Ethical Implications of Reflective Equilibrium: How Actions Influence Moral Status

Lucy Simpson

A thesis submitted in partial fulfilment of the requirements of Nottingham Trent University for the degree of Doctor of Philosophy.

2024

Abstract

In this thesis I argue that if the method of reflective equilibrium is adopted, then we ought to accept that the moral status of human beings can fluctuate depending upon the moral actions they perform.

In the introduction I lay down the groundwork of my argument and explain what the method of reflective equilibrium is.

In chapter one, I define 'moral status' and examine its implications for moral obligations. I critique what I call the 'common sense view' of moral status (demonstrating that a philosophically informed account is required), discuss the notion that moral status comes in degrees, and make a crucial distinction between intrinsic and relational moral status that features prominently in the later chapters.

Chapter two discusses and rejects the egalitarian view that every human being has the very same moral status.

Chapters three, four and five discuss the most widely held view of moral status in some detail. This is the moral individualist view according to which a being's intrinsic moral status should be based on its individual characteristics rather than its relation to anything else or membership in any group (e.g., its species membership). Chapter three focuses on Peter Singer's view, and chapters four and five on James Rachels's and Jeff McMahan's. Although the term 'moral individualism' is most closely associated with Rachels and McMahan I make it clear that Singer is also a moral individualist.

Although I endorse much of what the moral individualists say, I maintain that there is a major criticism of the view that mandates a major revision of the extant versions of the view. In chapter six I outline this criticism, focussing on the so-called problem of marginal cases.

The basic criticism is that the method of reflective equilibrium requires that moral individualists take into account our intuitions regarding just desert.

In chapter seven I elaborate on the themes of just desert, deservedness, and punishment, and consider our intuitions regarding these themes in more detail.

Finally, in chapter eight, I bring together the threads from the previous chapters to develop my own account of moral status, according to which, as advertised, the moral status of human beings can fluctuate depending upon the moral actions they perform.

Acknowledgments

I never really know what to say in such acknowledgements, as I'm sure they all sound the same to external readers, examiners, and supervisors after a time. But in order to follow convention I shall thank all relevant parties who have helped me during the undertaking of this thesis:

Thank you to Nottingham Trent University for letting me study there, and gain over £100,000.00 of debt which I must now spend the next 30 years working off. I'm hoping it is money well spent, and that I will be able to work to pay this off. If not: thank you to the United Kingdom's government for absorbing all of my student debt.

Thank you to my cats for repeatedly walking over my iPad during the writing of this thesis (NOTE: If any examiners find any terms such as "fhhfjrprpfgjl;pppp", "998ioiojiooooooo" or "“';…..kjknjknbza`" please do point this out, and I shall add the appropriate cat as an additional author, and reference their contribution formally).

I would thank my family, but I am certain that none of you are going to read this, and I am even more certain that none of you have the foggiest what I actually do.

But in all sincerity, I thank those people which without your help I could not have even gotten to this point of submitting:

Neil: Thank you for your help with this thesis, but more specifically for challenging me and forcing me to build up the integrity of my view. I have enjoyed our sparring over the years and shall miss it.

And, lastly:

Benjamin: in previous dissertations I have prided myself on having something short or funny to say to you in these acknowledgements, as I have really found them to be a bit pointless and forced. But, writing this now I can't really seem to bring myself to say something even remotely amusing or whimsical. Really, what I find myself wanting to do is to genuinely thank you. Obviously, not just for your help with this thesis (which has been astronomical, I know) but for all the cups of coffee, the patience, the kindness, the humour, the sternness (when it's been needed, although not at all wanted), and the time you have spent with me over the past eight or so years. As much as I know I have been a (ginormous!) pain, I do hope you know how much I value all of this, and you, and that I couldn't have done this without you. Really, genuinely, hand on heart, thank you so very much.

PS – Just to add, this only applies if I pass, obviously. If I fail spectacularly in this endeavour, then forget my ridiculously saft tone above, and just remember me as being the neurotic, abrasive, slightly amusing character you otherwise know me to be.

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Introduction

In this thesis I explore the topic of moral status, and the view that humans and non-human animals possess different levels of moral status. As I proceed, I will consider a number of different views, for example: the common sense view; egalitarianism; sentient utilitarianism; and moral individualism.[1] These views all inform the basis of my thesis, which aims to address a key point that I have identified as being missing or absent from the current literature on the topic. The absence is the effect of a being's moral actions on their moral status.[2] I will defend a new account of moral status that takes this into account and according to which moral status is action dependent (i.e., according to which moral status can vary depending upon the moral actions a being performs).

In short, the position defended in this thesis is as follows: at least some of the actions you or I commit really do have an effect on our moral status. If, for example, we commit horrific, morally reprehensible acts, then we lower our moral status. We are, in short, worth less (morally speaking) as human beings than those who have not performed such actions. If, on the other hand, we perform saintly, morally praiseworthy acts, we raise our moral status.[3]

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[1] In order to avoid repetition throughout this thesis I will not be explaining the meaning of these terms here. Instead I just seek to introduce the terms themselves, with the aim of outlining what I will explore in depth in later chapters. So the exact meaning (if one is unfamiliar with the terms) is not strictly important here, and will become clearer as this thesis progresses.

[2] NB, I use the term 'being' here and throughout to mean any kind of individual, whether it be a rock, a plant, an animal, or a human.

[3] I notice here that I have already used the term "moral status" several times without explicitly making the meaning clear. I outline what I mean by the term "moral status" in detail in chapter one. However for sake of clarity, for now, take the meaning to be something like "the moral significance or weight that a thing has". As I have said, a more thought-out, in-depth definition will be given in the first chapter of this thesis. I should also add that there is a caveat to my thesis as it has been stated here. The caveat is that, if a being is not morally responsible for their actions, then the action-dependent part of my thesis does not apply to them.

And so, we are, worth more (morally speaking). This means that some human beings do in fact have a higher moral status than others. But, as will become clear, I go further than this and explore the possibility that some human beings can and do have a lower moral status than some non-human animals, in the most extreme of cases. Thus (as I am perfectly aware), in this thesis I defend a highly controversial view, and place myself at odds with the vast majority of the published literature on moral status. Nonetheless, it is the view that I think is true, given the arguments I will present. In chapters one to five I introduce and then survey the literature on moral status in order to lay the groundwork for my positive view, which will be developed in chapters six to eight.

My overall approach in arguing for this thesis is to examine our intuitions on moral decision-making matters. Although I will make use of a range of different thought experiments to draw out our intuitions, most often I will make use of burning building thought experiments where we have to make a straight choice between saving one being or another. It is this use of this hypothetical thought experiment (among others), and the reflection upon our intuitions concerning the moral decision-making processes in these, that I use to highlight the deficiency in the current literature, that is, that action is not considered as a morally relevant component of moral status.

I. Context

Before I outline what is discussed in this thesis, it is important that I first outline why it is necessary at all — and why I have identified this topic for my thesis.

To those familiar with the literature, the topic of moral status can seem to have been exhausted, with little more to say about it. Indeed, in recent years there are fewer papers being

published on the topic.[4] However, I am certain that the topic of moral status — with the implications it has for the rights and the level of treatment that beings are due— remains as relevant as ever, with the increasing number of people who are becoming vegans or advocating animal rights. In the current climate, it seems the notion of accountability for our actions is also called to the forefront of discussion, yet there seems to be a tension between the idea that our actions matter morally, and the idea that they have no effect on our moral status.[5] And it is this which I aim to demonstrate by the end of this thesis.

Throughout my previous studies, which have included discussions of the value of objects, animals, and people, it became clear to me that moral status — the moral value that a being possesses — is tied to the notion of accountability or deservedness, and that this has been overlooked within the literature to date. I believe that this link is important, and as such it has become necessary for me to explore this in detail in this thesis.

For those who are unfamiliar with the literature on the topic of moral status, the practical relevance of my topic may be called in to question more broadly: why does it matter what value a being has? Well, here I argue that it is of the utmost importance. The (moral) value that a being has (whether this be a human being, a cat, a tree, a van, or, a cup of coffee) informs how we treat it, and informs our views on how we think we can and ought to treat it.

This means that if we viewed nothing as having any moral status at all, if there were no importance to the topic, then we would be able to do whatever we pleased to any being, regardless of the impact, significance, or harm that those actions may have on that being. So,

[4] I'm thinking here of the apparent popularity of the topic of moral status in the 1970s through to the early 2000s, with multiple works being published on this specific area by noted philosophers such as Kittay, Kagan, McMahan, Singer, Scanlon, Tooley, Diamond and Dworkin (to name but a few).

[5] As I have alluded to above, the notion that actions are morally relevant properties to a being's moral status is seemingly overlooked within the literature. This gap will become clear throughout the thesis, as I move through moral individualist, egalitarian, utilitarian positions on moral status.

if we never questioned how we ought to treat human beings, or the (moral) value that beings have in general, then our concepts of rights and obligations, of laws and protections, would fall apart. Although it might not seem so at first glance, the topic of moral status and the conclusions we draw from our study of it have far reaching implications for all beings.

To give some brief examples, if the topic of moral status were not important we wouldn't consider questions about the permissibility of eating non-human animals, or using them for cosmetic testing. This would mean that it would be, perhaps without question, fine to use non-human animals to experiment on for fun, or for profit, or to benefit ourselves in some other way. The same line of thought could also be applied to human beings such as you or I. Without concerns about moral status we (human beings) could reasonably treat any other human being in any way we like. If we did not carefully consider why we can (or cannot) treat someone else in a certain way, then our laws concerning the protection of human rights would have no foundation. This means that here it would feasibly be fine to treat any other human being in any way we like, without regard for the impact our actions would have on them.

Returning to the gap in the literature that this thesis addresses in relation to the link between moral status and action, the importance here is perhaps less obvious to an outside reader. Here I argue that by allowing that a being's actions have an effect on their moral status it will enable us to clear up intuitional conflicts that we face in moral decision-making processes, and to apply the concept of moral status more fairly across all (conscious) beings. For clarity, by 'more fairly' here I mean that if the conclusions of this thesis were implemented, then moral status, and the value we believe beings have, would better fit with our intuitions on the matter – and so, if a moral dilemma were to occur, we would not have to discard a

traditionally ‘less valuable’ being in favour for a human being, when it does not reflect our intuitive judgement on the matter.[6]

I appreciate that this seems somewhat abstract at this point. However, the concept of ‘fluctuating moral status’, as I shall call it – that is, a kind of moral status that can vary, up and down, dependent on the actions that a being (more specifically *‘moral agent’*) commits – has simply not been developed in the literature to date. As such, I am here simply laying out important groundwork in abstract terms before introducing it and arguing for it in more concrete terms. And so, this idea will become much clearer, and much less abstract, as this thesis progresses.

A further point to bear in mind while I am putting this thesis into context is one relating to the linguistic choices and language I use throughout. It is worth noting here that there may be language used in this thesis, or referenced from past work of philosophers, which some may find distasteful (or perhaps even offensive). This is particularly important when we arrive at chapter six, *the argument from marginal cases*, where I discuss cases of human beings who are believed to have mental capabilities comparable to non-human animals. However, it is important to note that great care has been taken to follow the conventions set in the current literature in order to make sure that no unnecessary offence is caused, and that all beings are discussed with appropriate dignity. In relation to the references to past literature which may use terminology that some may find offensive, or present ideas which some may find distasteful, it is worthwhile noting that great care has also been taken to ensure that these extracts are of importance and represent significant philosophical ideas which hold weight in relation to this thesis. In places, I have altered the terminology used, whilst retaining its content.

[6] Though, to be explicit in my position here, I do not intend for this thesis to be action guiding. I consider the context of this thesis to be theoretical, but focus on using the theory to assess and “weigh up” our intuitions on particular matters. This will be seen throughout this thesis through the use of the thought experiments.

As such no arbitrary choice has been taken when it comes to selecting passages to discusses, and from these I have taken great care in modifying language choices in order to better reflect current views on these topics. I will briefly return to this issue in chapter six, at any rate, and say a little more at the point at which it becomes most relevant.

This leads to me on to my final point in relation to the context of this thesis: during my time studying moral status it has become apparent that there are certain groups of human beings who are thought of differently in the literature due to the characteristics they possess. These groups are often called 'marginal cases' (as mentioned, above), and typically include human beings who possess severe cognitive disabilities, foetuses, and newborn babies. As the current most widely held model of moral status stands, members of these groups are considered to have a lower moral status than 'typical' human beings (such as you or me), because of the capacities and characteristics they possess in comparison to those human beings. However, as I will argue in this thesis, this is not always supported by the intuitions we ('typical' human beings) hold when we are faced with moral dilemmas concerning the aforementioned marginal cases, and morally bad 'typical' human beings. As such, I believe that the view I defend in this thesis in fact works as a corrective regarding those human beings and that, as such, many who find current work on moral status to have elements that are offensive, should find my thesis to be less so.

The main point of what I have so far said is this: in this thesis I will argue that if we take our moral intuitions seriously, we ought to hold that the moral actions a being performs can have an effect upon its moral status. In relation to this it is worth noting up front that I rely upon a methodology according to which we are justified in relying upon our intuitions when building our moral theories. This, in its most broad sense, is known as 'moral intuitionism'. Indeed, my argument will be that *if* one adopts this methodology, then one must accept my conclusion regarding the effect that actions can have on moral status. Note, however, that this

is a conditional claim. As such, it will remain open to someone who disagrees with my conclusions to reject the methodology I employ altogether. That is, if followed to its logical conclusion, my argument will achieve one of two things:

1. It will show that there is a flaw in the most widely accepted account of moral status which ought to be corrected.

   Or,

2. It will demonstrate there is a significant issue with relying upon our moral intuitions when attempting to justify our moral judgments (i.e., there is something wrong with moral intuitionism).

Either way, the conclusion I defend is a significant one, for the methodology I employ is not an idiosyncratic one. Indeed, it is the most widely employed methodology in the moral status literature today. Accordingly, in the next section, I say a few words about it in order to introduce it more fully.

II. Moral methodology

As discussed above, this thesis relies upon the methodology known broadly as 'moral intuitionism' in order to explore the concept of moral status. It is important to note, however, that this thesis does not itself offer anything like a *defence* of this methodology. The purpose is, rather, to use the methodology to draw out its consequences for moral status. Nonetheless, it is worthwhile dedicating some time to explaining in a little more detail what this methodology is, and why it is at least plausible. This is the purpose of this section.

Firstly, in order to avoid confusion it is necessary to note here that the term 'intuitionism' is used in the philosophical literature on morality to describe a number of different views. For

example, it is sometimes used to describe the view more fully described as '*faculty-intuitionism',* sometimes to refer to the view known as '*moral pluralism',* and sometimes to refer to the view known as '*reflective equilibrium'*. It is the third of these that truly picks out a methodological position, and it is this that I will adopt in this thesis. So, although the first two views do bear some relation to the methodological position I will employ, they will not be of direct concern, and so I shall not dedicate space here discussing them.[7] Instead, it is the reflective equilibrium version of intuitionism that I focus on, and upon which my thesis is built.

On this topic, then, it is important to discuss what our so-called 'intuitions' are, where they come from, and what role they play in the methodology. On this, Brad Hooker says the following:

> Most philosophers nowadays who mention 'moral intuitions' refer to a subset of moral beliefs, but this subset is not defined as the moral beliefs arrived at by some special faculty. Instead, a distinction is made between moral beliefs that are arrived at by inference from other moral beliefs and moral beliefs that are arrived at non-inferentially. A belief arrived at non-inferentially may also be accessible via inference. But a belief's status as an intuition consists in its being arrived at not by inference from other moral beliefs. (Hooker, 2002: 76)

[7] Of course, it is interesting to note what both of these mean in a wider philosophical context. Faculty-intuitionism is often understood to mean something like "our intuitions are special senses (faculties) which allow us to perceive objective moral truths". And, moral pluralism is often understood to mean (in simple terms) something like "there are multiple moral principles which we must adhere to, but there is no strict order to these principles". However, as I have said, this thesis is built upon the reflective equilibrium method of moral intuitionism (which is more widely accepted), and so no more space is to be dedicated to the other two views, but for more on faculty-intuitionism, see: Strawson's (1949) *Ethical Intuitionism*; and, for more on moral pluralism, see: Gaut's (1993) *Moral Pluralism*.

And Jeff McMahan makes a similar point:

> As I will understand the term, a moral intuition is a moral judgment – typically about a particular problem, a particular act, or a particular agent, though possibly also about a moral rule or principle – that is not the result of inferential reasoning. It is not inferred from one's other beliefs but arises on its own. (McMahan, 2013: 104-105)

So, here we can see that intuitions are not (or, at least not necessarily) thought to arise from some 'special moral faculty' that we, as humans, possess to pick out objective moral values and prescriptions.[8] But instead, they are simply beliefs that arise spontaneously within us when we confront moral decision-making situations. Those who employ the method of reflective equilibrium take these intuitions to have a certain evidential value – that is, they suppose that we are justified in taking our intuitions as being, at least defeasibly, true. Of course, there is the issue of precisely *how* these beliefs arise, and *why* we are justified in taking them as true. To engage in this debate is to engage in moral epistemology, about which I will have relatively

[8] This was the view defended by G.E. Moore in his *Principa Ethica* and criticised by J. L. Mackie in *Ethics: Inventing Right and Wrong* (in particular, with his 'argument from queerness'). For those unfamiliar, in this argument Mackie sketches out the position that although when we (human beings) discuss questions of morality and ethics we commit ourselves to objective values and prescriptions existing, there are in fact no such things. In short, his view is that while moral realists might be right about morality in principle, in practice this is not how the world is. While I do not have the space needed to discuss this in detail, it is worth noting that I reject it in this thesis and instead adopt a moral realist framework, which I believe to be right, and is also commonly assumed by moral philosophers in the current literature on moral status — and it is on this assumption that the reflective equilibrium form of intuitionism is based. For more on Mackie's criticisms, see: Mackie's (1977) book *Ethics: Inventing Right and Wrong*, or, his (1982) book *The Miracle of Theism*. For some examples of moral anti-realists, see: Carnap's (1935) *Philosophy and Logical Syntax*, or Hare's (1952) *The Language of Morals*. And for some examples of moral realists, see: Moore's (1903) *Principa Ethica*, or Foot's (1983) *Moral Realism and Moral Dilemma*.

little to say here, for, as mentioned, it is not my purpose in this thesis to *defend* reflective equilibrium, but rather to *use* it. As it turns out, this is quite normal. Most working in the field of normative ethics do not engage in the epistemological debate either, but rather simply take it for granted that we are permitted to take our intuitions as being, at least defeasibly, true. Nonetheless, I think there is a simple point that can be made that lends plausibility to our viewing our intuitions in this way.

The simple point is this: when we are engaged in the practical business of moral theory construction, we have to start somewhere. That is, we must begin our investigation by taking some moral propositions as true in order to build a theory at all. To see why imagine that an alien who lacked any kind of moral sense whatsoever were to visit Earth and be confronted by a morally repugnant situation (e.g., a case of brutal murder) and a morally praiseworthy situation (e.g., a case of giving food to the hungry). If the alien, even upon understanding the relevant features of the situation (that the first causes unwanted pain and the second alleviates suffering, and so on) had absolutely no idea whatsoever which was morally good and which bad, the alien would have no chance whatsoever of even making a start in building a moral theory. That is to say, I think we must take our moral intuitions seriously, and consider them to have evidential value when building our moral theories, simply because we have no other choice. Our intuitions supply the data points for our moral theories, and we could no more accept a moral theory that was in some wholesale way inconsistent with them than we could accept a physical theory that was in some wholesale way inconsistent with observational data. And so, in this regard, we *must* rely upon our intuitions to serve as our starting place, because if we do not, then, simply put, we have no other place to start.

It is also worth noting that those who adopt this methodology accept a broad moral realism according to which moral truth is, in some sense, out there to be discovered, and is not in any sense an invention of humanity, or a social construction, or similar. Again, I will not be

trying to justify moral realism in this thesis, but assuming it, as others in the debate also do. In the context of the method of reflective equilibrium, the idea is that as human beings we are generally good trackers of truth, and our moral intuitions should be taken as tracking, again defeasibly, moral truth.

The major point to take from the above is simply that all this method assumes is that our intuitions have some sufficient evidential status to serve as data when building a moral theory. It is compatible with a whole host of positions in moral epistemology, including both naturalism and non-naturalism. For more on this see, again, Hooker (2002: 80) who describes this branch of intuitionism as being "the least controversial sort of moral intuitionism". Indeed, as mentioned, this view of moral intuitions is implicitly adopted by most who work on moral theory construction, and some defend the position explicitly (e.g., McMahan, 2013).

Due to this being the most accepted framework within the moral status literature, and the 'least controversial' I believe it to be the correct and most appropriate framework to utilise throughout this thesis. This does mean that in this thesis I am not specifically researching or seeking to answer questions about the *nature* of our intuitions regarding what is good or bad, right or wrong, and so I appreciate that in some senses this thesis will leave some questions unanswered. However, at certain points my argument will lead me to consider *why* we have the intuitions that we do, and so I will have at least something to say about these matters. Nonetheless, I do not say all that much. But, as this thesis is focussed on the notion moral status, and as most within the moral status literature also adopt reflective equilibrium, I believe it to be entirely appropriate to work within the framework being outlined.

