rejected because it is unable to meet the *Intrinsic Value* condition (McMahan, 1996, p. 34; Singer, 2011, pp. 48-53).⁵

At this point, two comments are in order. First, one may note that there are some cases in which it seems reasonable to maintain that entities with intrinsic value do not have rights. Here is

⁴ For further discussion on the meaning of intrinsic value, see Korsgaard (1983). In this paper, I will use the expressions “intrinsically valuable” and “non-instrumentally valuable” interchangeably, unless I indicate otherwise.

⁵ It follows from this that an account of the conditions of the basis of moral status need not include a freestanding “Species Neutrality Requirement”, as some suggested (Liao, 2015, p. 12). This is because if speciesism violates the Intrinsic Value condition, then an anti-speciesism condition becomes conceptually redundant.

an example: life, one may plausibly maintain, has value in and of itself. It would be odd, however, to hold that any form of living beings has rights; for instance, few would maintain that bacteria are right-holders.

As we have seen above, there are different ways of counting morally, or different senses of moral status. Accordingly, it seems plausible to hold that while intrinsic value necessarily entails a certain kind of moral status, only *some* intrinsic values generate the moral status of a right-holder. Put differently, any entity that has intrinsic value “counts morally in its own right”; however, only some entities that have intrinsic value are the object of directed duties.⁶

Second, one may observe that there are cases of entities that have rights, despite not being intrinsically valuable, like corporations and legitimate states. However, even assuming that these entities do have rights, they do not have the moral status of a right-holder in the sense at issue here. The reason for this is that the rights of corporate entities are grounded in, and conditional on, how they serve the interests of individuals (Valentini, 2017, p. 878). Hence, it is precisely because they do not have intrinsic value that corporate agents are not ultimate units of moral concern, for they are not the object of directed duties *in virtue of the entity that they are*. Therefore, they do not have the kind of moral status that is relevant for this article, which consists in being a right-holder, or the object of directed duties, in virtue of the entity that one is.⁷

To conclude, then, according to a liberal conception of moral status, having moral status means being a right-holder, or being the object of directed duties, in virtue of the entity that one is; and, since being intrinsically valuable is necessary to be a right-holder in virtue of the entity that one is, a suitable candidate for the basis of moral status must meet the Intrinsic Value condition, namely, a status-conferring property must have intrinsic value.

⁶ To define exactly which kinds of intrinsic values can justify the possession of the moral status of a right holder is a question that falls beyond the scope of this article. For our purposes, it is sufficient to note that there is a fairly strong agreement in the literature that the kinds of intrinsic values, if any, which can justify the possession of the moral status of a right-holder are to be found in the properties discussed in the next sections. See Morris (2011, pp. 262-5).

⁷ I am grateful to an anonymous reviewer for prompting me to clarify these points.

3. The Capacity for Moral Personality (CMP) as *the* basis of Moral Status and the Under-Inclusiveness Objection

In this section, I introduce one of the most prominent liberal accounts of the basis of moral status: Rawls's view.⁸ Rawls argues that justice is owed to those beings that have the capacity for moral personality (CMP), that is, those beings that “are capable of having (and are assumed to have) a conception of the good (as expressed by a rational plan of life); and ... are capable of having (and are assumed to acquire) a sense of justice” (Rawls, 1971, p. 505). In brief, Rawls maintains that moral persons – i.e., those beings that are capable of moral personality – have moral status *qua* rational and reasonable beings.

The possession of the CMP is widely considered to be intrinsically valuable. Some suggested that this is because autonomous agents have the capacity to prescribe “general principles to themselves rationally, free from causal determinism, and not motivated by serious desires” (Hill Jr., 1991, p. 44). Others stressed that the CMP is valuable for its own sake because it entails the moral power of rationally choosing one's ends and thus becoming responsible for one's choices (Korsgaard, 1996, ch. 7).

It might be objected that these justifications for the intrinsic value of the CMP simply describe what the CMP is rather than providing independent reasons to account for its intrinsic value. The question of how the intrinsic value of a thing can be justified has long been debated in value theory (Zimmerman, 2015). However, two points are worth noting. First, it should be observed that this is not a problem for the CMP alone, but for any plausible status-conferring property. As Liao puts it, “suppose one holds the view that if X has actual sentience, then X is a right-

⁸ For other liberal accounts of the basis of moral status, see, Gauthier (1986), Locke (2016), and Mill (2015). While this paper focuses on liberal accounts of moral status, it is important to acknowledge that the belief that human beings have rights and are owed directed duties has also been strongly defended by several thinkers of different philosophical traditions. For instance, Douglas B. Rasmussen and Douglas J. Den Uyl develop a neo-Aristotelian account of moral status. See Rasmussen and Uyl (1991).

holder. It may be asked, why is this so? Asserting that “pain is bad” does not seem to providing an independent argument for this account” (Liao, 2015, pp. 24-5).