The above gives an account of the status of intuitions within the method of reflective equilibrium, but so far I have not explained how they function within that method. So, I now turn to this. In short, the method views the attempt to build a moral theory as the attempt to give a set of general propositions that systematise and lay down order upon our intuitions. That

is, the attempt to build a moral theory is the attempt to devise a general account that entails that certain things are good or right and other things are bad or wrong in a way that matches, as best as possible, with those things that we intuitively think are right or wrong, good or bad. For example, most have the strong intuition that killing a person is wrong. And so, at the theoretical level we can ask: why is this? Here McMahan illustrates how we might proceed.[9] He says:

> We could proceed by trying to understand why killing a person is generally wrong and why it is generally so much more seriously wrong than killing a lower animal. What are the relevant differences between a person and a lower animal? Are the properties of persons that make killing them generally worse all intrinsic properties? Or is part of the explanation of the greater wrongness of killing persons that we normally bear certain relations to them that do not exist between ourselves and animals? In addressing these questions, we may consult our intuitions about a range of particular cases and this may yield provocative results. (McMahan, 2013: 104)

The idea is that when asking moral questions we can consult our intuitions about particular cases to test the theories we have devised. The idea is then that go back and forth between our intuitions and theory, sometimes altering the theory to accommodate intuitions that it disagrees with, at other times rejecting the intuitions. This is what the method of reflective equilibrium consists in, because at the end of the process we will (under ideal circumstances) have reached an equilibrium between theory and intuition on the basis of reflection. There are difficult questions here, of course, regarding when we should alter theory to accommodate intuition, and when we should reject intuition in favour of theory. But, I do not get into this issue in the

[9] I will return to McMahan in a later chapter (chapter five) to discuss his work on moral individualism. For more on this, see page: 129.

abstract here, for it is not at all clear that there is much that can usefully said in the abstract. Instead, I will justify my decisions in this regard in practice – that is, as I progress with my argument.

Now, throughout this thesis I will be using a particular range of intuitions based upon the well-known (within the ethical literature) hypothetical example of a burning building. This will be used repeatedly to draw out some of our most central intuitions regarding the relative value or status of different types of being. The idea is that the intuitions elicited can be used to test the theories of moral status that have been put forward. The common form that the burning building hypothetical example takes is as follows:

I.0. There is a burning building. Inside, in two separate rooms (spaced equidistant from the only entry and exit point) are two beings. By entering the burning building you are not at risk to yourself (and so are bound to survive entering and exiting unscathed), and nobody else is coming to help. You, and you alone, must decide which room to enter and which being to save from the burning building. Whichever being you do not save will have no other way to escape the burning building, and so will certainly perish in the fire. You have two choices:

In room A: Some 'thing'.

In room B: A different 'thing'.

Which do you save?

As I state above, this hypothetical example will be altered as the thesis progresses, however this first case provides a good insight into the methodology of reflective equilibrium moral

intuitionism.[10] Here, in [I.0] I have used a placeholder (of 'thing') to show that there would be an object in each room, but this can really be substituted for anything to test our intuitions. Take the following example:

I.1 In room A: A cat.

In room B: A plate of chips.

Which do you save?

Here, in [I.1] then we can see that there is a decision-making process which we are forced to engage with. In this example I have chosen two different objects, the first being a cat (a sentient animal) and the second being a plate of chips (an inanimate object). We can intuitively weigh up which we ought to save in this situation. By using our intuitions we can make a judgement and come to the conclusion that the morally right thing for us to do is to save the cat.

One point to note here is that in this kind of case it does not seem to require much philosophical reflection to begin building a 'theory' about why we have the intuition that we do. The common sense thing to say when reflecting on this case is that we have the intuition that we do and so make the judgment that we do because we know that cats, being sentient animals, can suffer and feel pain, whilst, as delicious as a plate of chips is, there is no moral reason (as far as we can see) for us to save the chips over the cat. So, in this case it seems immediately clear that when we deliberate, we give weight to the qualities that the cat has (i.e.,

[10] By "altered" I mean that the object or thing in room A may be changed, and/or the object in room B may be changed. Additional information about the thing (or things) in the rooms may also be provided. However, this will become clear quickly as this thesis progresses as I will continually recall a version on this hypothetical example throughout the course of this thesis.

that we know that it would suffer, and we have the intuitions that unnecessary suffering is bad) over the characteristics that the chips have (cannot feel pain, even if they are tasty) and we come to a reasoned judgment that avoiding suffering is best, so we choose to save the cat. As such, I do appreciate here that this example is a little ridiculous. It might seem obvious that we should choose to save a cat over some chips. I also mentioned the obvious reasons that seem to stand behind our intuitions in this case, which might be thought of something like a 'common sense' theory. This, in turn, might suggest that there is simply no need for a more philosophical moral theory to explain our intuitions here. However, it was deliberately chosen to be obvious, as intuitions and what lies behind them are in some cases blindingly obvious to us.

However, as we will see, as this thesis progresses it is not always the case that our intuitions and what lies behind them are blindingly obvious, and in such cases we need to 'weigh up' the judgement and consider what theoretical explanation there is for it in greater depth than we did here. I return to this issue, and the 'common sense' theory, in more detail in chapter one below. For now, note that in situations where our judgements are not quite as easy to make (as it is between the choice of saving a cat over some chips) our intuitions can still provide us with the materials necessary to come to (what we believe to be) the right decision. On this McMahan writes:

> This is not to say that a moral intuition is necessarily elicited instantaneously, the way a sense perception is. If a particular problem or case is complex, one may have to consider it at length in order to distinguish and assimilate its various relevant features – in much the same way that one might have to examine the many details of a highly complex work of art in order to judge or appreciate it. (McMahan, 2013: 105)

Here McMahan is making the case that our intuitions do not always necessarily give us an instant answer, and instead we have to reflect upon the cases we are considering in some detail, so that we may come to the 'right' conclusion.

There is more to be said about all of the above, of course, but I will say no more here. My use of intuitions and reflective equilibrium will become clearer through their use in the thesis as I progress. For now, the above should serve as a sufficient introduction to make my methodology clear.

III. Overview

Now that I have explored the context and methodology of this thesis, I will move on to outline what I am going to discuss as this thesis progresses.

In the first chapter I will discuss what the term 'moral status' means. As we will see, the term has been used in a number of different ways, so it is important to ensure that there is no confusion about what concept I am discussing. I will identify the central idea lying behind the concept that will be of concern in this thesis as being one that identifies the moral weight we give to beings when considering choices about how they should be treated. There is as such a link between moral status and moral obligations (roughly, that a being has a particular moral status entails that we have certain moral obligations towards it).

I then present what I call 'the common sense view' of moral status. This elaborates on the idea introduced above that there are already widely held views about moral status within the general population (even if the term 'moral status' is not itself used). Reflecting upon this common sense view will reveal, however, that it is deficient, which will serve to justify the need for a more careful philosophical account of the notion. In short, with the common sense view, it is not always obvious what moral status beings possess, and even in the cases where it

is clear, it is not clear which beings have a higher moral status than others. In the remainder of the chapter I then lay out two general philosophical positions regarding moral status that will inform the rest of the thesis.

First, I discuss the view that moral status can (and does) come in degrees (i.e., that the moral status that two different beings can hold varies). I outline and endorse DeGrazia's position on this, which is that there is *full moral status* (FMS), *partial moral status* (PMS), and *no moral status.* The upshot will be that varying degrees of moral status impacts the obligations we have towards different beings. As such, for example, we ought to treat beings with FMS with higher consideration than we do beings with PMS.

Second, I explore the difference between *intrinsic* moral status and *relational* moral status. Roughly put, intrinsic moral status is the moral status that a being has in virtue of how it is *in itself*, whilst relational moral status is the moral status a being has in virtue of its *relations to* other things. This, I argue, is an important distinction. Drawing upon the work of Kittay, Scanlon, and McMahan, I allow that there is such a thing as relational moral status, but identify intrinsic moral status as being, in a certain sense, fundamental. It will be intrinsic moral status that I then focus on in the rest of this thesis.[11]

In chapter two I explore the egalitarian position on moral status, primarily through the work of Waldron, and Benn. According to this view, all human beings have equal moral status. I start with a discussion of this view because it raises an immediate objection to the view I wish to defend. In short, if all human beings have equal moral status, then the actions performed by any individual human being cannot effect their moral status (i.e., cannot raise or lower it). So,

[11] I appreciate this seems somewhat abstract without all of the relevant context being given to this discussion, but this will become clearer in chapter one. It is also worth noting that this is an important point to note, as if relational moral status superseded intrinsic moral status, then we would have very different obligations towards beings than those which we currently have. I return to relational and intrinsic moral status on page: 34.

if egalitarianism is true, my thesis is false. As such, if my thesis stands any chance of being true, egalitarianism must be rejected. I go on to do just this. I argue that we can reject the view on simple grounds, namely, that it conflicts with the intuitions we hold.

In chapters three to five, I then discuss some views regarding moral status that, in large part, I agree with. I begin with Peter Singer's utilitarian account of moral status in chapter three, and consider James Rachels's and Jeff McMahan's views on moral status (known as 'moral individualism') in chapters four and five. In chapter three I place special emphasis on Singer's principle of equal consideration of interests, which aims to remove the 'speciesist' element that is present in much common sense thinking and egalitarianism alike, and demonstrates that we should not always prioritise the interests of human beings over the interests of animals. In chapter four I first consider Rachel's position in detail, as he makes it abundantly clear that there is no special property possessed by human beings that could justify the view that human beings necessarily have a higher moral status than non-human animals. What drops out from his discussion of this point, and is elaborated by McMahan, is the moral individualist framework, which I consider in chapter five. In short, this is the view that the moral status that an individual possesses can only derive from the characteristics of the specific individual itself, rather than a species or group. Although this position is usually associated with McMahan rather than Singer, I will make it clear that Singer's view is also a version of moral individualism. I will also endorse this framework, and it will serve to underline my account of fluctuating moral status. As such, I will agree with much of what Singer, Rachels, and McMahan, say. However, I do not agree with all of what they say.

In the sixth chapter of this thesis, I focus on a problem known as the argument from marginal cases. I highlight that this problem should be understood as a methodological one for moral individualism, arguing that moral individualism, as it is in the literature currently, is subject to intuitional issues that specific groups pose to the current accounts of moral status

(and those which were present in chapters one through five). These intuitional conflicts are presented in a way which makes it clear as to which gaps within the current literature I am addressing with this thesis. This chapter (like others) uses the burning building thought experiment to illustrate these intuitional conflicts, and builds a case which shows that the current most widely accepted view of moral status needs revising.

Building upon this, in chapter seven I explore the notions of just desert, deservedness and punishment. This chapter — which will focus on retributivist themes – explores why we (moral agents) value those who do harm less than those who do not.

Finally, in the eighth chapter of this thesis I give a detailed account of my moral status system: fluctuating moral status. In this, I provide two principles which form the basis of the account, *the psychological property principle (PPP)* and *the moral modification principle (MMP).* At the end of this chapter I explore the possibility of negative moral status. What this means exactly will become clear, however, in short this section explores what would happen if a moral agent[12] (such as you or I) chose to commit such grievous or repeated harm which lowered their moral status. I briefly consider that if such numerous 'bad' actions were committed, whether could lead to a negative moral status being possessed by a moral agent, but discuss the idea that instead perhaps the individual in question lowers their moral status closer to zero (0) on the moral status scale. In this final section of chapter eight I explore what this would mean, and end the discussion of my thesis with some brief questions and answers in order to make my position on fluctuating moral status explicitly clear.

[12] I use the term 'moral agent' throughout, by this I mean something like 'a being which is capable of understanding right from wrong, and so we can hold them responsible for their actions'. For an example of a discussion of what moral agents are see: Pluhar's (1988) *Moral Agents and Moral Patients.*

Chapter One: On the Concept of Moral Status

In this chapter I will discuss both what moral status is, as well as what it means for something to have moral status. The key distinction that will be important in this chapter (and for the rest of the thesis) is the distinction between something having an *intrinsic* moral status and something having a *relational* moral status. By the end of this chapter, I will reject the idea that relational moral status is of primary importance and explain why I focus on intrinsic moral status in the rest of this thesis. This will then lead into the next chapter where I discuss egalitarianism, which attempts to ground intrinsic moral status in a way which gives all and only human beings full moral status. This will also be rejected, paving the way for the consideration of moral theories that attempt to ground moral status in the (intrinsic) properties that beings possess in the chapters that follow. I will also consider the view that moral status comes in degrees and endorse it. Before I come to this, first, some preliminaries.

So, as a preliminary to the discussion of what moral status is, it is first worth noting that the notion of moral status is one that is ubiquitous in the philosophical literature. Debates are very often framed using the concept. "What moral status do Ks have?" is a very common form of question.[13] It is asked about stem cells, embryos, foetuses, newborn infants, plants, non-human animals, human beings with profound intellectual disabilities, persons, supra-persons, antho-technological devices and even alien lifeforms (some of these will be explored later in this thesis in relation to the 'Argument from Marginal Cases' (AMC)). [14] However, many

[13] Here 'K' is just short for a kind of thing, e.g., cats, dogs, chairs, trees, adult human beings, carpets, plants, fish, bats, baths, shoes (ad infinitum).

[14]Examples. For stem cells see, e.g.,: Sagan and Singer (2007); embryos: Dunstan (1984); foetuses: Harman (1999); new born infants: Giubilini and Minerva (2013); plants: Warren (1997); non-human animals: Clark (1977), humans with profound intellectual disabilities: Curtis and Vehmas (2021); persons: Kuhse and Singer (2009), supra-persons: Douglas (2013); anthro-technological devices: Jotterand (2010); alien life forms: Mehlman et.al. (2013).

philosophers use the term ‘moral status’ without saying exactly what they mean by it. And, in fact, it is used in a variety of different ways, not only within the philosophical literature, but elsewhere. In what follows, then, I briefly survey what others have said about the notion in order to focus on an account that will inform the rest of this thesis.

So, how has the term ‘moral status’ been used? I note first that there are some uses of the term that fall outside of the standard philosophical use. On the standard use (as already alluded to above) ‘moral status’ is applied to individual things, and not to actions or principles, and it is on the former use (i.e., moral status viewed as a property of things) that I will focus. The non-standard use where moral status is applied to actions or principles can be thought of as a non-synonymous homonymic use (just like ‘bank’ is used in two non-synonymous homonymic senses as meaning (very roughly) ‘riverbank’ and ‘financial institution where money is kept’). In order to be clear about the standard use and distinguish from the non-standard use, then, I first turn my attention towards the non-standard uses of the term.

Consider the following examples:

Snelling (2014) discusses the so-called ‘moral status’ of the process of blood donation. He writes:

> Within the broader category of tissue and organ donation, it is possible further to distinguish types of acts and their moral statuses, from the obligatory to the supererogatory, and though the rule of rescue and family responsibilities apply and complicate in some instances of donation, they are seldom seen in one of the commonest donation acts: blood donation. Using publically [sic.] available documents

> and communications material, this paper both analyses the moral status presented and offers an alternative normative account. I argue that hitherto, blood donation has been regarded in the UK and elsewhere as altruistic and supererogatory. (Snelling, 2014: 341-342)

Here the term ‘moral status’ is applied to actions, with types of moral status including being obligatory and being supererogatory. This is clearly different from applying the term to things such as human beings, non-human animals, or chairs (for example) because it makes no sense to say that a human being is itself obligatory or supererogatory.

Similarly, in his (2004) paper, Kramer discusses the ‘moral status’ of an act, and so applies it to something with a different ontological status to a thing like a human being or a cat. Kramer writes:

> Although I believe that such an empirical thesis is false, it might conceivably be true as a contingent matter of human psychology, and in any event its truth-value is beside the point when we gauge the moral status of the act of shooting another person. For the task of apprehending that status, we have to ask a conditional question parallel to the one which I have posed about the rule of law. (Kramer, 2004: 70)

Here moral status is used to discuss the act of shooting someone. However, this again is a non-standard use of the term. To see this clearly, note that the term ‘moral status’ could be changed here to say ‘ethical rightness’ and the meaning of the sentence would remain the same. However, as will be explored later in this chapter, ‘moral status’ as used in its standard sense is

not synonymous with ‘moral rightness’, and as such this use of the term does not relate to the standard use of ‘moral status’ within the philosophical literature.

These examples could be multiplied but are sufficient to demonstrate that the term ‘moral status’ has been used outside of the standard philosophical use. However, these will not be considered to be discussing true ‘moral status’, and as such will be excluded from further discussion in this thesis. Before coming to the standard use, it is worth noting some cases where the term ‘moral status’ is applied to the right kinds of thing, but still seems not to be applied in the standard sense.

Consider first Yang et.al.’s (2010) paper. Here they discuss the negative impact that a stigma associated with mental illness (specifically schizophrenia, in this paper) has on the ‘moral’ status of a person. They write:

> Because one’s face or moral status is an embodiment of one’s power to engage in interpersonal action in local worlds in China, ‘‘losing face’’ due to mental illness results in becoming powerless to engage in local social interactions. Rather than resulting in blatant discrimination, community recognition of schizophrenia frequently manifested in nonverbal behaviors and group gossip that directly attacked one’s moral standing and consequently ability to negotiate effectively in the interpersonal sphere. (Yang et.al., 2010: 842)

The argument in this paper is that any stigma, or poor perception held towards those who have a mental illness, have negative impacts on people who suffer from mental illnesses, and thereby lower their moral status. This leads to social marginalisation, as well as poor social and clinical outcomes for the person who has a mental illness. This view expressed here does not actually

discuss ‘moral status’ in the standard philosophical sense, because it entails that a person’s moral status is a matter of subjective opinion. That is, it maintains that those with mental health problems do in fact have a lower moral status because they are stigmatized. As we will see, on the standard use of ‘moral status’, what moral status a being has is a matter of objective fact.

As a final example, consider Ewin’s (1991) paper. In this paper Ewin claims that “corporations are moral persons in that they have rights and duties”, writing:

> Corporations, as artificial persons, can have all sorts of rights and duties, but they lack the emotional life without which there can be no possession of virtues and vices. The moral personality of a corporation can be no more than a Kantian moral personality, restricted to issues of rights and duties; it cannot be the richer moral life of generosity and courage, meanness and cowardice, that is lived by "natural" people. The moral personality of a corporation is exhausted by its legal personality’s and that fact, taken together with the representative function of a corporation's management, places important limitations on what constitutes ethical behavior on the part of management. Those limitations are interesting because a common misunderstanding of them can lead ethical managers to behave in quite unethical ways and can lead members of the public to have quite improper expectations of corporations and management. (Ewin, 1991: 749)

This use of the term isn’t clearly a non-standard use, as corporations are of the right kind of thing to have a moral status. However, Ewin’s focus here is on the idea that corporations are things that themselves have *legal* rights and duties. And so, although this is in one sense a standard use, it is not a *standard* standard use (so to speak). As we shall shortly see, on the

standard use of 'moral status', the focus is on what *moral* obligations we have towards things that possess a moral status.

As a final preliminary, note that within the philosophical literature other terms besides 'moral status' are used with the same intent, with philosophers and thinkers opting to use synonymous terms such as: 'moral standing', 'moral considerability', and 'moral worth'. But what is exactly meant by use of these terms varies little in the philosophical literature. However, for the sake of clarity I will stick to using solely to the term 'moral status'.[15]

I. What is moral status, and what possesses it?

Firstly, it is important to note here that moral status isn't an object or 'thing' in and of itself. It can't be picked out from a line-up of other objects (such as chairs, or trees) and it's not a property that can be easily identified by empirical means (such as the property of being red, or the property of being sharp). Instead, moral status is a status conferring property, which in and of itself is dependent on the possession of some other morally relevant property (or properties).[16] In the philosophical literature what exactly the morally relevant property is which entitles a being to moral status, or a higher level of moral status than another, is discussed at length. This is a topic we will consider below and return to in the chapters that follow. For now, it is important that what is meant by 'moral status' is explored in order to give clarity to the rest of this thesis, and so there is no linguistic confusion or technical ambiguity later in the discussion.

[15] For a dissection of what the differences these terms are exactly, see: Buchanan (2009). This provides a clear and succinct breakdown of the differences these terms can have in the literature, which I do not have the space to provide myself, here.

[16] By 'property' here I allow relational properties.

So, in the philosophical literature, the standard use of the term ‘moral status’ is to pick out a property that applies to a thing and gives rise to obligations in others towards that thing. This is summarised by Warren as follows:

> To have moral status is to be morally considerable, or to have moral standing. It is to be an entity towards which moral agents have, or can have, moral obligations. If an entity has moral status, then we may not treat it in just any way we please; we are morally obliged to give weight in our deliberations to its needs, interests, or well-being. (Warren, 1997: 3)

More recently, Lovett and Riedener have put this as follows:

> When we say that something has full moral status, we mean it can make the full range of moral claims on us. Any moral obligation we can have to a flesh-and-blood person we can have to that thing. When we say that something has a fragmented moral status, we mean it can make some, but only some, kinds of moral claims on us. Thus, we can have some, but only some, kinds of moral obligations toward it. These obligations don’t merely concern the thing. You can have obligations concerning your hat, but your hat doesn’t have moral status. They’re obligations to the thing. They’re directed obligations. We don’t have an account of what such obligations are. But, intuitively, there are directed obligations. Sometimes we don’t just have obligations tout court. We owe things to particular moral subjects. (Lovett and Riedener, 2021: 222)

We can record what these authors are emphasising here as the following principle:

The Obligation Principle: If a thing of a kind K possesses moral status, then it means that we (other moral beings) are obligated to treat that K in certain ways, or to not treat that K in certain other ways.

As the possession of moral status by a being is tied to the obligations we have towards it, questions surrounding the moral status of Ks centre on the question: "is it wrong to commit this act, X, to this object of kind K?". We can introduce different scenarios in which the act, X, is varied. X could be anything that could be done to a K: stomping on a K; lying to a K; inflicting serious harm to a K through a violent physical act; grinding a K to a powder; farming K's for a profit and benefit to other Ks; burying a K in soil; throwing a K in the ocean. As you can imagine from the list I have provided here, the possibility of what acts X could be is seemingly infinite. It is only when we define what exactly K is that the wrongness (or rightness) of X (an action) becomes meaningful.

One last point that should be emphasised here, before I turn to the need for a philosophical account of moral status, is that giving an account of moral status is not to give an account of the *whole* of morality. To give an account of moral status is, in effect, to give an account of the moral *weight* that a being should have within our moral deliberations. It is consistent with this that we should take into account a whole host of other factors when deciding what we should morally do. To illustrate, suppose we had some way to quantify moral status, and consider that we deem one person (A) to have a moral status of 10, and another (B) a moral status of 5. In a straight moral choice between saving A or B from a burning building, without any further complicating factors, then given this weighting we ought to save A. But suppose instead that A and B are both in need of some good that we have going spare, but that

we had previously promised to B and not to A. Then it may well be that we should give this good to B and not A, despite the fact that B has a lower moral status than A. And so, to focus on moral status is to focus on the intrinsic worth that a being has, irrespective of complicating factors. It is for this reason that the burning building thought experiment serves as one of the best tests we have for our intuitive judgments about moral status, as it serves to isolate our judgments about moral status from other complicating factors. I'll briefly return to this point again below. But, for now, I turn to the need for a philosophical account of moral status.

My approach in drawing this issue out is to first of all treat moral status as an intuitive concept; that is to say, to consider the common sense view of moral status and what possesses it.[17] I do this because, according to the methodology I adopt, our intuitions have evidential weight. As such, someone might argue that we can simply rely entirely upon our intuitive understanding of cases to give an account of the notion of moral status. However, as we will see, this will not suffice, and so by considering the common sense account I will demonstrate that we need to go in search of a philosophically informed theoretical account of moral status.

The most salient feature of the common sense view of moral status is that there is a hierarchy, with human beings at the top, other animals below (with some higher than others),

[17] By a 'common sense' view of moral status, I mean simply the view of moral status that most people would find to be intuitively clear without engaging in any serious philosophical reflection. I will be considering, that is, the kinds of thing that the so-called 'man on the Clapham omnibus' would say about moral status if asked. In English Law, this is equivalent to the 'reasonable person' – a hypothetical average person with no mental aberrations and a good level of education. I recognise that what exactly counts as such a person varies across times and cultures, but here I rely upon what I take to be the kind of view held by an ordinary Western individual from the 21st Century. As such, because I am writing in the Western tradition in the 21st Century, I refer to this as 'our' view. At any rate, this will not matter, because the point I will make is that we cannot rely solely on this common sense view. I could have started with the common sense views of any person from any time and will have drawn out similar difficulties.

and inanimate objects at the bottom. Why is this? To investigate the issue, I begin with the most 'clear cut' common sense cases.

Arguably the most clear cut cases we can discuss when considering the common sense view of moral status of beings that do not possess any consciousness or life force at all. In the introduction I considered a plate of chips, but for the sake of variety, let us consider stones, and ask:

A. Is it morally wrong to stomp on a stone?
B. Is it morally wrong to tell a lie to a stone?
C. Is it morally wrong to throw a stone in the ocean?
D. Is it morally wrong to bury a stone in soil?

I could continue, but I suspect my point has become apparent even with the limited number of questions which I have posed. The common sense view of moral status (that most of us seem to possess and utilise in our everyday thought and actions) would say that it is obviously not wrong to do any of these acts to a stone. I also think that common sense has something to say about why we have these intuitions, for if we ask "why is it not wrong to do any of these things to a stone?" I think most people would say: "Because the stone is not living, it has no consciousness or awareness. It is nothing but a stone." And there appears to be no obvious other reason as to why it would be wrong to do any of these things to a stone – there will be no stone family that misses the stone that has been thrown in the ocean because stones are not capable of missing anything (nor do they have family units), and there will be no stone friends that grieve or are harmed by the violence inflicted on the stone, and the stone itself will not grieve the loss of a normal life after a violent attack because (again) stones do not possess the capacity

to suffer grief or harm.[18] It is clear then, at least on the surface of things, that a stone itself does not actually possess any sort of moral status that would justifiably prevent another being from treating it in any way at all. In short: according to common sense, it would be permissible to do anything to a stone.

There is, however, a caveat to this. Let us briefly consider that this stone belonged to someone: perhaps the stone was the property of a small child who had grown very attached to the company that they believed this stone provided. Then common sense would deem it plausible that we should not do anything we please to this stone, for the sake of the owner of it.[19] As such, common sense would perhaps allow that a stone can possess what we might call a relational moral status.

Continuing with the common sense view, let us consider a different kind of case where it is just as obvious to common sense, but in this case let it be one where a thing does have moral status: is it wrong to throw a cat in the ocean? I think it is clear that common sense would say that this is wrong. And again, common sense has something to say about why this is: unlike the stone, the cat is conscious and has the capacity for suffering, and so it is sentient. This capacity for suffering is observed when cats are injured and they yowl or limp, and so it is clear that they can suffer and feel pain. As we are aware of a cat's capacity to suffer, it would undoubtedly cause the cat pain if we were to launch it into the ocean, as it would consequently

[18] Again here I am aware there are questions surrounding the Arguments from Marginal Cases (AMC), and these will be discussed in detail in chapter six (see page: 147). However for now I am just outlining the 'common sense' view on moral status, which I believe fails. This also overlaps into what I will refer to as 'relational moral status' which will be discussed later in this chapter. So for now, it is not relevant for me to discuss AMCs or relational status in detail here.

[19] However, as I will discuss later in this chapter, it seems this cannot in fact be due to the possession of intrinsic moral status by the stone, rather than the relational value the stone possesses in virtue of its ownership by a being which does possess a level of moral status of their own. See page: 34-48 for the section on relational moral status.

drown. The fact that a cat itself possesses sentience informs a level of moral status possessed by a cat.

It is likely that the image conjured by lobbing a rock in the ocean is non-emotive, whereas when the discussion shifts to a cat being launched into the ocean it becomes emotive, and some would suggest it is distressing. It seems clear that the act of drowning a cat would not, presumably, cause distress only if the cat had an owner; rather the act would be distressing for the sake of the cat itself (because it can suffer). So, we (moral agents) do have obligations to treat cats in some ways and not in others due to the properties which the cat itself possesses.[20] Thus, common sense in this case says that cats have what we might call an intrinsic moral status.

Therefore, this seems to suggest that intrinsic moral status is tied to the value that a being possesses in and of itself whilst relational moral status is tied to the value that a being possesses in virtue of its relations to another thing. It also seems clear that if a being has intrinsic moral status, the being must be in possession of some intrinsic property or properties which inform a level of treatment, or a certain kind of treatment. So, then it would be wrong to do certain things to that being if and only if it possesses these intrinsic properties. In short, obligations that moral agents have towards a particular type of thing arise in some cases from the possession certain intrinsic properties by that particular type of thing. I think all of this is implicit even within our common sense view.

[20] In fact, in chapters four and five I discuss the intrinsic properties which are argued to entitle beings to the highest level of moral status. I will examine the work of Rachels (1991) and McMahan (2005) and the moral individualist approach they present which argues the specific inherent properties needed by a being to be entitled to the highest degree of moral status (which they argue is equal to the level currently possessed by human beings).

The common sense view, then, already contains hints of the view that the possession of certain properties by certain things mean that it is wrong to treat some of them in certain ways. It also seems that where intrinsic moral status is concerned, we can draw out from common sense the idea that it is something to do with a being's psychological properties that matters, for when talking about the cat, above, the key properties that were mentioned were its pain and suffering, which the stone lacked.

However, the common sense view has its problems. For example, as mentioned, on the common sense view humans are worth more than cats and other animals. And yet if we ask why this is so, I think the best that common sense comes up with is something like "because they are human", which clearly is not a satisfying explanation.[21] Common sense, in effect, seems to treat human beings as having some kind of special property purely in virtue of being human, without cashing out what this special property is. Another example of the problems the common sense view has is that, according to it, it is more permissible to farm and eat pigs or cows than it is to eat dogs or cats. Yet, it seems fairly clear that pigs and cats, for example, can feel the same levels of pain and suffering. In addition, I suspect that common sense would consider fish to have a lower status than other animals, purely because they do not exhibit the same signals of distress as other animals, although it is agreed upon that they can (and do) suffer.[22] Indeed, although humans are placed at the top of the hierarchy, it is not at all clear that they are capable of suffering greater distress than animals, and so common sense could not rely

[21] There may, of course, be some who justify it on religious grounds that humans are more important because God has deemed them so. This is not a view I will consider in this thesis, as instead I align my position in this thesis with the moral individualists (such as McMahan, as well as in kind, with Singer). However for more on religion, ethics and moral status see: Hare (2019).

[22] Consider the case, here, from 2019, where a man decided to swallow whole a live goldfish he won at a fun fair (Barnes, 2019). This case made headlines because it was to be concluded that the fish could, and would have, suffered.

upon this explanation in that case either. Moreover, there are also cases of human beings with severe cognitive disabilities or those on life support who are not capable of suffering, but that common sense would still deem to have a higher moral status than beings that can suffer greatly.

To emphasise, it is obvious to common sense that a human being possesses a high level of moral status (the highest level, full moral status, some argue) due to some 'special' possession of a property (or properties) that human beings as a species have which others do not.[23] It is this that makes human beings more 'special' than non-human animals and other objects (and so we have special obligations towards human beings, but not towards non-human animals and other objects). But, quite what this 'special' property is, is not at all clear.

What this indicates is that on the common sense account of moral status, there is no tackling of issues and questions which need to be answered concerning moral status. In other words, even if we allow that the common sense view encompasses certain intuitions and has some kind of rationale behind it (in terms of beings possessing properties that, in some sense, matter morally), it is a woefully under-developed view. So there is still great debate concerning what moral status is, what it does, whether there are levels of moral status, and who exactly it applies to. Philosophers have argued that there are degrees of moral status, that non-human animals have moral status, that the environment has moral status of its own, to name but a few.[24] As such it seems that the common sense view fails to give a full account of moral status (intrinsic or relational), and as such fails to address the concerns and criticisms raised in alternative philosophical accounts: simply put, although this account has some prima facie

[23] For this see: Waldron (2017); Scanlon (1998); Kittay (2005).

[24] For degrees of moral status, see: DeGrazia (2008). For arguments that non-human animals have moral status see: Singer (2009) and (2015); McMahan (2002); Tanner (2005); or May (2014). For arguments that the environment has moral status see: Norton (1991); de Shalit (1994); or, Light and Katz (1996). This is discussed in depth later in this chapter, and can be found on page 49 of this thesis.

plausibility, it fails to give anything like a full account. As such, the discussion of what moral status is has saturated the philosophical literature irrespective of this account (thus illustrating the need for a philosophical account).

So then, if moral status cannot be based on a 'common sense' view, what can it be founded on exactly? And can the common sense judgements regarding the hierarchy, with humans at the top, be maintained? Well, different theoretical accounts in the literature give different answers. According to the moral individualist view that I consider and at least partially endorse in chapters three to five, much of common sense, including the hierarchy with human beings at the top, must be rejected. Then there are two views that attempt to largely vindicate the common sense view regarding this hierarchy. I consider one of these, the egalitarian view, in chapter two, and reject it. The other is the relational moral status view, which I consider here and reject in the next section of this chapter, as doing so will allow me to identify my focus in the rest of this thesis.

II. Relational Moral Status

Moral relationists attempt to ground the moral status of a being in terms not of its intrinsic properties, but instead in terms of the relations a being bears to other things. An example of a moral relationist is Carl Cohen, who argues that only humans can have a moral status, and this is due to the fact that moral status is based on the ability that humans have to participate in a moral community.[25] In defence of this view Cohen gives a broadly Kantian account of the abilities of human beings, in which it is argued that human beings possess a

[25] In his (1986) paper which argues why it is permissible to use non-human animals in biomedical research and medical experiments.

unique ability to act morally and have autonomy in their actions.[26] It is this ability that gives human beings the capacity to participate in a community, and because non-human animals lack this ability and so cannot participate in a moral community, they cannot possess any rights or status afforded to moral communities. He says:

> Humans confront choices that are purely moral; humans – but certainly not dogs or mice – lay down moral laws, for others and for themselves. Human beings are self-legislative, morally auto-nomous. (Cohen, 1986: 866)

This, he contrasts with the abilities and capabilities of non-human animals, arguing that these creatures possess an entirely different set of characteristics which exclude them from participation in the moral community. He continues:

> Animals (that is, nonhuman animals, the ordinary sense of the word) lack this capacity for free moral judgement. They are not beings of a kind capable of exercising or responding to moral claims. Animals therefore have no rights, and they can have none. This is the core of the argument about the alleged rights of animals. The holders of rights must have the capacity to comprehend rules of duty, governing all including themselves. (Ibid. 866)

[26] This is a very brief summary of the works of Kant when it comes to moral status and morality, and his work on this can be found in his 1785 work (republished in 1949) "Fundamental Principles of the Metaphysic of Morals". It is in this work which Kant's views on morality are clearly outlined.

Now, although Cohen speaks of participating in a moral community, which is a relational property, it might seem here that Cohen is basing moral status on an intrinsic capacity that humans possess – the capacity to participate in a moral community (i.e., whether or not one in fact does). However, he goes on to say that even humans who lack this capacity (e.g. infants and severely cognitively disabled humans) still have the moral status that other humans have in virtue of the fact that they are human. He says:

> The capacity for moral judgment that distinguishes humans from animals is not a test to be administered to human beings one by one. Persons who, because of some disability, are unable to perform the full moral functions natural to human beings are not for that reason ejected from the human community. The critical distinction is one of kind. Humans are of such a land that rights pertain to them as humans; humans live lives that will be, or have been, or remain essentially moral. It is silly to suppose that human rights might fluctuate with an individual's health or dissipate with an individual's decline. The rights involved are human rights. On the other hand, animals are of such a kind that rights never pertain to them; what humans retain when disabled, rats never had. (Cohen, 2001: 37)

So, it turns out, on Cohen's view some objects (such as, severely cognitively disabled humans) have moral status not because of their intrinsic properties, but rather because they are related (by species) to objects (humans without cognitive disabilities) that possess certain capacities

(moral autonomy).[27] Thus, Cohen seems to commit himself to there being something uniquely human when it comes to morality.

This view, that there is something uniquely human when it comes to morality, is not by any means isolated to the arguments of Cohen. The argument that human beings are in a unique position of residing within the moral community is further argued by Diamond in her (1978) paper which discusses the differences between eating non-human animals and eating people.[28] She explains:

> That 'this' is a being which I ought not to make suffer, or whose suffering I should try to prevent, constitutes a special relationship to it, or rather, any of a number of such relationships - for example, what its suffering is in relation to me might depend upon its being my mother. That I ought to attend to a being's sufferings and enjoyments is not the fundamental moral relation to it, determining how I ought to act towards it-no more fundamental than that this man, being my brother, is a being about whom I should not entertain sexual fantasies. What a life is like in which I recognize such relationships as the former with at any rate some animals, how it is different from those in which no

[27] I should also note here that my use of the term 'object' in relation to the term 'severely cognitively disabled humans' is not intended to dehumanise them in any way. It is simply an expression that they (like you and I, cats and fish, tables and chairs) are a type of object or thing. And so I hope that my use of these terms in relation to one another are understood in the context of this thesis at this point (i.e., questioning what types of 'things' can possess moral status).

[28] This is specifically in relation to the Argument from Marginal Cases (AMC) which will be discussed at length in chapter six, however for now it might be useful to provide the context of this paper. It, in brief, argues that if moral status is based on cognitive ability, then what stops us from eating cognitively disabled human beings as opposed to non-human animals? Instead Diamond proposed that it is based on the severely cognitively disabled existing inside of our moral community in a way that not all non-human animals do.

> such relationships are recognized, or different ones, and how far it is possible to say that some such lives are less hypocritical or richer or better than those in which animals are for us mere things would then remain to be described. (Diamond, 1978: 470-471)

And so, similarly to Cohen, it is here argued by Diamond that the moral community in which we reside (i.e., the relationships we have to beings) matter in terms of the moral status that we give to beings.

Next, consider another moral relationist, Anderson, who argues (like Diamond) that some non-human animals do have a level of moral considerability (to use her language) but it is not comparable to the level of moral status possessed by human beings – and all is dependent on the ability to engage in the moral community. Anderson discusses the cases where human interests outweigh that of non-human animals, in this case she discusses vermin, and she goes on to say:

> I am claiming that the level of moral considerability they "have" (that is, that humans owe them) is profoundly diminished by the joint occurrence of two facts about them: the essential opposition of their interests to ours and their incapacity for reciprocal accommodation with us. Moral considerability is not an intrinsic property of any creature, nor is it supervenient on only its intrinsic properties, such as its capacities. It depends, deeply, on the kind of relations they can have with us. (Anderson, 2004: 288)

The key point to take away from this is, then, that moral status is again here argued to depend on the relations that non-human animals can have with a human being. This view presupposes that human beings themselves are, as a consequence of their own species, more suited and fit

for living with other humans in society and moral community. It is also implying that humans can (and do) discard their animalistic nature at will, which enables humans to live peacefully, and that non-human animals are not capable of this. virtue of the place that they have within the human community.

As one further example of the moral relationist standpoint we can turn to the works of Kittay, who throughout her catalogue of works has argued that all humans — with a specific emphasis on severely cognitively disabled human beings being included in this grouping — are worthy of the highest level of moral status.[29] This is due to the relationships that they have with other persons (moral agents). On this, she says:

> Identities that we acquire are ones in which social relations play a constitutive role, conferring moral status and moral duties. These identities are part and parcel of a social matrix of practices, roles, and understandings, which are themselves enmeshed in a moral world. Doubtless the social relationships of parenthood supervene on natural relationships, but biological relationships are neither necessary nor sufficient to define a social role. For that we need social practices. In the case of parenthood, the biological relation is a default assumption, not the final arbiter of parenthood. There exist socially recognized practices by which the mother, for example, can delegate to another the duties that fall to her by virtue of her social (and not merely natural) relationship to the child. Such moral duties and

[29] Namely in this discussion, here, I am drawing upon her papers from (2008) and (2021). However, further to these, this argument is expressed by Kittay in: 'Cognitive Disability and its Challenge to Moral Philosophy' (2010); 'Learning from My Daughter: The Value and Care of Disabled Minds' (2019); 'Rationality, personhood, and Peter Singer on the fate of severely impaired infants' (2021); 'Why Human Difference is Critical to the Conception of Moral Standing' (2021). Some of which will be discussed in chapter six, in relation to the Argument from Marginal Cases (AMC).

> moral status are not arbitrary and, while they are alterable, they are intertwined in the fabric of our lives and our broader moral understandings. (Kittay, 2008: 144)

Again this view presented argues that there is a relational quality to the property of moral status, and that crucially this relationship is what is morally relevant to consider when it comes to attributing a level of moral status that a being possesses.

One important point to note is that we can accommodate what Cohen, Diamond, Anderson, Kittay, and other relationists say here by allowing a distinction to stand between intrinsic moral status and relational moral status. We could say that the notion they define and discuss is the just one type of moral status – relational moral status. This kind of moral status is certainly in line with the obligation principle mentioned earlier, for it explains why we have obligations towards certain things in terms of the relations they stand in. It is also in line with some aspects of the common sense view, which also seems to allow there to be relational moral status (and so through this common sense intuitive account we could say that it would make sense for us to value some things over others based upon the relationships that we have with those things). So, we can say, the kind of moral status that Cohen and Diamond are arguing for here is a kind that is possessed by a being not in terms of its intrinsic properties, but instead in terms of the relations it bears to other things. However, this is not what moral relationists intend. The intent to ground *all* moral status in relations. So, although I am happy to make the distinction between intrinsic and relational moral status, I reject the idea that relational moral status can stand by itself as an account of moral status, or serve as the primary sense in which a thing has moral status. And so I think the relationist view must be rejected.

To see why first consider first the reason why we ought to make the distinction between intrinsic and relational moral status. The reason is simply that it seems to cohere with our common sense intuitions. Take the following burning building example:

1.1. In room A: an adult human being who you do not know.

In room B: Your mother, who you love deeply.

Which do you save?

Faced with this decision the intuition is that we ought to save our mothers over the stranger. Why? Is this because your mother possess a greater intrinsic moral worth? The simple answer here is: no. I don't think anyone could sensibly claim that their mother necessarily has a greater intrinsic worth than any other adult human being, and in this example we can suppose that there is no obvious morally relevant intrinsic property which differs between the human being in room A and the human being in room B. We can suppose that both possess the same morally relevant properties (e.g., they both have the capacity to suffer, want to live, are sentient, etc.). The only differentiating factor here is that you have a relation to the adult human being in room B that you do not have to the adult human being in room A. This does not make your mother any more special, or any more morally worthy — it simply shows that we favour and care for the interests of people we know and associate with more than we do for the interests of people and beings we do not know.

This means that for some human beings the relationship held to another thing can influence the amount of relational moral status we believe it holds. But as this is due solely to the relationship that one being has with another, and does not affect how others ought to – or

do – treat that other being. So here we give added moral weight to particular things in some circumstances – irrespective of the intrinsic properties that those particular things possess themselves. This view is explained by McMahan, who writes:

> […] I accept that some special relations between or among individuals are morally significant and are a source of moral reasons, though only of "agent-relative" reasons – that is, reasons that do not apply to people generally but only to those who are participants in the relations. (McMahan, 2005: 354)

Return to the earlier example — given in section one of this chapter — of the moral status of a stone. In this, I said:

> Unless of course, we briefly consider that this stone belonged to someone: Perhaps the stone was the property of a small child who had grown very attached to the company that they believed this stone provided. *Then it seems plausible that we should not do anything we please to this stone, for the sake of the owner of it.* (emphasis added.)