Second, it seems reasonable to maintain that since it is very difficult to argue for the intrinsic value of X – insofar as any attempt to do so will have to refer to properties that are outside X – the best we can do to justify X’s intrinsic value is to explain what X is and, by doing so, pump the intuition that X is non-instrumentally valuable. Inevitably, however, this discussion will reach an end; and, at that point, we will have to seek a reflective equilibrium by testing the normative principles entailed by a view which holds that X has intrinsic value against particular cases, and *vice versa*, so as to achieve a mutual fit between our considered judgments and our theory.⁹

Now, since the CMP meets the Intrinsic Value condition, this entails that Rawls’s view is a plausible account of the basis of moral status. But is Rawls’s view *the most* plausible account of the basis of moral status? Many raised scepticism in this regard. In particular, it has been argued that Rawls’s view should be rejected because it implies the disturbing conclusion that some human beings – those who do not yet hold the CMP and those who had the CMP but no longer hold it – and all nonhuman animals do not have moral status, and therefore they are not right-holders (Nussbaum, 2006; Regan, 1983; Singer, 2011). Call this the *under-inclusiveness objection*.

To summarise, standard liberal theories of justice have traditionally relied on the assumption that moral status is grounded in the possession of the CMP. And, while the CMP does indeed provide a plausible basis of moral status, maintaining that only those beings that are capable of moral personality have moral status has the disturbing implication of excluding a wide range of entities from the scope of justice.

⁹ For a discussion of the methodology of reflective equilibrium, see Norman Daniels (2018)

4. A Pluralist Account of the Basis of Moral Status and the Nonhuman Animal Superiority Objection (NASO)

A promising solution to overcome the under-inclusiveness objection is to argue in favour of a pluralist account of the basis of moral status, according to which the possession of the CMP is not the only status-conferring property. And, here different possibilities open up: some affirmed that the basis of moral status is to be found in one's sense of own consciousness (Sangiovanni, 2017). Others contended that sentience is a plausible candidate for the basis of moral status (Bentham, 2000; Singer, 2011). Finally, it has also been argued that moral status is grounded in the property of "being-subject-of-a-life" which consists in the capacity to have desires and beliefs, memory and a sense of the future, and to act intentionally (Regan, 1983, p. 243).

A pluralist account that includes the CMP and any of the above properties as the bases of moral status has the theoretical resources to broaden the scope of moral status so as to include almost all human beings and nonhuman animals within the realm of justice.

Nonetheless, a pluralist account of the basis of moral status which rests on sentience, being-subject-of-a-life, or consciousness, can only avoid the under-inclusiveness objection at high moral costs. To see this, it will be necessary to introduce the distinction between the question of *moral status* and the question of *moral equality* or *equal moral status*. The former is essentially non-comparative because it concerns what is owed to a being in and of itself, independently of what is owed to others. The latter, instead, is comparative in that it addresses what is owed to moral status-holders in relation to one another. So, for example, if A's and B's moral status is grounded in the same status-conferring property X, then this means that both A and B are right-holders. However, this does not entail that A and B have equally stringent rights: this is because since X confers moral worth on A and B, if A holds X to a higher degree than B, then it follows that A is more morally worthy than B – or, equivalently, A has a moral status that is superior to that of B. Hence, A's rights are more stringent than B's rights, other things being equal (Carter, 2011).

We are now in the position to see that an appeal to sentience, being-subject-of-a-life, or consciousness has disturbing implications: if the moral status of some human beings and nonhuman animals is grounded in the same status-conferring property, then there will be cases in which the latter hold this property to a higher, or equal, extent than the former. Therefore, nonhuman animals will have a moral status that is superior, or equal, to that of a wide range of human beings.

To illustrate this, consider some nonhuman animals, like dolphins, chimpanzees, and whales, which are deemed to display fairly high degrees of reasoning capacities, and some human beings, such as young children, cognitively disabled human beings and infants. It seems reasonable to believe that there will be cases in which the former hold the status-conferring properties of consciousness, sentience, and being-subject-of-a-life to a superior, or an equal, degree than the latter. Therefore, according to a pluralist account that includes any of these status-conferring properties, some nonhuman animals have a moral status that is superior, or equal, to that of a wide range of human beings. This, I submit, is a conclusion hard to accept. Call this the *nonhuman animal superiority objection* (NASO).¹⁰

At this point, two comments are in order: first, one may doubt that it is necessary to point to a property which some human beings hold, but nonhuman animals lack, in order to conclude that the former have more stringent rights than the latter. The reason for this is that the stringency of rights does not only depend on the status-conferring property on which rights are grounded but also on the underlying interests at stake. Accordingly, so the argument goes, even if human beings and nonhuman animals hold the same status-conferring property to an equal degree, this does not entail that they have equal rights, provided that the interests at stake are different. This line of argument, for example, is adopted by Tom Regan in his discussion of the lifeboat case,

¹⁰ A critic may protest that the NASO is question begging. It is true that I am here relying on an intuition about the *prima facie* implausibility of conferring superior, or equal, moral status to some nonhuman animals over a wide range of human beings. However, if I will show that there is indeed a status-conferring property that nonhuman animals lack, but almost all human beings possess, which marks a moral discontinuity between the two, then the intuition that underpins the NASO will be vindicated. As observed above, the aim is to achieve a mutual fit between our considered judgment and our theory.

where there are five survivors – four human beings and a dog – only four of which can be saved. Regan argues that even if human beings and dogs have equal moral status, we should abandon the dog and rescue the humans because the former would suffer less harm than the latter. This is because “the harm that death is, is a function of the opportunities for satisfaction that it forecloses”; hence, the death of a human being is a greater loss than the death of a dog (Regan, 1983, p. 324).

Even if this argument is correct, I contend that Regan’s solution does not provide us with a persuasive response to the NASO, for the following two reasons: first, it seems plausible to maintain that a convincing account of the basis of moral status should hold that human beings have more stringent rights than dogs not merely when and because the interests of the former are more fundamental than the interests of the latter, but also and mainly because the former are morally superior to the latter, insofar as, for example, at least some human beings are capable of moral personality, whereas dogs do not have this capacity. Second, there will be at least some cases in which human beings and nonhuman animals have the same interests at stake – or, more precisely, cases in which the interests at stake are *equally* fundamental. For instance, Singer observes that “there must be some kind of blow [...] that would cause the horse as much pain as we cause a baby by a simple slap” (Singer, 2011, p. 51). And, in these cases, Regan’s solution does not have the theoretical resources to justify prioritising the rights of human beings over the rights of nonhuman animals. Indeed, if their moral status is equal, and if the interests at stake are equally fundamental, then it follows that the decision about which rights should be prioritised will depend on a coin flip, other things being equal.¹¹ For this reason, I conclude that it is necessary to identify a status-conferring property that human beings have, and nonhuman animals lack, to avoid the NASO.

¹¹ For an analysis of the question of the priority of the rights of human beings over the rights of nonhuman animals with respect to a particular approach to the question of moral equality, see Floris (2019, pp. 239-41; 2020, pp. 409-411).

Second, one may think that a plausible way to overcome the NASO can be found in relational accounts of the basis of moral status which hold that human beings' moral status is grounded in their relational nature of being in relation to one other (Kittay, 2005).¹²

To start with, as many observed, there are strong reasons to suspect that relational properties cannot justify a being's intrinsic value (Zimmerman, 2015): indeed, there seems to be something odd in affirming that A's intrinsic value is grounded in the value that A has in relation to B, rather than in the value that A has *whatever* her relation to B. But even leaving this metaphysical worry aside, one may observe that relational accounts do not single out a property that only human beings have, but not nonhuman animals lack, for some nonhuman animals – especially those domesticated nonhuman animals – also possess the relational property of being in relation to other human beings (Valentini, 2014). In short, given the ubiquity of relations in the animal kingdom, it is unclear how relational views of moral status can avoid the NASO.

Standard properties that are considered to ground moral status are unable to refute the NASO. To overcome this difficulty, in what follows, I argue that the potential capacity for moral personality (PCMP) is a status-conferring property. And, since almost all human beings have this property, but nonhuman animals do not, the PCMP provides us with a justification to affirm that the former have a moral status that is *different* and *superior* to that of the latter.¹³ Hence, a pluralist account of the basis of moral status that maintains that both the CMP and the PCMP are bases of moral status allows us to overcome the under-inclusiveness objection without falling prey to the NASO.

¹² Constructivist moral theories, which maintain that moral obligations are the result of an agreement among persons under specific circumstances, can also be understood as relational views in this sense. See, for example, Rawls (1971).

¹³ To be sure, this is not necessarily to say that nonhuman animals *do not* have moral status. The aim of this paper is not that of arguing against the moral status of nonhuman animals; rather, the aim is that of showing that *even if* nonhuman animals do have moral status we have non-arbitrary – i.e. non-speciesist – reasons to hold that their moral status is different and inferior to that of almost all human beings.