Note that in this case the stone has a moral status in virtue of its connection to the small child, who, we may suppose, has some intrinsic moral worth. So, the key idea here is that doing something which would destroy or alter the stone in some significant way would be distressing to a being which, in itself, has intrinsic moral status. It of course does not mean that the stone has this same intrinsic moral status or value in and of itself based upon the properties it

possesses.[30] Rather, here, then, we can argue and allow that this stone has relational moral status in virtue of the relationship a being with intrinsic moral status has with it.

Once we allow that beings can have a relational moral status in this way we can they account for our intuitions regarding our pets, and endorse some of what relationists say as being concerned with such relational status. Consider, for example, what Diamond says about pets:

> What a life is like in which I recognize such relationships as the former with at any rate some animals, how it is different from those in which no such relationships are recognized, or different ones, and how far it is possible to say that some such lives are less hypocritical or richer or better than those in which animals are for us mere things would then remain to be described. But a starting point in any such description must be understanding what is involved in such things as our not eating people: no more than our not eating pets does that rest on recognition of the claims of a being simply as one capable of suffering and enjoyment. (Diamond, 1978: 471)

In this, Diamond argues that it is the relationship which is the morally relevant property, and not solely intrinsic properties (such as the ability to suffer, for example) which makes a difference in the level of moral status and the obligations of treatment we have towards other things and beings. We can certainly agree with this, once we allow that there is relational moral status.

[30] As was discussed earlier, the stone does not possess any morally relevant characteristics such as consciousness or capacity for suffering. As such, it is not ordinarily thought or believed that as a single, stand alone object, that the stone possesses any sort of quality which would entitle it to the obligations and differential treatment of other moral agents.

Indeed, we may also be able to explain our intuitions regarding human beings with severe cognitive disabilities in the same way. Consider a burning building case again:

1.2. In room A: A severely cognitively disabled human being.

In room B: A psychologically comparable non-human animal, e.g., a cat.

Here our intuition is that we should save the human being, and perhaps this can be justified in terms of the relations we bear to that human being, and so in terms of its relational moral status. This relates to the argument from marginal cases, which I will return to in chapter six. But, for now, note what Scanlon says about this:

> Not every human develops normal capacities, however, so there is a question of what this criterion implies about the moral status of those severely disabled humans who never develop even the limited capacities required for judgement-sensitive attitudes. The question is whether we have reason to accept the requirement that our treatment of these individuals should be governed by principles that they could not reasonably reject, even though they themselves do not and will not have the capacity to understand or weigh justifications. The answer is that we clearly do. The mere fact that a being is "of human born" provides a strong reason for according it the same status as other humans. (Scanlon, 1998: 185)

Here, Scanlon is discussing whether we owe the same obligations of morality and right and wrong to groups and beings which cannot understand or reject certain treatments of them. And

here he discusses the cases of human beings which would fall into this category, but unlike some objects (such as tomato plants, or cats or oak trees) we would be obligated to treat all human beings as though they are beings which could understand or hold judgement-sensitive attitudes. His justification for this is clearly a relational justification, as he follows the above with an explicit statement that such humans hold a relational moral status:

> The beings in question here are ones who are born to us or to others to whom we are bound by the requirements of justifiability. This tie of birth gives us good reason to want to treat them "as human" despite their limited capacities. (Scanlon, 1998: 185)

McMahan, when discussing Scanlon's view, adds that this can further be applied within one's own species to sub-groups. This can (and does) include the groupings of parents and children, our friends and our pets. And so it does seem plausible that the way in which we ascribe moral status is not solely based on intrinsic properties, but can have an extrinsic foundation to it. As McMahan says:

> Thus, while one has a reason to save an imperilled child just because the child is the kind of being who would be greatly hearted by dying, one has an additional reason (or, perhaps, the same reason but considerably strengthened) to save that child if the child is one's own. One has more reason, or a stronger reason, to save a child if one is related to it in this important way more than if one is not specially related to it. In short, special relations, such as the relation between a parent and a child, are an independent and autonomous source of moral reasons. (McMahan, 2002: 218)

All of this is well and good. But, as noted, relationists want to go further than this, and consider relations as being the basis for *all* moral status. There are two objections to this, which show that we cannot consider relational moral status as being of primary importance.

First, there is an objection implicit in what McMahan says above. This is that the relational moral status of a thing is only binding upon an agent who happens to stand in the relevant relation to that thing, and so it cannot by itself be used to ground the kinds of moral status that human beings are supposed to have. But imagine that an intelligent alien comes to Earth, who bears no relation whatsoever to human beings. If all moral status was founded on the relations we have to other things, such an alien would have no moral reason whatsoever to treat us in any particular way, and would do no wrong in torturing us, or farming us for food. This clearly does not fit with our moral intuitions, for we would certainly deem an alien who did such things a moral monster.

Second, and I think more significant, no account of relational moral status can be given unless we already have a developed account of intrinsic moral status. This is illustrated by the stone example above. The stone only has a relational moral status because the small child has an intrinsic moral status. It is *only* because the child has an intrinsic moral status that any other being would have obligations towards the stone. More generally, I do not think it is possible to conjure up moral status from relations alone. One might have a network of things that are related to each other in various ways, but unless there is something within that network with intrinsic moral status then those relations cannot give rise to any relational moral status. In other words, relational moral status is parasitic on intrinsic moral status, and is thus not the primary sense in which things can have moral status. Indeed, I think it is easy to give an account of relational moral status once we have an account of intrinsic moral status in hand, and so in my view, relationists, who focus on relational moral status without saying anything about

intrinsic moral status, are misguided in their treatment of the topic. It is for this simple reason, then, that I reject relationism about moral status. I do not think there is any answer to this simple point, and so will say little more in this thesis about relationists and their view. However, just to be clear, this is not to say that I reject the idea that there is such a thing as relational moral status itself.

To finish off this section, I return once more to the general account of moral status given by Warren, quoted above. There I drew out from Warren's view (along with that of Lovett and Riedener) the obligation principle (i.e., that moral status is a property that gives rise to obligations). But it is worth noting that there I only partially quoted what Warren says. I quoted the following:

> To have moral status is to be morally considerable, or to have moral standing. It is to be an entity towards which moral agents have, or can have, moral obligations. If an entity has moral status, then we may not treat it in just any way we please; we are morally obliged to give weight in our deliberations to its needs, interests, or well-being. (Warren, 1997: 3)

However, directly after this Warren goes on to say:

> Furthermore, we are morally obliged to do this not merely because protecting it may benefit ourselves or other persons, but because its needs have moral importance in their own right. (Warren, 1997: 3)

Warren's idea here is that for a being to have moral status, then it means that we (moral agents) must treat it in a way which is beneficial for that being (or thing) in itself, because it is itself

morally significant. What Warren has in mind here, then, is intrinsic moral status and not relational moral status. In effect, she recognises that the fundamental issue is not to give an account of why obligations can arise towards things in virtue of the relations those things have (to us or to others), but why obligations arise towards things in virtue of the intrinsic properties they possess. As should be clear, I am in full agreement with this position, and as such it is this issue that I will be primarily concerned with in what follows in this thesis.

In the next chapter I begin to examine the notion of intrinsic moral status in more detail, starting with egalitarianism. But before I come to this, I finish this chapter with a brief discussion of the idea that moral status comes in degrees.

III. Moral Status as a Matter of Degrees

As mentioned, according to the common sense account there is a hierarchy of moral status, with human beings at the top and non-human animals below. The various different theoretical accounts of moral status, whilst disagreeing on some of the details of this hierarchy, agree that there is a hierarchy, and agree on some of the details. I here outline the points of agreement and consider two different models of how this hierarchy is to be understood.

Although some have countenanced the idea that moral status can, at least in theory, be arbitrarily high, most agree that there is a degree of moral status than which no higher is possible, which is labelled 'full moral status' (FMS).[31] And there is general agreement that

[31] Douglas (2013) considers the idea that there could be beings (super intelligent aliens or technologically enhanced humans) with a moral status even higher than human beings. But, he is an outlier.

'typical' human beings (i.e., those who possess the highest cognitive capabilities when compared to other animals) have full moral status (FMS). 'Typical' human beings are those who are self-aware, conscious beings with the capacity to enjoy music, literature, and aesthetics, plan for their futures, and so on, and having FMS entails that they deserve the highest level of moral status and the protections and rights which are entailed by this. Due to the belief that human beings are in possession of this highest moral status, then they are offered the greatest protections in law against suffering and commodification.[32]

Below this highest level, there is general agreement that non-human animals which possess lesser cognitive abilities than human beings, are at least not fully self-aware and have little to no ability to plan for their futures have 'partial moral status' (PMS). This itself is on a sliding scale with some non-human animals having a greater degree of moral status than others. Examples of beings within this category of moral status, but who have a reasonably high level of moral status are dogs, elephants and chimpanzees. These beings are not offered the same protections in law as human beings, which means that at least some of them can be farmed for meat consumption, used in clinical testing for cosmetics and medicines, and can be subject to worse conditions than would be acceptable for human beings. However, because they are recognised to be holders of some moral status, there are protections in law against undue suffering and cruelty against such beings.[33]

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[32] This can be seen enshrined in our laws (both here in the United Kingdom and internationally), for examples of this see: Human Rights Act (1998), The Universal Declaration of Human Rights (1951), The Equality Act (2010) and The Employments Rights Act (1996). These laws provide a basis for protections afforded to human beings from a variety of treatment which is seen to be in violation of their moral status or intrinsic properties.

[33] For a comparison on the protections of human beings and non-human animals (in the United Kingdom) see: Animal Welfare Act (2006) and the Human Rights Act (1998). The detail in the

There is also general agreement that creatures who possess very little cognitive ability other than instinct come even lower on the scale. Examples of beings of this kind might be insects such as earth worms or cockroaches. As these beings have limited cognitive capacities, this means they cannot suffer in any significant sense, and have the lowest moral status and therefore are offered no protections in law against harms that may be inflicted against them.[34]

This categorisation of the status of beings lead to not only differential treatment in laws, but is also present in the way in which beings are treated, leading to a hierarchy of preference when it comes to saving their lives, or improving their wellbeing. Beings which possess FMS are favoured most often, being prioritised as they are more morally significant, then followed by being which possess PMS, and then beings which possess no moral status are not given concern for welfare or treatment.

In his (2008) paper DeGrazia considers this general hierarchical view, and outlines two different ways in which it might be understood to hold. He first clarifies what he understands moral status to be, which he ties to the notion of interests as follows:

> To say that X has moral status is to say that (1) moral agents have obligations regarding X, (2) X has interests, and (3) the obligations are based (at least partly) on X's interests. (DeGrazia 2008: 183)[35]

legislation outlines the depth of different treatment protections afforded to human beings and non-human animals.

[34] This kind of view coheres relatively well with the common sense view.

[35] Note that, because interests are intrinsic properties, conditions (2) and (3) indicate that DeGrazia has intrinsic moral status in mind here.

This account, as we will see in chapter three, is in line with Singer's view. According to it, what moral status a being has is determined by what interests it has. Nonetheless, we can immediately see how it is supposed to give rise to a hierarchy: human beings, in virtue of their greater cognitive development, have more extensive interests, and so have a higher moral status than non-human animals. He notes that condition (2) is entailed by condition (3), and so is strictly speaking not required, but says he includes it because it helps one to keep in mind that "not everything has interests and that having them is necessary for moral status". As a brief aside, it is interesting to note that he also says the following about condition (3):

> The parenthetical qualification in condition (3) is motivated by the possibility that some factor in addition to X's interests, such as the state of a moral agent's character, might also ground the relevant obligations. (ibid. 184)

As we will see, this will prove important in chapters six to either when I come to develop my own positive account. But, for now, the important point is that DeGrazia notes the agreement regarding the fact that human beings are thought to have a higher moral status than non-human animals. He says:

> Most people, including most animal protectionists, believe that it is generally worse to kill a person than to kill a mouse, even if the latter action is prima facie wrong or morally problematic. (DeGrazia, 2008: 186)

In terms of a burning building thought experiment we may capture this kind of intuition as follows:

1.3. In room A: A typical human beings.

In room B: A mouse.

Which should you save?

It is intuitions of this kind that lead us to say that human beings have a higher moral status than non-human animals like mice. But, DeGrazia goes on to note, there are two ways in which we might understand this claim in this case, which we can summarise as follows:

1) The Unequal *Consideration* Model of Degrees of Moral Status.

   On this view we assign a higher moral status to beings whose interests are to be given a greater degree of weight in our moral deliberations. Thus, even if we suppose that human beings have the same interest in surviving as mice, we should still favour the human being over the mouse in [1.3] because its interests are more morally significant.

2) The Unequal *Interests* Model of Degrees of Moral Status.

   On this view we assign the same degree of weight to the interests that beings have, and assign a greater moral status to those beings that have more extensive interests. Thus, we cannot here suppose that human beings have the same interest in surviving as mice, but have to maintain that human beings have more extensive interests in surviving than

mice, and it is for this reason that we should favour the human being over the mouse in [1.3].

I bring this point up now to emphasise that although there is agreement in the literature about the hierarchical nature of moral status, how the hierarchy is understood can differ, depending on what model is employed. And, as we will see as we consider the various theoretical accounts of moral status, different accounts tend to favour different models. Egalitarians tend to adopt the unequal consideration model, whilst Singer adopts the unequal interests model, for example. I will say little more about this now, except to note that I think it is plausible that common sense intuition favours the unequal consideration model. Consider:

1.4. You are a researcher working late in the lab with an infant human experimental subject, Sarah, and a lab mouse called Mickey, which is part of an ongoing experiment. Due to an unexpected power surge, a piece of equipment malfunctions and starts emitting a painful electrical current. The safety mechanism fails, and both Sarah and Mickey are simultaneously exposed to the current. You are positioned next to a control panel that can only deactivate the current for one of them due to a glitch. You have only a few seconds to decide whom to save from the painful electrical current: Sarah or Mickey. The pain will be severe but not lethal, and it will last for one hour. You can press one of two buttons on the control panel:

Button A: Stops the current for Sarah, saving her from the pain.

Button B: Stops the current for Mickey, saving it from the pain.

Who should you save?

In [1.4], and similar thought experiments, I think that common sense would favour saving the human being over the mouse, even though in this case it is highly plausible that both Sarah and Mickey have the very same interests in not feeling pain. At any rate, I say no more about this issue here, but ask that the reader keeps it in mind, for it will be relevant in later chapters.

IV. Conclusion

In this chapter I have clarified the focus of my thesis by outlining what I take moral status to be. I take it to be a property of individuals that determines what weight the individual should have within our moral deliberations and that grounds our moral obligations towards it. I have outlined what I take to be the common sense view of moral status, and argued that we cannot rely upon that account for our understanding of the notion, and that instead a more theoretically informed account is needed. I have distinguished between intrinsic and relational moral status, and argued that it is intrinsic moral status that is of primary importance. In so doing, I have rejected relational accounts of moral status that attempt to ground all moral status in relations. I have also explicitly considered the hierarchical nature of moral status, and outlined two models for how to understand this. I now turn to considering the extant theoretical accounts of moral status in the literature, beginning in chapter two with the egalitarian account.

Chapter Two: The Egalitarian Position on Moral Status

Egalitarianism, understood in its traditional sense, is the view that all human beings ought to be treated equally. In this chapter I consider accounts that defend a slightly different egalitarian view – namely, the view that all human beings have an exactly equal intrinsic moral status.[36] To do so I will first outline the egalitarian account of moral status developed by Jeremy Waldron, and then the account defended by Stanley Benn. I use them as representative accounts and argue that such egalitarian positions about moral status are untenable.

However, before I move to the main topic of discussion in this chapter, it is important to clarify what egalitarianism about moral status is, and its relation to traditional egalitarianism. To begin, note that traditional egalitarians are wont to argue that equality of treatment entails treating people in a way that in fact renders them equal, in some sense. But, what sense? In answering this, first note that, at least on the face of things, there seems to be obvious differences between human beings – a point Waldron himself has raised. On this he says:

> When I delivered the Gifford Lectures in Edinburgh at the beginning of 2015, I asked those attending to look around and consider the differences among members of the audience: some were old, some quite young; some men, some women; there were evident differences of race and ethnicity (perhaps not as many as there should have

[36] It is worth noting that some relational moral status accounts, such as ones held by Kittay and Scanlon, are argued to be egalitarian in their nature. However, as I am exploring the egalitarian position of intrinsic moral status it is important to note that the relational accounts will not be included for discussion in this chapter. To make my reasoning on this explicitly clear: this is because the accounts advocated by Kittay, Scanlon, and other relationists, argue for the relational moral status of a human being, and not for an intrinsic moral status account. And so, in short, these accounts argue that a human being has value not for its own sake, but simply because it has a relationship with another human being (which does have moral status for its own sake).

> been). There were differences of appearance—some people were fit, some like me were not so fit and not so thin either. Some showed in their faces that they were healthy, while others were struggling to conceal illness and infirmity. (Waldron, 2017: 4)

In other words, looking around we can see that human beings differ (e.g., I am taller than my sister, I am not as intelligent as Samuel, and Benjamin is funnier than me). And so, ought we be looking to develop systems where humans are rendered equal in all these ways? Well, the answer here (according to Waldron) is that although possession of these traits can be desirable, they are not morally relevant differences between human beings, and not things that our treatment ought to render equal.[37] So in discussions of equality and the presentation of traditional egalitarian accounts, the claim is not that human beings are equal with regard to these characteristics, nor that they ought to be treated in a way that renders them equal with regard to these characteristics. How, then, ought humans be rendered equal? Here there are a variety of different views. In order to demonstrate these different views, I will briefly note a few examples below.

In the vast literature on this topic of equality and egalitarianism, thinkers vary in what they believe ought to be rendered equal between human beings. This variety with regard to what we are discussing by using the term 'equality' in relation to human beings has been discussed by Dworkin, who cashes out the differences by distinguishing between 'treating humans equally' and 'treating humans as equals':

[37] Interestingly this seems to be supported by the laws we have. In the United Kingdom, the (2010) Equality Act lists different characteristics in which it is unlawful to discriminate against a human being on. This includes intellectual capabilities, sex, race, religious belief (to name a few).

> There is a difference between treating people equally, with respect to one or another commodity or opportunity, and treating them as equals. Someone who argues that people should be more equal in income claims that a community that achieves equality of income is one that really treats people as equals. Someone who urges that people should instead be equally happy offers a different and competing theory about what society deserves that title. (Dworkin, 1981: 187)[38]

Dworkin himself settles on equality being achieved through accessibility of socio-economic tools which allow for equality of opportunity of all human beings. However, others disagree about what equality for human beings would look like. Consider, for example:

> According to equality of welfare, goods are distributed equally among a group of persons to the degree that the distribution brings it about that each person enjoys the same welfare. (The norm thus presupposes the possibility of cardinal interpersonal welfare comparisons.) (Arneson, 1989: 82)

[38] Just as a note here: Waldron's account was developed from the work of his mentor Ronald Dworkin who was also an egalitarian. Dworkin's work focussed primarily on what he calls "liberal equality" (a view which roughly speaking means that equality is achieved when there is an equal distribution of resources which allows all human beings to access and use them equally – this would allow all human beings to have an equality in their choices about what resources and goods they would like). As I will shortly outline, Dworkin's work itself will not be directly relevant to the main body of this chapter even if it did so inform Waldron's account of an egalitarian position on what beings have moral status. For more on Dworkin's work see: *What is Equality?* (1981), *Sovereign Virtue: The Theory and Practice of Equality* (2000), *Sovereign Virtue Revisited* (2002), and *Equality, Luck and Hierarchy* (2003). As an additional point, Dworkin has authored a book titled *Justice for Hedgehogs* (2011) but this title does not mean that Dworkin advocates animal rights or any form of justice inclusive of animals at all; instead this book discusses broader philosophical topics such as truth in morals, and skepticism.

Here, Arneson describes the view that equality of welfare ('welfare' here meaning that an individual human being's interests and preferences are satisfied, with the importance of these preferences determined by that human being) is the true measure of equality. He ultimately goes on to argue that this is not the correct view, and that instead equality of opportunity for welfare is the true measure. And so, if you seek out a certain good and have a chance of getting it then you have opportunity for welfare – and if I seek out the same certain good and also have a chance of getting it then we have an equality of opportunity for welfare.

However, Cohen argues that Arneson doesn't go far enough with his position arguing that although equality of opportunity of welfare is better than simply 'equality of welfare', there is a better interpretation of (traditional) egalitarianism. He writes:

> Hence the principle I endorse responds to inequalities in people's welfare opportunities. But, as will be illustrated below, advantage is a broader notion than welfare. Anything which enhances my welfare is pro tanto to my advantage, but the converse is not true. And disadvantage is correspondingly broader than welfare deficiency, so the view I favor, which can be called equal opportunity for advantage, or, preferably, equal access to advantage, corrects for inequalities to which equal opportunity for welfare is insensitive. (Cohen, 1989: 916)

Cohen, here, prefers the term 'access' over 'opportunity' due to the variables present in human beings; your opportunities as a human being will remain the same irrespective of your ability.[39] As one may have 'shortfalls' (as Cohen puts it) in personal capacities it would impact one's

[39] By this it can be said that we (human beings) vary in our abilities such as strength and intelligence.

ability to access certain opportunities.[40] And so Cohen believes the true egalitarian position is one in which people are treated in such a way that they have equality of access to advantages.[41]

Equality in also discussed in terms of justice, and this is seen through the example of John Rawls. He says:

> The natural answer seems to be that it is precisely the moral persons who are entitled to equal justice. Moral persons are distinguished by two features: first they are capable of having (and are assumed to have) a conception of their good (as expressed by a rational plan for life); and second they are capable of having (and are assumed to acquire) a sense of justice, a normally effective desire to apply and to act upon the principles of justice, at least to a certain minimum degree. (Rawls, 2008: 505)

Here we can see that the Rawlsian view of equality is measured through justice as fairness, which he cashes out in terms of what he calls the 'original position' — a thought experiment in which all human beings (citizens) exist in a state (the 'veil of ignorance') in which they have no knowledge of their own characteristics (i.e., what race they are, what sex they are, or what class they belong to).[42] They then select the rules that govern the treatment of all humans (i.e.,

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[40] See: Cohen (1989) page 917.

[41] Later in this thesis — in chapter three — I shall discuss another utilitarian position which is that of Peter Singer and sentience utilitarianism. This position argues for an equality of treatment based on like and comparable interests. However, due to the importance of this topic for the thesis more broadly I will return to this later, so (for now) it remains a purposeful oversight. For more on sentient utilitarianism, and Singer's Principle of Equal Consideration of Interests see page: 81.

[42] This is labelled as the 'veil of ignorance' by Rawls. I do not have the space here to go into the full detail of this thought experiment which Rawls outlines in depth, however the summary I have given is a rough outlining of what this position means in terms of egalitarianism. It is also worth noting that the veil of ignorance would also prevent a representative from having any information bout their ethnicity,

including themselves) from behind this veil. This lack of knowledge by the representatives forces them to advocate for the most just and fair rules of society, as they do not know how they would be impacted if they themselves were returned to society (as all representatives have been acting without knowledge of who they are advocating for, and so cannot press for rules which would unfairly favour a certain group of citizens, e.g., women, the elderly, or the working class). This, Rawls implicitly argues, is what equal treatment amounts to.

And so, there are a variety of views regarding what equal treatment amounts to, varying depending upon the sense in which humans ought to be rendered equal by that treatment. However, these differences are not really relevant to my discussion of egalitarianism about moral status. In short, all of the positions above concern what has been called 'liberal equality'. They concern how we should go about structuring our socio-economic system in order to ensure that all human beings are treated equally. But they do not offer any account of the value that human beings inside of this socio-economic system hold themselves (and as such, serve to ground or justify why we should implement liberal equality). They assume, that is, that all humans deserve equal treatment, and seek to cash out what that means. But they do not consider the question of why all humans deserve such equal treatment.[43] As such, it is at this point that I shall introduce Waldron's egalitarian position, which does consider this question, and which he labels as 'basic equality'.

I. Basic Equality

or their age, whether they are clever (or not). For the full account given by Rawls see: Rawls (1999) *A Theory of Justice*.

[43] There are many more papers that deal with the question of equality of treatment, and the above is not to be taken as being exhaustive by any means. One further notable account, for example, is given by Sen in his (1979) Tanner Lectures titled "Equality of What?".

In this first section I will consider Waldron's egalitarian view about moral status. Waldron's concern is with what he calls 'basic equality', which he thinks entails that when considering how to treat human beings we ought to apply the same considerations to all human beings, regardless of the particular characteristics possessed. He summarises this in the following:

> The idea of basic human equality seems to commit us to the proposition that all serious moral arguments should range over the interests of all human beings[...] But that is not enough. Egalitarians also maintain that serious moral arguments should range over the interests of all human beings without discrimination. (Waldron, 2008: 5)

It is worth emphasising that Waldron does not argue for the egalitarian moral status of all (conscious) animals, but instead argues that humans ought to be held in special regard. His account of why this is so is that humans possess an inherent human dignity which elevates them above the status of non-human animals which do not and cannot possess this dignity. That is to say, Waldron analyses the notion of 'status' in terms of 'dignity'. On the concept of 'dignity' itself Waldron writes:

> Dignity, I believe, is best understood as a status term: it refers to the standing of human beings in the great scheme of things, their status as persons who command a high level of concern and respect. The basis of our equal dignity as humans is supposed to be something fundamental about us that makes it important for us to accord equal moral consideration to one another and to respect each other in the same way. (Waldron, 2008: 3)

On the concept of dignity, then, Waldron argues that because each individual human being possesses dignity, and no individual from any other species does, this elevates them to this higher position of moral consideration. In short, he thinks that human beings have an additional special property which holds moral weight and that, as such, we must hold them in a higher regard in our moral decision-making processes than non-human animals, which cannot possess this same property. Dignity, in other words, is a uniquely human characteristic. And note, also, his use of the term 'inherent' to indicate he considers it to be an intrinsic property. Waldron continues:

> On the [one] hand, we are told that human rights "derive from the inherent dignity of the human person." On the other hand, it is said that people have a right to be protected against "degrading treatment" and "outrages on personal dignity." Dignity is what some of our rights are rights to, but dignity is also what grounds all of our rights. (Waldron, 2009: 212)

As such, Waldron seems to indicate here that our inherent dignity is not only something we possess inherently, but also something that can be bestowed upon us by the treatment we receive (otherwise it wouldn't make sense to say that we have a right to it). This would obviously be problematic, because one cannot bestow something upon someone that they already possess. However, Waldron goes on to clarify that he rejects the latter sense of dignity, and only defends the former. He thus clearly indicates that, on his view, all and only human beings possesses a special intrinsic property, dignity, and the possession of this property entails that all and only human beings are exactly equal to each other with respect to their moral worth or value.

As should be clear, Waldron's account here is an attempt to vindicate the common sense account. According to it, all human beings, and only human beings, have FMS. Human beings

stand at the top of the hierarchy of moral status. They do so in virtue of possessing a special property, dignity, that no other being possesses.

What, though, is dignity? Here Waldron appeals to a thoroughgoing Kantian account, arguing that dignity derives from our capacity to reason morally. He thinks that as human beings we not only have the ability to think, but to think in moral terms, by laying down moral rules for ourselves in order to bind our own actions. And this seems to impress Waldron greatly. He says:

> There is a wonderful passage in Kant's Critique of Practical Reason, which begins, "Two things fill the mind with ever new and increasing admiration and awe . . . : the starry heavens above and the moral law within." The astronomical perspective "annihilates, as it were, my importance as an animal creature." But my moral self-awareness "infinitely raises my worth as an intelligence," as I become aware of a depth in my being not given by my biology. This is what determines the nature and scale of human dignity. (Waldron 2009: 101)

The problem with this account of human dignity, however, is that there are some human beings, young children, dementia patients, and those with severe cognitive disabilities, who do not have the ability to reason morally. This is the argument from marginal cases, that I adverted to in the introduction and chapter one. How can Waldron explain human dignity in these terms, and insist that all human beings have it, when there are humans who do not meet such terms?

Waldron does have something to say about such cases, and thinks he can still afford them a unique human dignity. His defence invokes the potential that he claims all humans possess. His view is that severely cognitively disabled human beings, who *in fact* are psychologically

comparable to non-human animals, nonetheless at some point possessed the *potential* to develop into a typical human being, and that it is this that gives them dignity. He says:

> This is human potential, a potential of the (evolved) human organism, present in rudimentary form in [severely cognitively disabled humans], but effaced, blocked, or damaged. The profoundly disabled were human in their potential and they are human in their disability. (Waldron 2009: 242)

I find this defence to be somewhat lacking, to say the least. First, Waldron's view of the facts regarding cognitively disability seem to be naïve. There are a whole host of cognitive disabilities that are intrinsic to the genetic makeup of the foetus from conception. Examples include Down Syndrome, Fragile X Syndrome, Rett Syndrome, Phenylketonuria, and others. As such, it is hard to see how those with conditions could be said to have ever had the potential to develop as a typical human being does. Second, it is hard to see how the *potential* to possess the properties that Waldron thinks underlie human dignity can do the work they are supposed to here. It is unclear why such human beings don't simply have the potential to possess such dignity, rather than actually possessing it. And third, given that Waldron does not even think that this potential is present in such human beings, only that it *was* once present, it is even harder to see how such properties can do the work. And so, I think, Waldron's account fails at this crucial juncture. I do not see what more can be said in favour of the view, given the points above.

To finish this section it worth noting that Waldron clearly adopts the Unequal Consideration Model of Degrees of Moral Status. His view is that *all* humans possess human dignity, and so even if their interests coincide with those of some non-human animal, they still deserve better treatment than any non-human animal.

II. Equality of Human Interests

In this section, then, I consider the egalitarian position held by Benn, which is that of equal consideration of human interests. This position, in the most simple terms, concerns the equality of human beings in particular, rather than equality between any other things. This means that (looking ahead to chapter three, in which I discuss Singer's principle of equal consideration of interests) Benn seeks to establish the grounds on which we can give elevated status and value to the interests that human beings — as individual members of the same species — possess.[44]

As was outlined in the introduction to this chapter, there are differing views about what 'treating people equally' amounts to, depending upon what inequalities are thought to need eliminating. In his work 'Egalitarianism and Equal Consideration of Interests', Benn acknowledges this stating the following:

> Although most movements for equality can be interpreted in terms of protests against specific inequalities, a strong disposition nonetheless exists, among philosophers and others, to argue what whatever men's actual differences and whatever their genuine relevance for certain kinds of differentiation, there yet remain important values in respect of which *all men's claims are equal.* (Benn, 1967: 69) [emphasis added]

[44] Of course, here it is important to note the implications of this position, if it were true, for my thesis. If all human being's interests are of equal and same value, and crucially, if they are always higher and more valuable than the interests of non-human animals, then it would render my thesis moot. This means that, if Benn's account is right, then there could be no fluctuating moral status, or any human being with a lesser moral status than any non-human animal. However, as I seek to establish in this chapter, I believe the egalitarian stance to be incorrect, and we ought not to apply a blanket status to all members of the same species in virtue of them belonging to that species. Why I believe this will be outlined primarily in chapter three, looking at Singer's comments on speciesism (see page: 94), and then further in chapter four and five when I explore the work of moral individualists.

So, as we can see above, Benn acknowledges that there may be different views about what kind of equality ought to be achieved – but whatever this is (whether that be through social justice, welfare, opportunity etc.), all human beings have an equal claim to equal treatment with regard to this. It becomes clear that as he continues, he thinks that all humans have such a claim *because* they are human.[45] It is this possession of the characteristic of belonging to the group 'human beings' which, in effect, trumps any other property that a being possesses with regard to how the being should be treated (at least with regard to basic rights). He goes on to further say:

> The duties we have in respect to dogs would generally be discounted when they conflict with our duties to human beings —discounted, not set aside, for we might well decide to waive a minor obligation to a human being rather than cause intense suffering to an animal. But if the duties were at all commensurate, if, for instance, one had to decide between feeding a hungry baby or a hungry dog, anyone who chose the dog would generally be reckoned morally defective, unable to recognize a fundamental inequality of claims. (Benn, 1967: 69)

Here Benn is saying that it is the obvious moral intuition to choose to feed a hungry human baby over a hungry dog. As such, Benn too clearly endorses the Unequal Consideration Model of Degrees of Moral Status. We should feed the hungry human not because we (human beings) believe that dogs cannot suffer, but rather because we believe the suffering of the human baby

[45] It is also worth nothing here that Benn uses the terms 'man', 'mankind' and 'men' to refer to human beings. This is a linguistic choice which reflects the period in which Benn was writing, rather than a philosophy which advocated for lesser rights for women. So it must be read with the meaning of 'humankind' or 'human beings' in mind.

holds greater weight.[46] Benn considers the view, defended (at a later date) by Waldron, that what grounds our intuitions here is that humans have some kind of inherent dignity. However, he argues that this view is challenged by the aforementioned argument from marginal cases. He puts forward the argument that there are human beings who lack dignity, and, in particular, the severely cognitively disabled. Nonetheless, he says, we do differentiate between the treatment which ought to be given to the severely cognitively disabled and non-human animals such as dogs. He says:

> This is what distinguishes our attitude to animals from our attitude to [the severely cognitively disabled]. It would be odd to say that we ought to respect equally the dignity or personality of the [severely cognitively disabled human] and of the rational man; it is the questionable indeed whether one can treat with respect someone for whom one's principal feeling is pity. But there is nothing odd about saying that we should respect their interests equally, that is, that we should give to the interests of each the same serious consideration as clams to conditions necessary for some standard of well-being that we can recognise and endorse. (Benn, 1967: 69-70)

But why, then, does Benn think we do this, if not because of an inherent dignity of human beings? Benn goes on to note that historically, in philosophical accounts, rationality has been

[46] Such a belief, that dogs do not suffer, was held by Descartes who believed animals to be automata – he maintained the belief that animals cold not be rational and could not suffer, and that they are essentially complex machines unable to have experiences. Descartes held this conviction with such certainty he experimented on live dogs to see the inner workings of the body. For more on Descartes view on animals see: *Discourse on Method* and *Meditations* (2012). This, however, is not the view that Benn is putting forward.

argued to be the qualifying condition which grounds human equality and freedom.[47] But as Benn's account is centred on the equal consideration of human interests, he does not believe this to be correct either, again because of the existence of marginal cases, such as severely cognitively disabled humans. He states:

> But if equal consideration of interests depends on rationality, [severely cognitively disabled humans] would belong to an inferior species, whose interests (if they could properly be allowed to have interests) would always have to be discounted when they compete with those of rational men. What reason could then be offered against using them like dogs or guinea pigs for, say, medical research? But, of course, we do distinguish [severely cognitively disabled humans] from animals in this regards, and although it would be quite properly to discriminate between [severely cognitively disabled humans] and rational men for very many purposes, most rationalist philosophers would concede that it would be grossly indecent to subordinate the interests of [a severely cognitively disabled human] to those of normal persons for all purposes, simply on the ground of his [severe cognitive disability]. (Benn, 1967: 70)

As such, finding no other morally relevant respect in which the severely cognitively disabled differ from non-human animals like dogs, Benn settles on the important morally relevant intrinsic property as being the property of being human itself.[48] He puts forward the view that

[47] Here Benn points to the Stoics as an example of this. For an overview of what the Stoics thought on freedom generally, see: O'Keefe (2016).

[48] Of course, strictly speaking *being human* is a relational property (as it requires that one is born of another human). However, nothing that Benn says suggests that this is an important aspect of being human. He seems, rather, to have in mind something like having the intrinsic constitution of a human being.

that irrespective of any difference in the level of rationality possessed by 'typical' human beings and the severely cognitively disabled, we cannot discount the value held by the latter. This is because human interests are worthy of special consideration based purely on the fact that members of the human species are more important than any other species because they are human.

It is worth noting here that although Benn often speaks as if the property of being human is itself the property of moral significance that distinguishes humans from non-human animals, he does also suggest elsewhere that he too is open to an appeal to the potential that humans have. Note, in particular, the following passage:

> If the human species is more important to us than other species, with interests worthy of special consideration, each man's of this own sake, this is possibly because each of us sees in other men the image of himself. So he recognizes in them what he knows in his own experience, the potentialities for moral freedom, for making responsible choices among ways of life open to him, for striving, no matter how mistakenly and unsuccessfully, to make of himself something worthy of his own respect. (Benn, 1967: 70)

Benn continues, stating this crucial point:

> It is because this is the characteristically human enterprise, requiring a capacity for self-appraisal and criticism normal to men but not to dogs, that it seems reasonable to treat men as more important than dogs. (Benn, 1967: 70-71)

Whether or not Benn appeals to the property of being human in itself, or allows the potentialities that humans have to be of significance, the egalitarian aspect of Benn's account is explicitly clear: that no matter what 'deficiency' a human being may have, they are no less morally worthy than any other human being, because the species norm of human beings is to have more significant interests than any other species. It might be said that Benn's account here is a relational account, because he refers to the value that other humans have 'to us', and because he refers to species norms. That is, one might think his account is that we ought to treat severely cognitively disabled humans as we do typical humans because they stand in a certain relationship to those typical humans (i.e., the being the same species as relation). If this is right, then his account is just another relationist position, and so much the worse for it. However, this does not appear to be the case. He does appear to want to elevate the mere property of being human to an intrinsic property of moral significance, perhaps in a way that invokes the potential that human beings have. However, it is again hard here to see how this view can be defended. The intrinsic aspect of the property of being human is a mere biological property to do with the structure of our DNA, and it is simply incredible that having a certain microscopic structure could in itself be a morally relevant one. I think, indeed, that this simple observation is sufficient to reject Benn's account out of hand. There is simply not much more to say about it than this. But, I will return to this point and bolster it in the next two chapters when discussing Singer and the moral individualists.

To finish this section, I want to note that the intuitions that Waldron and Benn muster in favour of egalitarianism may well be explained by an appeal to relational moral status. Waldron, for example, could maintain that some human beings have a high intrinsic moral status in virtue of possessing the intrinsic property of dignity (grounded in the possession of the Kantian properties he thinks are important) and that other human beings have a high relational moral status in virtue of the relations they bear to us. This would, then, constitute

some reason as to why we would not treat the severely cognitively disabled in ways that we treat dogs, or guinea pigs. This view, that there be a relational moral status as well as an intrinsic moral status (which I defended in chapter one), appears to have been overlooked by Waldron and Benn. The relational account seems to provide some explanation as to why we (rational human beings) would deem it to be 'grossly indecent' to use those human beings which do possess a severe cognitive disability in medical research; as this would impede on the interests of those human beings who do have rational interests which may be related to, or have formed bonds with, severely cognitively disabled human beings and other marginal cases.[49] This approach does have its limitations, however, but I leave a discussion of this for later, for as we will see, it is this approach that Singer and moral intuitionists take.

III. Intuitions Regarding Egalitarian Moral Status

So far I have argued that egalitarian should be rejected on theoretical grounds. In short, they simply do not seem able to give an account of the special property that *all* human beings possess and no non-human animal does, and this is a theoretical shortcoming. However, in this section I turn my focus towards the intuitions regarding egalitarian moral status. The reason I do so is because in addition to its theoretical shortcomings, our intuitions regarding egalitarianism are

[49] Later in this thesis I explore other arguments which concern the argument from marginal cases, such as that of Narveson. It is worthwhile noting here that Narveson argues that it is impermissible to treat such human beings in ways which are morally reprehensible for a different kind of relational argument: that we seek to protect ourselves or our loved ones by choosing to distinguish the treatment of the severely cognitively disabled from non-human animals – as we or they may find ourselves in a position in the future that we may become ourselves severely cognitively disabled. But more on this on page: 167.

also not as clear cut as they have been made to seem.[50] Above, I have outlined the egalitarian accounts of moral status as presented by Waldron and Benn. These accounts argue that there is a basic human dignity (according to Waldron), and that all human interests are worth equal consideration (as argued by Benn), and that as a such all human beings are of exactly equal value. It has often been said that our intuitions have supported, and continue to support, this view. [51] However, as I say, I do not think that our intuitions are necessarily so egalitarian as they are often presented as being.

Briefly let us turn our attention to a well-known moral dilemma: The Trolley Problem. In case of unfamiliarity with this problem, in this hypothetical moral dilemma there is a runaway train (otherwise called a 'trolley', but to not cause confusion with the cart we use in supermarkets, I will use the term 'train' when explaining this), and on the tracks below are five workers unaware of the impending doom. On a parallel track, of which you have access to a switch to divert the runaway train, is only one worker who is unaware of the unfolding disaster.[52] A common intuition would tell us here that we ought to divert the train to prevent

[50] The role that intuitions have to play in this thesis was outlined in the introductory chapter. As a brief refresher, however, it is worth noting here that this thesis is using a moral realist framework, alongside the reflective equilibrium methodology. This does mean that as a consequence this thesis subscribes to the view that our moral intuitions hold weight in our decision-making processes, and as such will be relied upon repeatedly throughout the progression of this thesis.

[51] As was made very clear to me throughout many discussions with my supervisor, Ben. So I thank you for flagging this particular point to my attention.

[52] For those familiar with the Trolley Problem will know the account I have given is a very brief summary of how the original account is presented. For the original, see: Foot's (1967) paper titled 'The Problem of Abortion and the Doctrine of Double Effect'. In this paper our intuitions regarding moral dilemmas are not discussed in entirely the same manner as I am here, instead Foot is using this moral dilemma as a means of defending the doctrine of double effect and her position that negative rights/duties carry more moral weight than positive rights/duties. This example has been discussed repeated throughout the literature, but for other responses and uses of it see: Thompson's (1985) paper

killing five individuals, as opposed to one (saving a net total of four lives, if we calculate it so bluntly). And here it is important to note that (intuitively) we don't choose to divert the train to kill the one because that particular one person is worth any less morally than any of the five on the parallel track – it is simply that it seems more morally right to save more lives when we have the option.

However, let us suppose that we can alter this hypothetical moral dilemma and instead of having five human beings on one track and one human being on another, we pose that there is one human being on each track. So, in this case pulling the lever would divert the runaway train from killing one worker on to the parallel track where it would kill one (different) worker. Here our intuitions are less apparent: there seems to be little reason for us to choose to kill one worker over another, as without any further information the calculation seems to be perfectly balanced (i.e., either way we are going to lose one human life). And here our commitment to egalitarian intuitions seem to show that we would value both lives as being of equal (moral) worth.

There does seem to be an important part of this value equation missing, however: what if we are aware of some details about each individual – would this change our intuitional egalitarian commitments? Well, it seems so.

In their (2014) paper Kawai et. al. explore the psychological phenomena of 'in-groups' and 'out-groups'. This (in very brief terms) meaning the processes we (human beings) go through when identifying the value of, or associating with, other groups of 'things' in the world.[53] So,

'The Trolley Problem'; or, Fried's (2012) paper 'What Does Matter? The Case for Killing the Trolley Problem (Or Letting It Die)'; or, Greene's (2016) paper 'Solving The Trolley Problem'.