4. The Potential Capacity for Moral Personality (PCMP) as a Basis of Moral Status

Few would deny that potentiality is valuable; indeed, potentiality is clearly valuable for the sake of its actualisation, or fulfilment. But is it plausible to hold that potentiality has also *intrinsic* value? As we saw earlier, arguing in favour of the intrinsic value of a property is a very difficult task, for it is unclear what needs to be shown to account for the intrinsic value of something. In what follows, however, I first refute some of the reasons that are usually given against the intrinsic value of potentiality: this will help us to elucidate further the meaning of potentiality and, moreover, to clarify on what basis it *cannot* be argued that potentiality is not valuable in and of itself. Second, on a more positive note, I conclude by discussing two reasons why we should think that the PCMP is also valuable in and of itself and, therefore, satisfies the Intrinsic Value condition.

To begin with, it will be instructive to examine the distinction between capacity and potentiality. As Thomas K. Johansen observes, Aristotle, for example, uses these two terms almost interchangeably. More precisely, we can distinguish two conceptions of capacity, or potentiality, in Aristotle: first, the notion of a capacity “in the sense of a power to bring about or undergo change” (Johansen, 2012, p. 209). Second, the modal notion of capacity which “underlies our talk of things being in capacity, in contrast to their being in activity” (Johansen, 2012, p. 209). Accordingly, saying that “A has the capacity for X” means (i) that A has the power to undergo, or bring about, a change – i.e. to pass from a state in which A is not doing X to a state in which A is actually doing X, and (ii) that A is in the modal state of being able to do X, rather than in the modal state of actually doing X. But if this is true, then there is a plausible sense in which “capacity” and “potentiality” are not two different metaphysical notions; rather, they are two different *kinds* of the same metaphysical concept.

To appreciate this, consider the statements “A has the capacity to read” and “B has the potentiality for reading”. As we have just seen, these two statements indicate the same modal state in that neither A nor B is in activity – i.e. neither is reading. Furthermore, just as the first statement

refers to A's power to cause a change – A can pass from a state in which she does not read to a state in which she actually reads – so, analogously, the second statement indicates B's power to bring about, or undergo, a change – B has the power to pass from a state in which she does not have the ability to read to one in which she actually possesses this ability. Therefore, it seems reasonable to maintain that “capacity” and “potentiality” are not different concepts, but they are two notions which describe two kinds of the same concept. Put simply, “capacity” and “potentiality” are used to distinguish two different kinds of “potentialities” – that is, two different powers to undergo or bring about a change.

This discussion can help us to rule out some of the reasons that are commonly advanced against the intrinsic value of potentiality in the literature. First, it is often suggested that since what is morally relevant is “what is here and now”, rather than “what may be”, potentiality cannot be morally significant in and of itself, for it has to do with what may be in a hypothetical future. As Warren observes:

Merely potential people [...] are just things that might have existed, that is, that at some time were empirically possible, but which in fact do not, never did, and never will exist.

And what does not exist and never will cannot be harmed or wronged or have its rights violated. (Warren, 1977, p. 280; emphasis added)

Even if we grant the assumption that what may be is not morally relevant in and of itself, this does not entail that the potential *capacity* for X cannot have intrinsic value because the latter describes an ability, or a power, that certain entities possess here and now. In other words, while potential *people* refers to some entities that may be in the future – e.g. future generations – but are not here and now, potential *capacity* denotes a specific ability that a range of *actual* beings hold here and now. Therefore, the value of the potential capacity is grounded in what is here and now, rather than in what may be.

Second, and relatedly, it is sometimes observed that only “what A can do here and now” – as opposed to “what A may be able to do in the future” – is morally relevant. Here again, even if we accept that what A may do in the future is not morally relevant in and of itself, this does not imply that the potential capacity for X is not intrinsically valuable. The reason for this is that, as has been noted above, capacity and potentiality denote two different abilities – i.e. powers to do something – that are held here and now. Accordingly, maintaining that A’s potential capacity for X is morally relevant when assessing A’s moral status amounts to saying that A holds an ability to do something here and now that confers moral worth on her. Therefore, potential capacity for X does not ground A’s value in what A may be able to do in the future; rather, it justifies A’s value on the basis of what A is able to do here and now.

The analysis of the metaphysical distinction between the capacity for X and the potential capacity for X allowed us to refute some of the objections that are usually raised against the intrinsic value of potentiality. Admittedly, however, this does not say anything on whether the PCMP can indeed meet the Intrinsic Value condition. In the final part of this section, then, I discuss two reasons as to why the PCMP should be considered to also have intrinsic value.