[53] As I have said, this is a huge generalisation and the in-group and out-group (or 'us' and 'them') theory has its roots in social identity theory. It is not necessary to discuss this theory in detail in my thesis, as the central hypothesis of social identity theory (that we value in-groups more than out-groups) is

a very broad and general 'in-group' would be human beings, and a general broad 'out-group' would be wild non-domesticated animals.[54] The theory behind the in/out group distinction is that as human beings we value 'things' (e.g., humans, animals, natural objects) more if we can associate with them – that is, in other words, if we can identify as belonging to the same group as them. This is perfectly in line with the notion that we afford relational moral status to certain beings. However, the relevance to our discussion is not so much to do with the in group/out group distinction, as with the results that were obtained about the moral intuitions that people have with regard to human strangers.

Kawai et.al. used a sample of two-hundred-and-fifty-one (251) University students (from both undergraduate and graduate levels) and presented four groups with two different versions of the trolley problem. They state:

> In the footbridge version of the trolley problem, four versions of the scenarios were prepared, in which only the descriptions of the sacrificial target varied. (Kawai, et.al., 2014: 256)[55]

One of the four scenarios which was presented to the students is as follows:

discussed in this section in relation to our intuitions regarding the value that some human beings hold over others.

[54] Obviously from our (human beings who identify as human beings) perspective. From a wild hare's perspective this would presumably be different.

[55] The 'footbridge' version of The Trolley Problem varies slightly from the brief account I have given above, but for context here instead of pulling a lever to prevent the train from killing five persons, you are asked if you would push a stranger on to the tracks to achieve the same result.

> A runaway trolley is headed for five people who will be killed if the trolley proceeds on its present course. You are standing next to a large stranger on a footbridge that spans the tracks and is in between the oncoming trolley and the five people. The only way to save the five people is to push the large stranger off the bridge, onto the tracks below. He will die if you do this, but his body will stop the trolley from reaching the others. To what extent was this action appropriate? (Kawai et.al., 2014: 256)

Moving on from this example, Kawai et.al. presented the groups of students with alternative descriptions of the stranger (rather than 'large'). The variations of descriptions of the sacrificial stranger consisted of 'elderly', 'youth', 'child' and 'disabled'. The results from this study then showed that the most sacrificed group is the elderly, followed by the disabled, the youth, and then children.

Now, at this point it is important to clearly express why this study is important in relation to the egalitarian positions I sketched earlier (in sections I and II). The results from this study — that intuitively we (human beings) place differing moral values on the lives of strangers based upon what the egalitarian views would label as non-morally relevant characteristics — bolsters the view that all human beings are not intuitively viewed as being one another's equals, and neither are their interests.[56] If we were to accept the egalitarian view of moral status as capturing our intuitions, then we would expect there to be little (or rather no) difference between the acceptability rating of each of the four sacrificial groups. In plain terms: what we would expect to see if all human lives are considered to be of equal value, if each human was equal in terms of dignity or if their human interests are of equal value, is the same

[56] I will return to the discussion of non-morally relevant characteristics (which are also referred to by the term 'morally irrelevant characteristics') later in this thesis when I discuss the utilitarian and moral individualist standpoints on moral status. For the discussion of this in relation to Singer's sentient utilitarianism see page: 82; and in relation to the moral individualist's see: page 135.

acceptability rating to sacrifice a child, or a youth, or a disabled human, or an elderly human. However, we simply do not see that.[57]

So, now using this information from Kawai et.al.'s (2014) study, we can return to the positions that Waldron and Benn hold — that all humans have an inherent dignity that makes every person morally equal, or their interests are of equal value — and we can see that, if we take our intuitions seriously, this does not seem to be true. In order to further demonstrate this, let's return to the simulated moral dilemma I posed in the introduction to this thesis: the burning building. Consider the following example:

2.1. In room A: A typical human being who is ninety-years-old.

In room B: A typical human being who is twenty-years-old.

Which do you save?

Waldron's and Benn's egalitarian view here would be that all humans possess a special dignity with the same value, or that all interests are of equal value. So, the ninety-year-old and the twenty-year-old are of equal value and have the same moral status. This would mean that, by Waldron's and Benn's accounts, we cannot (or should not, or do not) place any additional value

[57] It is worth noting here too that these results (of differing acceptability rates of sacrificial groups) is supported by other independent psychological studies. For example, see: Valdesolo & DeSteno's (2006) study; or, Hauser et.al.'s (2007) study. As an additional point here, then, it is worth commenting that it does not appear that any crossover of participants between these studies occurred – so we can rule out there just being a particular outlier group which is willing to sacrifice grannies over babies. Instead it seems that the intuition (that some lives are of greater value than others) is widespread rather than isolated.

on either human being. This would mean that in this simulated moral dilemma [2.1] it is a free choice as to who we save.

However, the findings of psychology reports (and indeed my own intuitions which I think more or less accurately track general intuitions) demonstrate that our intuitions about who to save do vary depending on factors like age, and in this case I suggest that we would be most unwilling to save the ninety-year-old and that most of us would in fact not do so.[58]

The main point I want to make here, then, is that given the method of reflective equilibrium, there does not even seem to be a prima facie reason to think that egalitarianism is the view we should be attempting to give a theoretical account of (i.e., because our intuitions simply do not support it). As such, I think that we not only have good theoretical reasons to reject it, but good methodological reasons too. Taken together, this, I think, gives us sufficient reason to reject both Benn's and Waldron's accounts. They cannot give a good theoretical account of what makes human beings special. And, moreover, at the very core of Waldron's and Benn's accounts is the assumption that we have the intuition that all humans are *equally* special. But, quite simply, that we do have such intuitions is, I think, a liberal myth.

Benn's account is based very simply on this, highlighting as it does, the mere property of being human. But the same applies to Waldron's view. That we, human beings, are one another's (moral) equals due to the inherent human dignity we each possess, is supposed to ground the idea that in morally relevant situations all humans should be treated equally.[59] But,

[58] According to Kawai et.al., in their simulated moral dilemma about 98% of us would save the baby (or in more accurate terms: not sacrifice the baby). So, while a small number of human beings across the globe might have the intuition to save the forty-two-year-old the majority would agree we ought to save the baby.

[59] As we saw earlier in this thesis, by treating everyone in the same way would only widen inequality in some cases. As such we may not have to treat the six-month-old and the forty-two-year-old in the same way here.

both the forty-two-year-old and the six-month-old would possess the so-called 'human dignity', and each would be of equal moral standing to one another. So again, here, it seems that we are being instructed to make a free choice between the baby and the adult, despite our intuitive judgement suggesting otherwise. I deem this instruction to be unacceptable.

IV. Conclusion

In this chapter I have explored egalitarianism about moral status, taking Waldron's and Benn's views as representatives. I have rejected egalitarianism on the grounds that (i.) the view requires there to be some special property that is possessed by all and only human beings, which they cannot supply, and (ii.) that our intuitions do not support the idea that all human beings are of exactly the same moral value anyway. It was important for me to consider and reject this position because if it were true, then my thesis (that the moral status of beings like humans can fluctuate) would be false.

In addition to the above, in this chapter I have also introduced a number of issues that will prove to be important and that I will return to later. In particular, I will return to the idea that there is some special property that is possessed by all and only humans. This view is defended by both Waldron and Benn on egalitarian grounds, but is a view that is also widely held amongst the general population (i.e., it also seems to be part of the common sense view, even if we don't necessarily think all human beings are *equally* special). Two suggestions have emerged about what this special property might be. The first, that seems to be held by Benn, is that being human (or, having the constitution of a human being) is itself a morally significant intrinsic property. The second, held by Waldron and perhaps by Benn, is that having the potential for high level thought (and in particular moral thought) is a morally significant

intrinsic property. In the course of the next three chapters each of these points will be dealt with independently of how they function in the egalitarian view.

Chapter Three: Singer's Utilitarian Stance on Moral Status

Peter Singer's view of moral status is probably the most influential view there is, and, as such, it is this view that is the subject of this chapter. Singer has written a great deal over many years in defence of his view, but much of his later writing is concerned with reiterating the position as he defends it in his 1979 classic book *Practical Ethics*, which is still the clearest and fullest expression of it. As such, although I will also refer to his other work where necessary, I will largely be concerned in this chapter to describe his view as it is presented in that book.

It is worth noting from the outset that *Practical Ethics* does not use the term 'moral status' at all. However, Singer is elsewhere happy to cast his view in terms of moral status (e.g., in his (2009) and (2015)), and so it is correctly considered to be a view about moral status. I will highlight this point as the chapter progresses.

It is also worth noting from the outset that, in this chapter and the following two chapters, I focus mainly on describing positions rather than assessing them (although there will be some elaboration of important aspects of the positions described, and at least some assessment). That is, this chapter is mainly concerned to give a descriptive account of Singer's position. The next two chapters are then mainly concerned to give a descriptive account of the moral individualist position (of James Rachels and Jeff McMahan). This is because, as will become clear, I agree in large part with these positions, and many aspects of these positions inform my own view. As such, it will prove useful in later chapters of this thesis to have a detailed accounts of them to refer back to. Nonetheless, as will also become clear, I will ultimately reject both Singer's view and moral individualism, and will do so on the basis of the same basic argument. I will give this argument in chapter six, once both Singer's position and moral individualism have been laid down.

In terms of the content of this chapter, then, I will first examine Singer's rejection of egalitarianism and how this leads to the development of his own account, which is broadly utilitarian.[60] This will lead to an explanation of his principle of equal consideration of interests (PEC). Although this will be discussed in much more detail later in this chapter, because the principle is of central importance in understanding Singer's view, it is useful to quickly outline what the principle is up front. The principle of equal consideration of interests, in its simplest form can be written as follows:

> Principle of Equal Consideration of Interests (PEC): If a being possesses an equal and like interests to another being, both interests must be given equal consideration in moral decision-making processes.

This principle forms the backbone of Singer's version of utilitarianism, as we will see.

After considering Singer's PEC principle, I will then turn to Singer's view about relational moral status, and his claim that any view that favours all humans over all non-human

[60] I will specifically be exploring Singer's utilitarian stance in this chapter, as opposed to a broad utilitarian stance on the topic. This is sometimes referred to as sentient utilitarianism – the reasons for which will become clearer throughout this chapter. Due to space constraints in this thesis I do not have the capacity to fully explore utilitarianism as a whole, but it is important to note that there are a variety of utilitarian thinkers which all present a different stance on the moral theory of utilitarianism. For a greater understanding of these (and how they differ) see: Bentham & Mill's Classical Utilitarianism (see, e.g., (Troyer, 2003)); Popper's Negative Utilitarianism (1945); Hare's Two-Level Utilitarianism (1973); Adam's Motive Utilitarianism (1976).

animals is speciesist. [61] Again, to emphasise, much of this chapter will be descriptive, but it will serve as a building block for me to introduce my own account of moral status later in this thesis.[62]

I. Utilitarianism and the principle of equal consideration of interests

In this first section, I begin by looking at Singer's response to the egalitarian stance, and how he rejects this to offer his own, utilitarian stance.

Singer begins in his (1979), as I did in the previous chapter, by asking what it is that we mean when we claim that all humans are equal, irrespective of any property that they may possess (e.g., being of a particular race or sex). As also became clear in the previous chapter, if we are to maintain that human beings are morally equal, in the way that egalitarians about moral status maintain, then it seems that we must find some property that grounds this. We must find, that is, some morally relevant property which all humans share. Singer notes in this regard that racists and sexists are apt to deny that humans are morally equal because whatever measure we use in attempt to ground their equality, there are clear differences between humans. For example, some people are taller than others, and others are better are at mathematics, and so on. However, although Singer endorses the view that there are no precise properties with

[61] It is important to note here, however, Singer did not create the term – but rather is credited with popularising it through his works. For the original use of the term see: Ryder (1970), for further usage see: Ryder (2004; 2011), Singer (1973).

[62] This will be introduced later in this thesis in chapter six. It is important that I first examine in detail the prevalent and most notable cases which argue for a foundation of moral status, as this will highlight the key gaps in the current philosophical literature which, I believe, my account solves. For more on this go to page: 170.

regard to which humans are all in fact equal, he considers a suggestion due to John Rawls (who, remember, is a traditional egalitarian), namely that we can explain the sense in which humans are equal by selecting what Rawls calls a 'range property'. Here is what Rawls himself says about this:

> [I]t is not the case that founding equality on natural capacities is incompatible with an egalitarian view. All we have to do is to select a range property (as I shall say) and to give equal justice to those meeting its conditions. For example, the property of being in the interior of the unit circle is a range property of points in the plane. All points inside this circle have this property although their coordinates vary within a certain range. And they equally have this property, since no point interior to a circle is more or less interior to it than any other interior point. (Rawls 1999: 444)

Rawls's idea here is that even though humans may vary with respect to the properties they possess, so long as every human has a certain class of property to some degree then we can use that fact as being the basis of human equality (i.e., by saying 'all humans are equal in virtue of possessing property X to some degree'). Here, the degree to which humans in fact possess the relevant property is not important. As it happens, Rawls himself thinks that the relevant range property is being a person to whom one can make a moral appeal (i.e., one who possesses a 'moral personality' or who has at least some sense of justice).

However, once again here, the argument from marginal cases rears its head, and Singer presses the argument in rejecting Rawls's suggestion. He argues that even drawing the range property in terms of beings that possess a moral personality or some sense of justice is not sufficient to encompass all humans, and so cannot serve as a basis for equality. In particular,

Singer notes that infants and young children, as well as humans with severe cognitive disabilities, lack even a minimal sense of justice, and so do not possess even the range property that Rawls identifies.[63] (He notes that Rawls himself considers such humans and says that they 'may present a difficulty' but does not elaborate or offer a solution.) But, moreover, Singer expresses a general scepticism about whether any range property can be found that encompasses all human beings. He says:

> So the possession of 'moral personality' does not provide a satisfactory basis for the principle that all humans are equal. I doubt that any natural characteristic, whether a 'range property' or not, can fulfil this function, for I doubt that there is any morally significant property which all humans possess equally. (Singer, 1979: 17)

As we will see in later chapters, the idea that there is *no* property that can fulfil this function, is a crucial one in defending the positions of others aside from Singer.[64] So, I will return to this in due course.

Having rejected the view that there is any property with regard to which all human beings are in fact equal, Singer then notes the important fact that we cannot draw morally relevant distinctions between people on the basis of what race or sex they are. His implicit point is that race and sex, being purely biological, do not *themselves* have any moral relevance. But, moreover, he notes that the possession of such properties does not entail the possession of any

[63] Which we discussed in chapter two, for a reminder of this see page: 59.

[64] In particular, here, it will be important in defending the position held by moral individualists such as Rachels and McMahan. The moral individualist position on moral status is considered in length in chapter five. For more on this see page: 129.

other property that could be deemed morally significant. This is because although some traits may be dominant in different races and sexes, they are only *statistically* dominant. So, even if it is true that most women are emotionally deeper and caring than most men, and less aggressive, it is equally true that some men will inherit these same traits, and not all women will share these characteristics. And the same is true regardless of whether the persons are of African or European decent. As Singer puts it, human beings differ as *individuals*, rather than as races and sexes.

Next, Singer considers intelligence, which has a better *prima facie* claim to being in itself morally significant, and rejects it as being morally significant. Although Singer does not say so, in doing so he seems to rely upon our intuitions. To see this, note that he introduces a hypothetical account of a world where someone has proposed that all humans should be given intelligence tests, and that the outcome of this test will determine their moral standing and position in society – a hierarchy of intelligence:

> Suppose that someone proposed that people should be given intelligence tests and then classified in to higher or lower status categories on the basis of the results. Perhaps those scoring higher than 125 would be a slave-owning class; those scoring between 100 and 125 would be free citizens but lack the right to own slaves; whereas those scoring less than 100 would be the slaves of those scoring higher than 125. (Singer, 1979: 19)

It is clear that Singer views this system (i.e., one which bases moral status on the grounds of cognitive ability) as being as abhorrent as a system which is based on race or sex, and he thus commits to the idea that this kind of view must be rejected. However, interestingly, he provides

no explicit argument for this. My reading of this is simply that Singer takes this to be intuitively obvious. As it happens, I agree with this, and I think this could be illustrated with a burning building case:

3.1. In room A: A human being with an IQ of 80.
In room B: A human being with an IQ of 120.
Which do you save?

I think it is clear here that, without any further information about the human beings given, most people would consider the choice here to be an arbitrary one. I am emphasising this point because in Singer's book it marks a crucial stage in his argument, and as such it is notable that Singer provides no other argument for the view that we should not make moral distinctions between people on the basis of intelligence than the example he gives. As such, it seems to be that Singer relies on our intuitions here, in the same kind of a way that I think we must.

At any rate, Singer commits to rejecting the view that intelligence is a morally significant property using this example. He notes, however, that if we can agree that the differences between human beings cut across the boundaries of race and sex, then we cannot reject this view on the same grounds that we can reject a racist or sexist hierarchy. So, how does he think we can reject this kind of view? [65]

[65] One such example of this is the system of noocracy proposed by Plato in his *Republic* (2007). In this he argues that decisions and decision-making can only be conducted by those that are 'wise'. The 'wise' being philosophers in his view, and as such it is only philosophers which ought to be the political and social decision makers.

It is at this point that Singer introduces the notion of an 'interest', (i.e., in broad terms, a capability of wanting to gain pleasure, or avoid suffering). For Singer, there is no line of argument or reason which convinces him that because two humans possess different abilities (such as intelligence) that we should give their interests different considerations because of this. He states:

> There is no logically compelling reason for assuming that a difference in ability between two people justifies any difference in the amount of consideration that we give to their interests. Equality is a basic ethical principle, not an assertion of fact. (Singer, 1979: 20)

So, to reject the hierarchy of intelligence Singer looks to establish an ethical system which has its foundations in the interests that beings possess. It is this system which Singer formulates in terms of the principle of equal consideration of interests, which, as a reminder, can be formulated as follows:

> Principle of Equal Consideration of Interests (PEC): If a being possesses an equal and like interest to another being, both interests must be given equal consideration in moral decision-making processes.

This principle, in short, mandates that the like interests of any two humans X and Y are to be given equal consideration in moral deliberations, even if X is a human with an IQ of 120, and Y is a human with and IQ of 80, and the same is true if X and Y are different sexes or races.[66]

To put it simply: Singer's PEC, at its core, is a system which states that we ought to give equal weight and consideration in the moral deliberations we undertake to the *like* interests to all humans affected by the actions and outcome of the moral deliberation. This means that we cannot justify our actions in a moral decision-making situation if we choose to favour X over Y simply because we prefer them, or favour their happiness over Y's. To put the principle in Utilitarian terms: *The interests of one counts only as the interests of one and no more than one*. To illustrate this principle in working terms, Singer considers the specific interest of relieving suffering or pain:

> [T]he principle says that the ultimate moral reason for relieving pain is simply the undesirability of pain as such, not the undesirability of X's pain which might be different from the undesirability of Y's pain. Of course, X's pain might be more undesirable than Y's pain because it is more painful, and then the principle of equal consideration would give greater weight to the relief of X's pain. (Singer, 1979: 20)

Again, to reiterate, the morally *irrelevant* characteristics here would be the aforementioned characteristics (i.e., race, sex, intelligence), and the morally *relevant* characteristic would be the intensity of the pain. This is not to say, however, that the intensities of the *particular* pains

[66] As we will see later this will also apply in terms of different species of beings, and so if X were human and Y were a dog. Singer has an argument which, according to his principle of equal consideration of interests, species is not a morally relevant property. But for more on this see page: 94.

of X and Y are the *only* morally relevant factors in this moral decision-making process, and there may be other factors to consider. But, all of these other factors end up relating to interests too. Such would be in the case of a natural disaster (such as an earthquake) where we might treat the pain of a doctor over the equal pain of a non-doctor, so that they may then go on to help others, as this would be of most benefit to all affected, and so serve the greater overall number of interests. However, even in this case the pain of the doctor itself still only counts as one interest (and not any more than) and is given no added weight in itself regardless of the benefit to others that treating it may have. It is just that by saving the doctor, this has the consequence of being able to satisfy more people's interests overall.[67]

As an illustrative example, Singer compares the PEC to a pair of scales where the interests on each side of the scales is weighed impartially and without added weight (bias). The scales – if true – would tip to favour the interests which carry more weight (and therefore are stronger), or where the one big interest on one side is outweighed by a combination of smaller interests which, when collected together, are of a larger weight than the singular interest.[68] What this makes clear is that Singer, unlike the egalitarians, endorses the Unequal Interests

[67] I.e., We could only treat the doctor as a priority in order to help others, not because the doctor has a higher level of moral status – according to Singer. It would be, in short, the smart thing to do here.

[68] An interesting discussion as a side point here, is: what do our intuitions tell us about these 'scales' when the larger collective weight comes from a group which have an interest in committing harm and suffering (say, for example, group of 'evil' criminals intent on rioting through a town and destroying property and harming any individual they may be faced with), and the singular interest comes from a 'good' person (we could imagine someone who is 'morally innocent' such as a small child, for example)? Intuitively here, I would say that we ought to discount the weight of those people which are wanting to commit harm and commit 'bad' actions, and give added weight to the 'good' interests of the small child. Perhaps Singer would label this as 'bias', but intuitively this does not feel right. I will return to the idea of 'good' and 'bad' actions and moral status later in this thesis when I discuss my 'fluctuating moral status' in chapters seven and eight.

Model of Degrees of Moral Status. Where there is a difference in intrinsic moral status between two beings, he maintains, there is a difference in interests.