A standard line of argument to justify the moral significance of potentiality is to contend that those beings that have the ability to acquire some goods in the future have a right to be helped to obtain those goods. More precisely, the possession of the ability to acquire a range of goods generates an interest in the acquisition of those goods which, in turn, grounds a right to be helped to obtain those goods (Stone, 1985).

To begin with, it should be pointed out that, as we saw in section 1, the mere existence of an interest is not sufficient to ground a right to the satisfaction of that interest: if A has an interest in X, this alone does not entail that A has a right against B to be helped to satisfy her interest in X, for it is not clear why B has a directed duty *owed to* A, in particular and for its own sake, unless A has intrinsic value. Thus, for instance, someone who denies that nonhuman animals have a right

to life need not deny that nonhuman animals have a fundamental interest in living. It is conceptually coherent to affirm that despite nonhuman animals have an interest in living, they do not hold any intrinsically valuable property which confers moral worth on them; therefore, they do not have the moral standing to have a right to life.

It follows from this that a justification for the possession of the moral status of a right-holder on the grounds of potentiality must show that potentiality is intrinsically valuable. And, this seems to rest on the claim that the possession of the ability to acquire a range of goods is itself intrinsically valuable. Put differently, the possession of this kind of ability confers moral worth upon its holder and thus accounts for her moral standing to have rights against others to be helped to obtain the goods she has the potential to acquire.

Now, it is important to observe that, for our purposes, we do not need to justify the intrinsic value of any type of potentiality to acquire some goods. Rather, we only need to justify the intrinsic value of a specific kind of potentiality, namely, the PCMP. Hence, following a similar line of argument, I argue that while the possession of the PCMP is not intrinsically valuable simply because it represents the ability to obtain *some* goods, it has intrinsic value because it consists in the ability to obtain a range of *non-instrumentally valuable* moral powers. Put simply, the possession of the ability to acquire a range of non-instrumentally valuable moral powers is itself intrinsically valuable and thus confers moral worth on its holder; hence, the PCMP is a basis of moral status.

This, however, is not the only line of argument that can be put forward in favour of the intrinsic value of PCMP. A different justification for PCMP's intrinsic value, I argue, can be mounted by appealing to a *constitutive argument*, whereby the intrinsic value of X lies in being a constitutive part of an intrinsic value, Y, which makes the former share in the value of the latter while being less valuable.

To see this, we need to address the following question: what is a constitutive value? What kind of relationship must there be between the part and the whole for the former to be a *constitutive* part of the latter?

According to some proponents of constitutive values, “things are constituent goods if they are elements of what is good in itself which contribute to its value, i.e. elements but for which a situation which is good in itself would be less valuable” (Raz, 1986, p. 200). This kind of constitutive argument is often invoked by Aristotelians to account for the intrinsic value of those goods that are part of human flourishing (MacIntyre, 2007, p. 149). For instance, relationships of love and companionship are usually considered to be elements of a flourishing life. This, however, Aristotelians argue, does not entail that these relationships are only valuable for the sake of the promotion of human flourishing. On the contrary, they are also non-instrumentally valuable because they are a constitutive component of human flourishing that contributes to the value of human flourishing itself.

As some observed, however, a part X can be a constitutive part of Y even if X does not contribute to the value of Y – or, at least, even if X does not contribute to Y’s value in the same way that relationships of love contribute to the value of a flourishing life. To illustrate this, consider Cruft’s (2010) analysis of the value of the duties of friendship. The duties that A owes to B, Cruft observes, are not only instrumentally valuable to the extent that they motivate A to behave in a friendly manner – indeed, a good friend should not care for her friend out of a sense of duty. The reason for this is that “the duties themselves [...] are a *conceptually necessary constituent* of friendship. Without such duties, the relationship would lack the directed normative character necessary for it to be friendship” (Cruft, 2010, p. 452; emphasis added). Accordingly, duties of friendship are not merely valuable to the extent that they promote friendship relation, but they are also valuable in and of themselves, insofar as they are a conceptually necessary constituent of what friendship – which, *ex hypothesi*, has intrinsic value – is. Crucially, then, duties of friendship do not contribute to the value of friendship in the same way that relationships of love contribute to the value of a flourishing life: a friendship without duties of friendship would not be less valuable, but it would not be friendship at all, for the former is a conceptually necessary constituent of the latter.