II. Singer's Rebuttal of Criticism

Singer highlights that his principle has come under scrutiny by others, with criticisms including: (i.) the PEC is a purely formal principle; (ii.) it is lacking in substance; and (iii.) it is too weak to exclude any inegalitarian practice. In order to get a clear view of Singer's account, it is useful to consider Singer's rebuttal of these criticisms.

Singer argues that (as outlined above) the PEC does exclude sexism and racism, as well as being effective against the hierarchy of intelligence – thus being sophisticated enough to reject these forms of inegalitarianism. Singer adds to this that this principle is effective in preventing and prohibiting others from prioritising the needs and interests of humans based on their abilities or other morally non-relevant characteristics – allowing only for the consideration of interests, which Singer argues is important:

> Intelligence has nothing to do with many important interests that humans have, like the interest in avoiding pain, in satisfying basic needs for food and shelter, to love and care for any children one may have, to enjoy friendly and loving relations with others and to be free to pursue one's projects without unnecessary interference from others. (Singer, 1979: 21-22)

The principle of equal consideration of interests is thus able to rule out not only the hierarchy of intelligence, prohibiting one from owning slaves who are of a lesser intelligence, but also eliminates discrimination against the disabled on the same grounds. As such, Singer argues that the principle of equal consideration of interests is perhaps defensible as a form of basic human equality, but not in the form considered in chapter two. Instead of the principle is stated in terms of all human beings being equal in the sense that they all possess *interests*.

It is at this point that Singer stresses that *equal* treatment doesn't entail *same* treatment. To demonstrate this working principle, he describes the aftermath of an earthquake in which two human beings are injured:

> Imagine that after an earthquake I come across two victims: one with a crushed leg, in agony, and one with a gashed thigh, in slight pain. I have only two shots of morphine left. Equal treatment would suggest that I give one to each person, but one shot would not do much to relieve the pain of the person with the crushed leg. She would still be in much more pain than the other victim, and even after I have given her one shot, giving her the second shot would achieve a more marked reduction in her pain than giving one shot to the person in slight pain would do for that person. Hence, equal consideration of interests in this situation leads to what some may consider an inegalitarian result: two shots of morphine for one person and none for the other. (Singer, 1979: 22)

It is worth noting here that Singer again relies upon an example that appeals to our intuitions. The example illustrates that if it were the case that PEC entailed treating all those with an interest in a situation the same, then it could lead to a greater intuitive injustice. However, as

the principle of equal consideration of interests considers the *weight* of an interest, it deems the morally just decision to be to lessen the degree of difference in which the persons are suffering.[69] And as such, it mandates that the morally just thing to do here involves giving two doses of the morphine to one singular person. This reduces the degree of difference of suffering, resulting in a more equal level of suffering in pain for both humans, and is, we may presume, what Singer thinks is the intuitively correct result.

Singer argues that this reduction in the gap between the degree of suffering is in line with another principle: *The principle of declining marginal utility.* This principle, commonly discussed in economics, states that the more of one thing that one person has the less valuable additional amounts of that thing is to them. Singer doesn't give a very detailed explanation of this principle, but I think it can be most easily explained in terms of money. Greene and Baron put the point as follows:

> Money, for example, tends to exhibit declining marginal utility, as illustrated by the fact that the utility you would gain from increasing your wealth from $1,000,000 to $1,001,000 would almost certainly be smaller than the utility you would gain from increasing your wealth from $1000 to $2000. This is because as your wealth increases, you would tend to spend each increment on goods that had more utility per dollar, putting off those with less utility per dollar until you have bought the more important goods. (Greene & Baron, 2001: 243-244)

[69] As explained above, in the example given by Singer of the scales. See page: 89 for a reminder of this analogy.

But this same principle can be applied to many other commodities (e.g., food where giving an additional portion of food to a person who has little is of a much greater benefit than giving that same portion of food to someone who is well fed). While this principle of declining marginal utility seems to be, at first glance, at least very similar to the principle of equal consideration of interests, Singer provides an example in which it does not hold or give us a sufficient answer in some cases.

The example is a variation of the earthquake case in which one victim, A, has lost one leg in the disaster, but is at a further risk of losing one of her toes on her remaining foot; the second victim, B, however, is less injured but without medical intervention will also lose one of her legs:

> [W]ithout medical treatment, A loses a leg and a toe, while B loses a leg; if we give the treatment to A, then A loses a leg and B also loses a leg; if we give the treatment to B, A loses a leg and a toe, while B loses nothing. (Singer, 1979: 23)

In this example, Singer says, the principle of marginal utility would appear to encourage us to lessen the gap between the two persons, and consequently use the medical resources to help A so they do not suffer more loss than they have already. This would, obviously, result in B also losing a leg. Yet, the PEC, Singer argues, would not encourage us to do this. Instead, the outcome of applying the PEC here would be to use the medical resources to help B, so they do not lose a leg. This is because its generally thought to be worse to lose a leg than a toe, and as A has already lost a leg we cannot prevent that – therefore we would, according to this principle, prevent the loss of B's leg. Singer does acknowledge that this is a special case where

the principle of equal consideration of interests would widen the gap between two persons which are at different (more and less severe) levels of wellbeing.

The above, then, summarises and clarifies Singer's basic account of moral status. As noted, in his (1979) book he does not put any of this in terms of moral status. But, as should be clear, it could be so put in such terms, the intrinsic moral status that a being has depends only upon the interests that it has. As should also be clear, what interests a being has is an intrinsic matter. As such, intrinsic moral status, on Singer's view, is grounded in interests. However, Singer does also have something to say about relational moral status.

III. Singer on Relational Moral Status and Speciesism

We can approach what Singer says about relational moral status by asking: What should we say about cases that do not merely concern helping strangers (e.g., cases where a person involved is a family member)? There is an argument that the principle of equal consideration of interests fails in such cases, or seems too abstract, when we apply it to more personal moral deliberations. Even Singer himself questions whether it is possible for us to give equal consideration to the welfare and wellbeing of our families and loved ones as we do to strangers. As mentioned in chapter one, the *special relationships* we develop with different beings mean we intuitively want to treat them differently to other beings towards which we have no special relationship.[70]

[70] This was discussed in chapter one in the section concerning relational moral status. But this will also be returned to in the course of this thesis, again in discussion of moral individualists such as McMahan and Rachels. McMahan additionally has an argument do with the moral status of our loved ones (see page: 94).

Although Singer does have something to say about special relationships, he places far less importance upon them than I have alluded that we should in chapters one and two, where I suggested that appealing to them might allow us to, at least in large part, explain our intuitions regarding the treatment of, for example, severely cognitively disabled human beings. He first focusses on those special relationships that extend beyond our immediate family, with him arguing that it is without a doubt that most people prefer to help people who are closer to them (physically) than those who are further away:

> No doubt we instinctively prefer to help those who are close to us. Few could stand by and watch a child drown; many ignore the avoidable deaths of children in Africa or India. (Singer, 1979: 202)

However, his view is that although this is what we normally *do* (i.e., help those who are close to us), this is not what we *ought to do morally*. In his view, belonging to a specific community or distance from the person who needs help, makes little difference to our moral obligations, and treating people differently on these grounds is difficult to morally justify.[71]

Drawing upon his earlier discussions on the relevance of characteristics of race and sex in moral deliberations, Singer argues that citizenship of a nation is another additional morally irrelevant characteristic. As such, if persons who live in Africa have an interest in not starving,

[71] This can again be discussed in terms of 'in and out groups' – where we associate closely with beings in our 'in group' and are less willing to help those in our 'out groups' as we struggle to associate with them. This has been discussed in psychological studies which aim to evaluate the moral status of the elderly (who are often perceived to be an 'out group' for many). It does also add some weight to the theory that there is a different perceived moral status for those which we have a special relationship with. For more on this see: Kawai et.al. (2014).

then we ought to provide them with food, as those who live in Europe are in less need of food (to prevent starvation) and therefore have less of an interest in this matter. Building on this point, Singer further argues this is the case with economic resources as well as food resources, and as such money ought to be distributed where it can have the most impact:

> Because everyone's resources are limited, it makes sense to use them where they can have the most beneficial impact. Under these circumstances, it would be wrong to decide that only those fortunate enough to be citizens of our own affluent community will share our abundance. (Singer, 1979: 203)

Finally, addressing the special relationships which hold between blood relations, Singer suggests that in a situation where our own children are starving, it would seem to violate our biological nature to give away food to others in a foreign nation. This, he suggests, is permissible. But, he thinks, this is *only* permissible in cases of extreme poverty, such as starvation. He points out that in modern day societies which are affluent, such as in European nations, the needs of our basic children have been met, and that the needs of others are stronger:

> In any case, we are not faced with that situation [i.e., the situation where our own children are starving] but with one in which our own children are well fed, well clothed, well educated and would now like new bikes or more sophisticated computer games. In these circumstances, any special obligations we might have to our children have been fulfilled, and the needs of strangers make a stronger claim on us. (Singer, 1979: 203)

As such, if all the basic needs of our blood relations have been met, Singer argues, we have a duty and obligation to help others who we are not related to. To help those who are in extreme poverty — which is much less typical inside of our own communities in the developed world and much more frequently seen in the developing countries – would, he thinks, be little sacrifice to those who are more affluent. To put it simply: the discrepancy in the levels of wealth between communities or nations vastly outweigh any special preference we have for our own personal relationships.

To summarise what has been said about special relations so far: Singer does allow that special relations can, in some limited circumstances, have moral weight. This is so, for example, if we have to choose between feeding our own starving child or a stranger's starving child. Although our own child's and the stranger's child's interest are equal, in this case, Singer thinks, we can permissibly favour our own child. As such, if we put this again in terms of relational moral status, it is clear that Singer also allows that, to a limited degree, there is such a thing as relational moral status. However, Singer is quite clear, he thinks that one cannot justify the special treatment of humans over animals on any such ground.

Our intuitions certainly seem to point towards the idea that we should treat humans as having a higher moral status than non-human animals. As mentioned, in chapter one and two I suggested that we can justify treating all humans as having a higher moral status than all non-human animals by an appeal to the fact we bear a special relation to them (the *being of the same species* relation).

As we have seen above, Singer himself allows us, albeit to some limited extent, to look after 'our own'. It is this that he allows when he agrees that it is permissible to save one's own starving child over that of a stranger. But, the question is, how far does this extend? Can we stretch this notion to include all of humankind as 'our own' group, and as such place the needs

and wants of all human beings over those desires and interests that non-human animals hold? This view is indeed held by many relationists about moral status, with numerous philosophers arguing that human beings are entitled to have a preference for those of their own species. Bernard Williams explicitly responds to Singer's view on this point in his (2006). He argues that as we – human beings – are the ones who are judging and deciding what is the best thing to do in moral deliberations, we are entitled to have a prejudice for our own kind:

> There is certainly one point of view from which they are important, namely ours: unsurprisingly so, since the "we" in question, the "we" who raise this question and discuss with others who we hope will listen and reply, are indeed human beings. It is just as unsurprising that this "we" often shows up within the content of our values. Whether a creature is a human being or not makes a large difference, a lot of the time, to the ways in which we treat that creature or at least think that we should treat it. (Williams, 2006: 138)

In short, Williams's argument is that, for us, whether a being is human or not matters. He thinks that relationally speaking, at least, *it is a morally relevant characteristic.* He also thinks that this preference for our own species is the reason we developed the notion of human rights, and why philosophy often focusses on human values.[72] However, he argues that this preference for human welfare and life isn't a universal declaration which states: "human beings are more

[72] For an example of human rights see: European Convention of Human Rights (1951). For an example of antrocentracism in philosophy see: In environmental philosophy, Goodpaster (1978) or Kopnina et.al. (2018); for rights and nature, Sinha (1978) or Düwell & Bos (2016) or Kant (1785); for politics, Aristotle (2009).

important than non-human animals". Instead, Williams agues, the declaration is something more like: 'humans matter more to me, a human, than non-human animals'. And this declaration, Williams argues, is not an unreasonable one – it is simply the human point of view, which is the point of view from which moral judgements and decisions are made. Singer, however, disagrees entirely with this view.

That we bear the species membership relation to others beings, for Singer, is no more a morally relevant relationship than bearing racial or sexual membership relations to others. Using the term '*speciesism'* — having a preference for one's own species — analogously to racism and sexism, Singer argues that the 'we' and 'them' distinction that Williams utilises is no more morally justifiable than a racist or sexist preferring their own group.[73] This is because, Singer argues, in considering humans to stand in a special relation to us we must be considering other humans to be 'one of us'. But, Singer thinks, unless there is some property other than the mere biological property of *being human* (or *having the genetics of a human*) that serves to make a being 'one of us' as opposed to 'not one of us' this parochialism is entirely unjustified. And once more, on this score, Singer argues, there is no such property. His arguments here, then, go on to mirror the arguments given for there being no intrinsic differences that separate humans from non-human animals: We must, he thinks, find some shared trait that groups all other humans and no non-human animals as being 'one of us', but humans differ with regard to a whole host of capacities. Genetics themselves do not justify the grouping. Cognitive ability is to some level important here, as if a member from an out group (Singer uses the example of an alien) disguises itself as a human and can understand us and communicate with us, then we would be inclined to include that being within our group. But, there are again problems with

[73] Take, for example, the case of a man preferring to favour the interests of other men for the sole simple reason that 'he is one of us'. Or an avowed white supremacist refusing to consider the interests of a black person because they prefer to 'look after their own'.

marginal cases, and in particular human beings who possess severe cognitive disabilities. As Singer puts it in a later publication:

> In the case of applying this to people with severe and profound cognitive disabilities, there is also a problem about saying who the "we" are. What is really important about saying "us"? Is it that we are all capable of understanding language, and perhaps even rational argument? In that case, I am not addressing those who are profoundly [intellectually disabled]. (Singer, 2009: 572-573)

As such, Singer questions what inherent properties human beings could possibly have in virtue of being human which justify even a relational account of high moral status for human beings. Even though a superior cognitive ability is often cited as the reason as to why human beings can be entitled to better treatment, there is again the problem of human beings who lack those cognitive abilities. Singer here also offers the example of Koko the gorilla who was taught to communicate in sign language with human beings. In this example an ape possesses the sufficient cognitive capabilities to communicate using language, which is already of a higher level than the most extreme cases of persons who have cognitive disabilities, and surpasses the abilities of a newborn baby to communicate using language.[74] As such, Singer suggests, Koko should also be considered to be 'one of us' by the cognitive abilities criterion, and we will have again failed to group only humans as being part of the 'we'.

[74] For more on the communication skills of Koko and how she compares to the abilities possessed by human beings see: Bonvillian & Patterson (1993) and Joseph (1993). However, see also p113 below for scepticism about the abilities of non-human animals like Koko.

This completes my overview of those aspects of Singer's position that will be relevant for my purposes. I now summarise in the conclusion and explain where this will take us.

IV. Conclusion

In this third chapter, I have outlined Singer's view on moral status. This, in short, is a utilitarian stance on moral status, which argues — through the principle of equal consideration of interests — that same interests are to be given same weight in moral decision making deliberations.

In terms of moral status, on Singer's account a being's intrinsic moral status depends only upon its possession of interests, which are themselves intrinsic properties. To some limited extent, a being can also possess a relational moral status in virtue of standing in certain special relations to others (e.g., blood relations), but there is no justification for thinking that the *being the same species as* relation is such a special relation, and as such we are not entitled to consider human beings in general as having a higher relational moral status than non-human animals, and therefore not entitled to give human beings any special treatment because of this. This latter line of argument from Singer concludes with the view that by favouring our own species in a moral decision making dilemma (such as a burning building) then we are guilty of the same ill-judgment as those who are sexist, or racist. In plain terms, if we favour a member of our own species simply because they belong to the same species as us, then we are speciesist.

It is from this basis I will now move on to the moral individualist position of moral status. As it happens, I will argue that Singer's view itself counts as a version of moral individualism, and what distinguishes those who identify as moral individualists is really just a matter of emphasis. This is why, as was mentioned at the very beginning of this chapter, the criticism I

have of the utilitarian position offered by Singer and the moral individualist position, is the same criticism. This, then, is also why I have not explicitly explored the criticisms of Singer's view in this chapter. Singer's and the moral individualist's positions are similar enough in this respect to be treated together. Moreover, the argument from marginal cases has again been mentioned in this chapter, and will be mentioned again in the upcoming chapters. Once more, as a reminder, I will also return to this in greater detail in chapter six, where I will also present my criticism of Singer's and the moral individualist's positions.

So, for now, I will continue to move through notable accounts of moral status, and in the next two chapters will explore the moral individualist view presented by Rachels and McMahan.

Chapter Four: Humans and Non-Human Animals

In this chapter and the next I turn to the moral individualist view of moral status. It is most associated with the work of James Rachels and Jeff McMahan (McMahan's position on moral status is built upon the work of Rachels). In this chapter, however, I do not get into the details of moral individualism, but consider some background details by discussing an issue that I have not yet considered in any detail but will prove to be important later. This is the issue of what differentiates human beings from non-human animals. This issue will be important to me because, as we will see, in developing my own account of moral status I will have something to say about the moral status of non-human animals, and what I say will depend in large degree on the differences between them and human beings. In short, I will defend the view that at least many (though not all) human beings have a higher moral status than all non-human animals, but also that non-human animals have a much higher moral status than is usually attributed to them.

This chapter is the right place to consider the issue of the differences between human beings and non-human animals because Rachels's work on it is the most thorough treatment of the issue that I know in the philosophical literature, and it leads naturally into his defence of moral individualism. I also agree with what Rachels says, and so will be able to readily draw upon his conclusions in later chapters. Rachels himself draws upon the work of Darwin, arguing that by at least most measures, there is no significant dividing line between human beings and non-human animals.

Again, as a reminder, in this chapter I stick largely to describing the views of others, which will enable me to build my own account, starting in chapter six.

I. Morally relevant and uniquely human traits

Rachels's stated concern is to examine the philosophical implications of Darwinism on ethical views concerning animals. In exploring this he can be seen as offering a criticism of the human dignity view (i.e., by rejecting the idea that there are any common characteristics shared by all (and only) humans that can constitute this 'human dignity'). The human characteristics he considers that animals might be said to lack are: the ability to suffer or to feel pain; having higher cognitive abilities leading to increased intellectual capacities; possessing more complex language skills resulting in a better communication between humans; having a greater degree of rationality in decision making; possessing an ability to act morally. It is important that each of these are discussed in turn, so that in later chapters we have a clear idea regarding these differences upon which to build an account of moral status.

II. Suffering and Pain

Rachels argues that the relationship between human beings and the way they view animals has always been problematic. He argues that problems begin with the anthropomorphising of animals, and that we liken them to ourselves. This can be seen in the way we view our pets – we think that our cats are sometimes visibly sad, or lonely, or smile, but argues we have no way of actually knowing if they feel any of these emotions, and even so, if these emotions are felt then if it is in the same way we (humans) feel them. But Rachels also highlights that this anthropomorphism is at odds with our need to justify that non-human animals are not actually like us so that we can use them for our own gains: farming animals for meat to eat; or using them in experiments to test the effectiveness of medicines for human

benefit; and even for the testing of cosmetics for human beautification. [75] All of these uses we have for non-human animals mean we have to view them as being different from humans in order to justify our treatment of them. Regarding the ways in which we treat animals, Rachels says:

> [W]e are burdened with the need to justify our moral relations with them. We kill them for food; we use them for experimental subjects in laboratories; we exploit them as sources of raw materials such as leather and wool; we keep them as work animals — the list goes on and on. These practices are to our advantage, and we intend to continue them. Thus, when we think about what animals are like, we are motivated to conceive of them in ways that are compatible with treating them in these ways. If animals are conceived as intelligent, sensitive beings, these ways of treating them might seem monstrous. (Rachels, 1991: 129)

The idea here, is that there is a need, and a desire, to explain why animals can be treated in ways which fall far below the standard we would ordinarily treat human beings. This justification allows us to alleviate any moral guilt and reinforces our position of superiority, so that we can carry on treating animals as inferior creatures. And for Rachels, the historical pattern of humans needing to justify the treatment of animals as lesser moral beings is only too clear when observing the arguments of other philosophers. To illustrate this, Rachels uses

[75] Of course, we wouldn't treat our pets in the same way that we treat farm animals (i.e., kill them and eat them). That would be seen as another sort of moral wrong, which has its own interesting conclusions about the way we view the moral status of different animals. I don't have the space here to discuss this in detail, but it should be clear from what has come before that, ultimately, I think this boils down to a level of relational status, not intrinsic moral status. This vein of idea has been discussed by Diamond in her (1978) paper '*Eating Meat and Eating People*', which gives a broader introduction in to this topic.

Aquinas and Descartes as such examples of how animals were argued to be completely distinct and different from humans, in order to alienate them from our moral compasses.

Rachels himself doesn't give the quote from Aquinas, but it is useful to consider it, as it is clear that Aquinas thinks in hierarchical terms, with human beings being at the top of the hierarchy, and thus is in agreement with that aspect of the common sense view. In answer to the objection that it is just as much a sin to kill an animal as it is to kill a human, because both possess life, Aquinas writes:

> There is no sin in using a thing for the purpose for which it is. Now the order of things is such that the imperfect are for the perfect, even as in the process of generation nature proceeds from imperfection to perfection. Hence it is that just as in the generation of a man there is first a living thing, then an animal, and lastly a man, so too things, like the plants, which merely have life, are all alike for animals, and all animals are for man. Wherefore it is not unlawful if man use plants for the good of animals, and animals for the good of man… (Aquinas, Summa: II-II, Q64, Art 1)

Rachels, however is unconvinced by the argument that Aquinas puts forward. He believes that the ultimate purpose of arguments like this are to ease the guilt that human beings would otherwise feel for treating animals as we do. But, he says, even if animals were intended for human use, this does nothing to ease the horrendous suffering that has been (and still is) inflicted upon them.