We are now in the position to see that the metaphysical relation that holds between potentiality and actuality reveals that there is a plausible sense in which the PCMP is a constitutive part of the CMP in the same way in which duties of friendship are a constitutive part of friendship. In brief, this is because actuality retains its potentiality: hence, having the PCMP is a constitutive part of having the CMP. To appreciate this, consider Michael Frede's example:

If we have an actually healthy person, what underlies the health – the person independently of being healthy – remains potentially healthy even after having being cured by a doctor, namely in so far as he continues to be in a state such that, if he were to be ill, he could still be cured by a doctor. (Frede, 1994, p. 192)

Analogously, then, it can be argued that part of what it means to be a being capable of moral personality is to be a being that retains the PCMP. Put differently, part of what it means to be a moral person is to be that kind of being that has the potentiality to reacquire the CMP if and when this has been lost; hence, the PCMP is a conceptually necessary constituent of the CMP. It follows from this that the PCMP is not merely instrumentally valuable but it is also intrinsically valuable because it is a constitutive part of something that is valuable for its own sake.

A critic may object to this constitutive argument by noting that, for example, some individuals late in life lose their PCMP and never recover it.¹⁴ While the validity of this claim seems to ultimately depend on the specific account of potentiality that one endorses, it is worth noting that affirming that part of what it means to be a moral person is to retain the PCMP does not entail that the PCMP will be actualised in all circumstances. Indeed, this claim is consistent with maintaining that there are several ways of losing the CMP which imply a loss of the PCMP, too. Thus, for example, a middle-aged adult human being capable of moral personality retains the potentiality to reacquire the CMP if and when this is lost. Nonetheless, this is compatible with acknowledging

¹⁴ I am grateful to an anonymous reviewer for raising this challenge.

that there are cases in which such potentiality will not be realised, such as if this person dies or if she becomes severely cognitively disabled.

Accordingly, it seems plausible to maintain that individuals late in life, who are *still* capable of moral personality, do not necessarily lose their PCMP completely. Rather, their PCMP is *diminished* because for them losing the CMP implies losing the PCMP in a wider range of cases than it does for middle-aged adult human beings who have the CMP, other things being equal. For this reason, I argue that these cases do not undermine the validity of the metaphysical relation between the CMP and the PCMP.

To conclude, in this section, I showed that there are fewer reasons to be suspicious about the intrinsic value of potentiality and more reasons to maintain that potentiality is also valuable in and of itself than is commonly thought. In particular, I argued that the PCMP has intrinsic value because (i) it consists in the ability to acquire a range of non-instrumentally valuable moral powers, and (ii) it is a constitutive value of the CMP, for the former is a conceptually necessary constituent of the latter.

As we saw earlier, an argument in favour of the intrinsic value of the PCMP must explain what the PCMP is and, by doing so, pump the intuition that it indeed has value in and of itself. This discussion, however, will inevitably reach an end; at that point, we will have to seek a reflective equilibrium by testing the implications of a theory that maintains that the PCMP is a basis of moral status against particular cases, and *vive versa*. Therefore, it seems reasonable to hold that we should regard the bar of justification of the intrinsic value of the PCMP as lower the more intuitively convinced we are about the strength of the NASO. Far from begging the question, this allows us to reach a “mutual fit” between our considered judgment and our theory. With this point in mind, then, I conclude that we have enough reasons to affirm that the PCMP satisfies the Intrinsic Value condition.

5. Objections

In the final section of this paper, I discuss two objections so as to strengthen the argument made so far as well as illustrate its implications.

5.1 The Intrinsic/Extrinsic Distinction Objection

In *Abortion and Infanticide*, Michael Tooley presented what has become a standard example against the moral significance of potentiality. Here is the example: imagine a future in which a chemical has been discovered that can transform kittens into adult humans. Since kittens, Tooley argues, now have the potentiality to become adult humans, exactly like infants, a potentiality account entails that both kittens and infants are entitled to have their potentiality actualised *qua* potential adult humans. This, however, seems a very disturbing conclusion (Tooley, 1972, pp. 61-2).

In response to this example, it is usually suggested that, *pace* Tooley, there is a crucial distinction in the kind of potentialities that kittens and infants hold: while kittens have the *extrinsic* potentiality to become adult humans, infants have the *intrinsic* potentiality to do so. And, since, as I argued in section 1, a being has moral status if its value supervenes upon its intrinsically valuable properties, it follows that only infants have a right to have their potentiality actualised *qua* potential adult humans (Harman, 2003).

A critic, however, may protest that this response hinges on an untenable distinction between intrinsic and extrinsic potentiality. Both the potentiality of kittens and that of infants, so the objection goes, need some external inputs – chemical and nurture, respectively – to be actualised. Therefore, it is difficult to see on what grounds it can be argued that the former is extrinsic, whereas the latter is intrinsic. Call this the *intrinsic/extrinsic distinction objection*.

Proponents of potentiality views have often tried to reject the intrinsic/extrinsic objection by appealing to metaphysics of essence (Reichlin, 1997). Following this line of thought, the difference between the potentiality of kittens and that of infants lies in the fact that only the latter have

the inherent *telos* to become adult human beings. This line of argument is notoriously problematic. In particular, it is unclear what determines a being's *telos* – that is, what defines a being's essence: what reasons do we have to maintain that becoming adult humans is not part of kittens' nature in Tooley's world where kittens can in fact become adult humans if provided with some external inputs? Metaphysical accounts of essence are very hard to defend.

A more persuasive answer to the intrinsic/extrinsic objection, I contend, consists in showing that it does not provide us with sufficient reasons to reject the notion of potentiality. Rather, to the extent that the intrinsic/extrinsic objection is true, it points to a bullet that potentiality views have to bite, but one that is not too hard to bite, at most.

First of all, it is important to note that the intrinsic/extrinsic objection does not call into question the possibility of distinguishing intrinsic and extrinsic potentiality in a non-arbitrary way in all circumstances. So, for instance, it seems reasonable to hold that Tooley's chemical does not do all the work in transforming kittens in adult humans – that is, kittens' potentiality is not wholly extrinsic – like in the case of a god who has the ability to transform some creatures in beings of a different kind. (Indeed, if that were the case, we would have a principled reason to affirm that kittens' potentiality is extrinsic and thus that they do not have moral status *qua* potential adult humans.) Tooley's chemical, instead, triggers a reaction from a range of intrinsic physical properties that kittens hold which generate their transformation into adult humans. In other words, in Tooley's world, kittens possess some intrinsic properties that, if provided with the appropriate external inputs, actualise their potentiality to become adult humans. Hence, there is a relevant sense in which kittens do have the intrinsic potentiality to become adult humans, at least to some extent. If this is true, then the intrinsic/extrinsic objection does not reveal an inherent arbitrariness in the distinction between intrinsic and extrinsic potentiality which would cast doubt on the notion of intrinsic potentiality itself. Accordingly, the intrinsic/extrinsic objection does not undermine the validity of the concept of intrinsic potentiality as the kind of potentiality that, being intrinsically valuable, is a basis of moral status.

Of course, this does not entail that in Tooley's world infants, but not kittens, have the intrinsic potentiality to become adult humans. On the contrary, it seems reasonable to concede that both infants and pre-injected kittens have the right to become adult humans *qua* potential adult humans. On reflection, however, accepting that in a world in which kittens and infants have the same intrinsic potentiality to become adult humans, both have the right to have their potentiality actualised does not seem such an implausible conclusion. Neither is a conclusion to which only potentiality views are committed to. To appreciate this, consider a world – possibly less far-fetched than Tooley's – in which some AI display a high degree of rationality and reasonableness so that they can be deemed to be capable of moral personality. In such a scenario, according to the same line of argument that underpins Tooley's example, standard CMP-accounts of moral status seem to entail that AI have intrinsic value and therefore have moral status *qua* actual moral persons, other things being equal.

Proponents of potentiality views have attempted to show that Tooley's pre-injected kittens do not have the intrinsic potentiality to become adult humans; this claim, however, rests on shaky grounds. In this section, I argued that advocates of potentiality views have fewer reasons to worry about Tooley's example than they have usually thought. Tooley's thought experiment shows that in a world in which some nonhuman animals and some human beings have the same potentiality to become adult humans, potentiality views are committed to the conclusion that both the former and the latter have the right to have their potentiality actualised *qua* potential adult humans. This, however, is either precisely the kind of conclusion that a non-speciesist account of the basis of moral status is meant to entail, at best; or, it is a bullet that is neither too hard to bite, nor one that only potentiality views are committed to biting, at worst. The important point is that Tooley's objection does not show that intrinsic potentiality cannot be distinguished from extrinsic potentiality in a non-arbitrary way in all circumstances. Hence, Tooley's example is insufficient to reject the notion of intrinsic potentiality as the kind of potentiality that is intrinsically valuable and thus grounds moral status.

5.2 Logical Point(s) about Potentiality

Even if the notion of intrinsic potentiality rests on solid metaphysical grounds, it has been argued that potentiality accounts of the basis of moral status should be rejected because they do not entail the implications that their advocates argue they have. This concern, for example, is raised by Feinberg's "logical point about potentiality": "it is a logical error, some have charged, to deduce *actual* rights from merely *potential* (but not yet actual) qualification for those rights" (Feinberg, 1992, p. 48; emphasis in the original). As Benn puts it, "a potential president of the United States is not on that account Commander-in-Chief [of the U.S. Army and Navy]" (Benn, 1974, cit. in Feinberg, 1992, pp. 48-9).

Feinberg's logical point is not a very pressing objection against potentiality accounts because it rests on the unwarranted assumption that these accounts are committed to holding that potential qualification for rights justifies actual qualification for rights. This need not be so: as I argued in section 4, a potentiality account of the basis of moral status maintains that the *actual qualification* of rights is grounded in the *actual possession* of a potential capacity.

There are, however, two versions of Feinberg's logical point which are worth noting in order to bring to light two significant implications of the difference between the CMP and the PCMP that have sometimes been neglected in the literature.

The first version is the following: "it is a logical error to deduce the *same* rights from the possession of potential and actual capacity". The reason why it would be a mistake to deduce the same rights from the possession of potential and actual capacity is that it seems reasonable to maintain that what is owed to a moral status-holder depends, at least to some extent, on the reason why she has moral status. If having moral status means being the object of directed duties in virtue of the sort of entity that one is, then this implies that the nature of the entity – i.e. the basis of moral status – informs the content of the directed duties that are owed to her. As Raz puts it, "the ground of an entitlement determines its nature" (Raz, 1986, p. 223).

Accordingly, since the potential capacity for X and the actual capacity for X are two different properties – the former is the ability to acquire the capacity for X, whereas the latter is the ability to exercise X – it follows from this that they generate different sets of rights. To be clear: this is not to say that the same right cannot be grounded in different properties. Rather, what I am claiming is that since the moral statuses of potential and actual persons are grounded in different properties, they have distinct – but, at least to some extent, overlapping – sets of rights.

The second version of Feinberg's logical point, instead, reads as follows: “it is a logical error to deduce *equal* rights from the possession of potential and actual capacity”. Indeed, it would be a mistake to maintain – as some, more or less explicitly, seem to suggest¹⁵ – that potentiality and actuality ground equal rights, insofar as the latter has priority over the former. While the priority of actuality is a very complex topic,¹⁶ for our purposes, it is sufficient to note the fairly uncontroversial point that the actual possession of X is more morally relevant than the potential possession of X, other things being equal (Burgess, 2010, p. 143). Hence, the possession of the former grounds a superior moral status than the possession of the latter. Therefore, potential moral persons and actual moral persons do not have *equal* moral status and thus they do not have equally stringent rights, other things being equal.

It is worth observing that the inequality of moral status among actual and potential moral persons has important implications for the debate on the permissibility of abortion. Indeed, we can now see that even if the PCMP might justify a foetus' right to life, this does not entail that abortion is morally impermissible, all things considered. The reason for this is that the right to life that a foetus has might be in conflict with another fundamental right of a being whose moral status is *superior* – e.g. the right to bodily integrity of the actual moral person who carries the foetus.

¹⁵ As we noted above, this seems entailed by Rawls's observation that “moral personality is here defined as a *potentiality* that is ordinary realized in due course. It is *potentiality* which brings the claims into play” (Rawls, 1971, p. 505; emphasis added). The equality of moral status between potential and actual moral persons is also explicitly defended in more classical neo-Thomist views. See Patrick Lee and Robert P. George (2008).

¹⁶ For illuminating discussions on this issue, see Witt (1994).

Hence, a commitment to the PCMP as *a* basis of moral status does not necessarily entail the impermissibility of abortion.

To conclude, potentiality accounts of moral status do not rest on a logical fallacy, for they maintain that the actual possession of a potential capacity grounds actual qualification for a range of rights. However, in this section, I argued that the difference between potentiality and actuality has significant implications for the moral status of potential and actual moral persons. In particular, potentiality views cannot provide stand-alone accounts of moral status, but they need to be part of a pluralist account of the basis of moral status which holds that potential and actual moral persons have different and unequal rights because the PCMP and the CMP are two different and unequally valuable status-conferring properties.

Conclusion

Standard liberal theories of justice have often relied on the assumption that the CMP is *the* basis of moral status. As many noted, however, this has the disturbing implication of excluding a wide range of entities from the scope of justice. In this paper, I argued that liberals have in their arsenal the theoretical resources to offer a powerful response to this challenge: liberals should embrace a pluralist account of the basis of moral status which maintains that the CMP and the PCMP are two bases of moral status.

This pluralist account has significant implications for liberal theories of justice: on the one hand, it identifies a status-conferring property that almost all human beings have, but nonhuman animals lack. Therefore, it shows that liberals can broaden the scope of justice while, at the same time, maintain that the rights of almost all human beings should have priority over the rights of nonhuman animals. On the other hand, it reveals that – *contra* what is commonly believed – actual and potential moral persons have different and unequal rights, other things being equal.

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