Rachels argues that further examples of this rationalisation for our mistreatment of animals can be found in the works of Descartes. Descartes argues that the mind and body are separate entities, with the mind being immaterial in nature, and the body being a machine. He also believed that animals were merely machine-like creatures, and as such do not have a mind.

Again, although Rachels does not give it, it is worth considering a quote from Descartes where he argues that although animals can outperform humans physically in many respects, they are nonetheless not intelligent beings, but merely perform such actions 'like clockwork':

> Consequently, the fact that they do something better than we do does not prove that they have any intelligence, for, were that the case, they would have more of it than any of us and would excel us in everything. But rather it proves that they have no intelligence at all, and that it is nature that acts in them, according to the disposition of their organs just as we see that a clock composed exclusively of wheels and springs can count the hours and measure time more accurately than we can with all our carefulness. (Descartes, 1998: 33)

The implication of Descartes's view is that animals, lacking minds, cannot suffer. Whether or not Descartes himself genuinely believed this, Rachels argues that the general tendency to deny this is deliberate but specious, introduced so that animals can be subject to mistreatment. His view is that the position itself is so ridiculous that it is hard to see how it could have been seriously held:

> It is easy today, looking back, to think Descartes's view ridiculous. How could anyone seriously believe that animals do not feel pain? After all, we have virtually the same evidence for animal pain that we have for human pain. When humans are tortured, they cry out; so do animals. (Rachels, 1991: 131)

In my view Rachels here does not go far enough. I don't think we even need to 'look back' to deem this view ridiculous. Indeed, even before the work of Darwin there were

philosophers who recognised the absurdity of Descartes's view. Jeremy Bentham's famous proclamation in his *Introduction to the Principles of Morals and Legislation*, published in 1789, for example, is a case in point:

> It may come one day to be recognized, that the number of legs, the villosity of the skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or perhaps, the faculty for discourse?...the question is not, Can they reason? nor, Can they talk? but, Can they suffer? Why should the law refuse its protection to any sensitive being?... The time will come when humanity will extend its mantle over everything which breathes... (Bentham, 1769: 261)

I thus find it hard to see how people could ever have seriously believed that animals do not feel pain, given the similarities in the behavioural responses to pain that humans and animals display. As such, I can see no other reason for a view like Descartes' being adopted other than for those who adopt it to distance themselves so as to justify their actions which harm animals. Perhaps one might point to differences in behavioural responses to pain between humans and certain non-human animals. For example, humans will often use language to express that they are in pain, while animals cannot. Indeed, some animals, such as giraffes, lack vocal chords altogether and so cannot 'scream' in pain like a human can. However, such differences are not sufficient to make the view that they cannot feel pain plausible. In this regard, Rachels considers humans who cannot express their pain. He says:

> [I]nfants cannot speak, and neither can some [humans with severe cognitive disabilities] or senile people — yet we do not doubt they suffer when they are hurt. So, on what

> grounds could anyone possibly say that animals are insensitive to pain? (Rachels, 1991: 131)

In general, it seems that the less that humans are seen to be like animals, the more that humans justify to themselves the harm they do to them – whether this be inflicting wounds which would otherwise be perceived of as incredibly painful for humans, or farming them for food or experimental testing. But according to Rachels, since the time of Darwin, it has been abundantly clear not only that suffering is not specific to humans and is shared by animals, but that that humans and animals are far more similar to each other than human beings generally like to think. Let us consider, for example, cognitive ability and intelligence.

III. Cognitive Ability and Intelligence

Rachels argues that, as is alike with many characteristics a being can possess, intelligence comes in degrees. Humans are not the only intelligent creature, but on average humans are more intelligent than other animals. To illustrate this, Rachels refers to Darwin's work on the intelligence of earthworms where, he argues, even they can be said to possess some degree of intelligence:

> Darwin's method was to consider whether hypotheses other than intelligence might explain the worms' behaviour. If other hypotheses could be eliminated, leaving only intelligence as an explanation, then he would have to accept that explanation no matter how strange it seemed. One hypothesis might be that worms proceed merely by trial and error, learning nothing from their experience. Another might be that they act purely by instinct. […] The worms seemed to be reacting intelligently to their perceptions of

> the shapes of the new objects. As a result of these observations, Darwin became convinced that the hypotheses of 'unlearnt instinct' and trial-and-error are indefensible, and that 'One alternative alone is left, namely, that worms, although standing low in the organization, possess some degree of intelligence.' (Rachels, 1991: 135)

Of course, it is clear to see that the average human being possesses a higher level of intelligence than other beings, including earthworms. It is not the case that we are sat debating whether typical adult humans operate on instinct, or by trial and error. Instead we acknowledge the complexity of the intelligence of human beings. But a *higher* level of intelligence does not mean that all others possess *no* intelligence. Intelligence is not, as it were, a *special* property possessed only by humans. Things don't possess or lack intelligence *simpliciter*. Rather, it comes in degrees, and the degree to which a creature possesses intelligence should be decided through experimentation in individual cases. This simple fact will again prove important for my argument, and I will be returning to it later.

It is worth noting at this point that although Rachels agrees with Darwin on the comparative standards in which we hold beings, he does not agree with Darwin on all points. Rachels argues that Darwin himself goes too far in anthropomorphising animals. He argues that whilst Descartes and his followers conceded too little to animals, Darwin goes too far the other way and attributes too much to them. He then argues that due to this, and to avoid 'naïve anthropomorphism', those thinkers who followed Darwin's work then took great pains to highlight the differences between human and non-human animals, creating a renewed drive in the twentieth century to eliminate the thought that human and non-human animals are alike. As a consequence a number of arguments which aimed to demonstrate the stark difference between human rationality, and the so-called 'pseudo rationality' of animals, arose. Rachels argues that because of this the conclusion continued to be drawn that although animals might be similar to

us in bodily matters (i.e., that they have legs and arms, or that their muscles in their faces can form a smile) their minds are far inferior to human minds, which are far more complex and superior. One well known version of this view Rachels considers is the view that human linguistic ability demonstrates the differences between human and animal minds:

> Because we are masters of a complex language, we can formulate thoughts, draw inferences, and in general understand ourselves and what is going on around us in a sophisticated way. Animals who lack a language, the argument says, necessarily lack these associated abilities, and so they cannot be said to be 'rational' in the same sense. (Rachels, 1991: 137)

As it happens, Rachels does see some merit in this argument.

IV. Complex Language

Rachels notes that Darwin himself denied that the language that animals possess is radically different to the language possessed by humans. Darwin instead argued that the language used by humans differs in degree not in type, from the primitive signals used by animals, and as such the language system we have is just a natural extension of those same primitive systems. Rachels argues, however, that Darwin's work stops short of the really interesting issues concerning the evolution of human language:

> Darwin assumes that, if the origins of human language can be explained thusly, there is no problem in understanding how further evolutionary development can augment the

> primitive signal-system until we eventually come to modern English or Hungarian or Chinese. (Rachels, 1991: 138)

Drawing upon the work of Huxley, Rachels highlights that the use of human language gives persons capabilities that no animals can approximate. This is, the use of language gives people the ability and opportunity to pass on rich histories and the wisdom of those generations which came before our own; such as in the case with old-wives tales, myths, and tribal tales. It is this system of complex concepts that are associated with human language that it seems feasible that non-human animals cannot grasp. For example, Rachels highlights that non-human animals do not have the complexities in language as human beings do.

> Human language has syntactical rules that permit the formation of an infinite number of new sentences, expressing new thoughts, that have never appeared before. And despite the fact that they have never encountered these sentences before, humans are able to understand them instantly. […] Animal communication involves nothing comparable to the syntactical structures of human language, and the classic view, expressed by Descartes, was that this is what distinguishes man from the beasts[.] (Rachels, 1991: 138)

It is from this point that Rachels interprets Descartes' view as meaning that humans and non-human animals must have radically different natures (though of course Descartes went further than this and concluded on this basis that animals cannot feel pain). In fact, as Rachels highlights, there have been a lot of attempts to prove that Descartes was in fact, wrong; that animals can master syntactically complicated languages, but these have all failed. Even in cases where Great Apes have been taught sign language, communication between apes and humans

have not been proven in any robust way to be meaningful interactions, but can instead be explained in terms of the apes responding to the signals, gestures and subtle clues from their human teachers. [76] In short, such interactions, despite appearances, may remain as meaningless as teaching a dog to give a high-five; they understand the commands given and as such respond with a gesture, but do not necessarily understand the meaning *behind* the action – it's an empty reflex gesture to a taught command. About this, Rachels writes:

> Moreover, impressive evidence has been presented that early 'successes' were nothing more than animals responding, uncomprehendingly, to cues unwittingly provided by their human trainers, who would misrepresent the animals' performances by isolating their few 'meaningful' responses while ignoring the far more numerous instances of gibberish. It had long been known that pigeons can be taught to secure food by pecking coloured buttons in the right order. To substitute inscriptions for colours, so that the pigeon pecks please-give-me-food (rather than red-blue-green-yellow) would create the illusion but not the reality of language. The experiments with the chimpanzees, the critics argued persuasively, did little more. (Rachels, 1991:139)

As such, it seems that the linguistic capabilities of non-human animals are not, after all, comparable to human capabilities, and are in fact far inferior to the abilities that you and I possess. This means that while it is possible (and does happen) that non-human animals can communicate with one another, with some understanding of the other, it is nothing like how humans communicate with syntactically complex language. Rachels returns to examining

[76] The most obvious example here being of Koko the gorilla, mentioned above — who was said to joke and invent metaphors! For more on the communication abilities of Koko see: (Patterson & Gordon, 2002), as the space in this chapter does not allow for me to explore whether this really was communication or not.

Darwin's work on the matter, highlighting that even Darwin believed that this development of sophisticated language must depend upon how developed the brain is, and that it is only the human brain which developed in a way which allowed for superior and complex language to emerge.

Here, then, we do find a significant difference between human beings and animals. It remains to be seen, however, whether this is a *morally* significant difference. Once more, I will return to this point later.

V. Rationality

Moving on from the discussion of language, Rachels discusses rationality, and whether this is a condition which gives us a good reason to distinguish between the value of non-human animals and human animals. First, in order to be clear in the discussion, Rachels explores what it is to be rational:

> In one sense, to be rational is to be capable of constructing and following complex chains of reasoning. In this sense Sherlock Holmes was a model of rationality, as are mathematicians. This kind of rationality does seem to depend on the possession of language […] it is clear enough that humans can 'reason' in this way while other animals cannot.
>
> On the other hand, rationality is also shown to when animals — human or non-human — are able to adjust their behaviour to the demands of the environment in a complex, intelligent way. More specifically, we act rationally when we make choices that are appropriately motivated by our beliefs and attitudes. (Rachels, 1991: 140)

So, Rachel asks the question: If non-human animals are incapable of as complex language as humans, then are they incapable of being rational? Well again referring to the work of Darwin, and the ethical implications we can infer about the nature of non-human animals, Rachels notes that Darwin seemed to consider the second view on rationality when examining the nature of animals. That is to say that Darwin noticed that the behavioural patterns of animals showed that if they desired something, say a sea otter with a desire to eat a mussel, but encountered a problem or hurdle, such as the mussel shell being closed and therefore inedible in its current form, then animals showed rationality in solving those problems and acting reasonably in order to get what they want. In the case of the sea otter, these animals have been observed using rocks to hold the closed mussels against and to smash them open in order to get to the edible flesh inside. This behaviour is not unlike human behaviour: given a locked wooden box with an object inside it would make sense to a human that one way to gain access to the contents of this box would be to smash it open against a hard surface. Seeing as *rational* human behaviour in this case parallels the behaviour of non-human animals, it would seemingly make sense that the animal behaviour would also be rational. But, it is widely debated whether non-human animals are rational. Rachels writes:

> [A]s we might say: our best theory of animal behaviour involves attributing to them desires and beliefs. Desires and beliefs, taken together, form reasons for action. Thus, when we explain the animal's behaviour this way — the animal wants certain things, and realizes that by taking certain steps it can get what it wants — we are seeing its conduct as rational. Sceptics, however, have objected to this easy attribution of rationality. (Rachels, 1991: 141)

One noted sceptic, Rachels says, is behaviourist B.F. Skinner. Skinner, instead of attributing mentalistic properties to animals, argues that animals are responding mechanically to situations. This is to say simply: animals do not have beliefs or desires, but rather are conditioned to act in a certain way in situations. Rachels discusses one such case which Skinner argues demonstrates this:

> In one essay he described how he would expose this error for students: 'In a demonstration experiment a hungry pigeon was conditioned to turn around in a clockwise direction. A final, smoothly executed pattern of behaviour was shaped by reinforcing successive approximations of food'. Students were then invited to describe what was happening, and they invariably responded with such statements as 'The pigeon *observed* that a certain behaviour seemed to produce a certain result', or 'The pigeon *felt* that food would be given it because of its action'. But then, when the origin of the behaviour was revealed, this explanation was exposed as merely fanciful: in reality, the pigeon was only reacting mechanistically to prior conditioning. (Rachels, 1991: 141)

This response, learning that an action is likely to lead to a certain consequence is called *operant conditioning.* Because the pigeon, when they turned clockwise, was given food, the pigeon learned the behaviour and associated the consequence of food to that action. According to Skinner, it has nothing to do with the pigeon wanting or desiring food and such the pigeon knowingly turns clockwise, but rather the actions are a learned response. Skinner observed these behaviours in non-human animals, and also learned that positively rewarded behaviours (e.g., by food being given to a hungry pigeon) were more likely to be repeated than negatively

rewarded behaviours (e.g., shocking the animal), and as such Skinner introduced the term 'reinforcement'. Here is how Skinner himself puts this point:

> Positive reinforcement, as the term implies, is strengthening. It lacks both the suppressive and the aggressive effects of punishment, and it is free of the effects of negative reinforcement that we associate with anxiety and fear. Positively reinforced behaviour is active participation in life, free of boredom and depression. When our behaviour is positive reinforced we say we enjoy what we are doing; we call ourselves happy. (Skinner, 1978: 5)

Skinner argues that the ways in which we describe the behaviours of non-human animals are natural to us, but are completely erroneous and false. This is to say that we may believe that pigeon *feels* as though it will get food if it spins around in circles, but it is our inferences of what it is to feel which do not apply to the pigeon; the pigeon is hungry and is simply repeating learned behaviours in order to satisfy the instinct of hunger. He also argues that human selves are separated from non-human animals by our very nature:

> Since the only selves we know are human selves, it is often said that man is distinguished from other species precisely because he is aware of himself and participates in the determination of his future. What distinguishes the human species, however, is the development of a culture, a social environment that contains the contingencies generating self-knowledge and self-control. (Skinner, 1978: 52)

However, despite this Rachel disputes Skinner's findings. This is because Rachels believes that if non-human animal behaviours are learned, then so are human behaviours. He writes:

> But this is not just a thesis about *non-human* behaviour. If animal behaviour is shaped by this type of conditioning, so is the behaviour of humans. The conditioning that produces human behaviour is so complex that it is impossible to map, and so we have the illusion that human behaviour is different. But it is not. Mentalistic explanations are equally inappropriate for human behaviour. The pigeon is only the human writ small. (Rachels, 1991: 141-142)

In short, Rachels argues that Skinner's view assumes that the mechanistic explanations and the mentalistic explanations are incompatible. But, Rachels argues, it is not obviously true that if one kind of behaviour can be explained through learned conditioning – mechanistic behaviours – then the same behaviour *cannot* be explained through reasoning about beliefs and desires – mentalistic behaviour. For Rachels, these two are not mutually exclusive, and he explains this through discussing a hypothetical example of a child's preferences of ice cream flavours:

> Suppose that, as a child, you were rewarded for eating strawberry ice cream and punished for eating vanilla. (Perhaps your parents were psychologists that deliberately did this experiment.) As a result, you developed strong aversion to vanilla. Now, as an adult, when you are offered ice cream, with various flavours available, you invariable refuse the vanilla and take the strawberry. Wouldn't it be true *both* that your action was a product of conditioning (a mechanistic explanation), *and* that your decision was

> prompted by your desires (a mentalistic explanation)? After all, the fact that you now prefer strawberry can itself be explained by the fact that you were conditioned to have this preference. So there is no apparent incompatibility between the two. (Rachels, 1991: 142)

As such, with this, Rachels argues that (referring back to his previous example of Skinner's students being quizzed about the hungry pigeons) once we have a mechanistic explanation available, it does not mean that the mentalistic explanations are no longer relevant. Rachels then argues that had Skinner's students been presented with the ice cream case, above, and were asked to explain what was going on when the child chose strawberry over vanilla, then they would respond something like: "the child likes strawberry ice cream more than vanilla". And then, after this, had the students been presented with the knowledge that the child had been conditioned to choose strawberry over vanilla, Rachels suggests that the students may be interested in the context of the child's decisions, but remain doubtful that this knowledge was necessary for them to change or retract what they had said, on those grounds alone.

Ending his analysis of Skinner's behaviourism, Rachels concludes if Skinner is right, and animals do not have any beliefs or desires, it would show that Darwin was indeed wrong in his thesis. *But* this would also mean that if Skinner *is* right then this would *also* mean that humans do not have any beliefs or desires either. In the Darwinian view, Rachels highlights, it is thought that animal psychology and human psychology are continuous – and so what is said about one, must be said about the other, varying only in degrees.

On this note, Rachels discusses the possibility of Darwin's thesis being rejected by persons who argue that animal behaviour is *tropistic* – that is, that the behaviours of animals are automatic responses, reflexes, to a stimulus. (This differs from the earlier mentioned

behaviourism, but is nonetheless a mechanical process at its core also.) The example which Rachels uses is that of the bee:

> A bee, after finding food, will return to its hive and perform a 'dance' which informs the other bees of the food's quantity, direction, and distance. Humans have often marvelled at the 'rationality' of this bit of avian behaviour. Yet, when her antennae are stimulated properly, the worker will execute her dance in just the same way, *even though there are no other bees present.* Thus the behaviour is exposed as tropistic; it is merely a mechanical performance in response to a stimulus, and not 'rational' at all. (Rachels, 1991: 144)

This type of behaviour in animals could also be argued to be existent in humans; after all when human knees are hit in the right spot by a hammer (the stimulus) the knee jerks in reflex response to that. As such mechanical behaviours are not isolated to non-human animals. However, the important question is: *Is all animal behaviour tropistic, or just some of it?* This would include all behaviours of the 'higher-level' animals also: apes, elephants, dolphins and dogs, all of which we believe to be of the highest intellectual capabilities besides humans, would (if their behaviours *are* tropistic) be no more intelligent or rational than the dancing bee. But, if this is the case, why would we stop at believing non-human animals act on instinct and reflect, and not human beings? After all, humans are believed to be of the highest level of intellectual abilities of all animals. Referring back to Darwin's work, Rachels writes:

> If one takes this view of animal behaviour, *and at the same time regards human behaviour differently,* then Darwin's opinion about the psychological similarities between humans and non-humans must be rejected. But once again, why should we

> regard humans differently? If we are willing to regard even the most complex behaviour of monkeys and apes as in principle tropistic, there is no reason not to think of humans in the same way. Human behaviour, too, is under the control of a finite system — the human brain — and this means that the human behaviour repertory, no matter how vast, also has its limits. (Rachels, 1991: 146)

He continues by stating that although it may seem that human behaviour is incredibly flexible, more so than non-human animals, it is not *infinitely* so. As such, no matter how spectacular or special the human brain may seem to be, it is still a *finite* system – and so is the same kind of system as an animal brain. So, while it might seem to make humans more special or different from animals than we can form complex linguistic sentences of an endless possibility of variations of this, it reaches a point where even the human brain cannot understand the sentence, as it is too syntactically complicated. There are is a finite threshold for a person's understanding.

As can be said for understanding, Rachels argues, the behaviour of human beings is also incredibly flexible, but not infinitely so. Persons can adapt their behaviour to a situation and, should a person come across a problem, the person can usually adapt their behaviour. If a person is able to cope with a sufficient number of changes to a situation, and as such, adapt their behaviour to each changing situation accordingly, then it can be said that the person behaves rationally. But if a person does come across a particular situation that they *cannot* adapt to, then we do not say that the person is *irrational* as they could not meet the demands of the situation, but rather that their rationality has failed in *that specific instance.* And this too can be said of non-human animals, Rachels concludes.

VI. Social Instincts and Morality

Finally, Rachels considers differences between human beings and non-human animals with regard to their social instincts and moral behaviour. He returns to studying the work of Darwin, who wrote about the question of morality in animals in *The Decent of Man*, exploring the nature and origins of morality in all animals (including humans). Rachels notes that in Darwin's findings he concluded that non-human animals have the same basic instincts which form the foundations of morality as humans do, but that it is the case that these instincts are not as well formed as they are in human beings. This comes from our natural disposition to act in ways which benefit and help other people – so called *'social instincts'* – which cause us to set aside our own wants and needs to act in ways which we see as being moral. This, however, is not isolated to human beings alone. Rachels writes:

> The social instincts lead us to set aside our own narrow interests, and do what is for the good of the whole community. But other animals also have social instincts and are capable of acting self-sacrificially for the benefit of their fellow creatures. Therefore they should also be thought of as acting morally. (Rachels, 1991: 147)

This view of morality can be viewed almost identically as the argument of rationality in animals: This is to say that *some* animals possess *some* levels of rationality, and that because they do not act rationally in *all cases at all times*, it is not to say they cannot *ever* act rationally. In this, you can replace the word 'rationally' with 'morally' and it would encompass the view that both Rachels and Darwin outline, and as such I won't repeat the details.

However, it is important that I evidence the point that animals, firstly, possess social instincts, and that, secondly, they use these social instincts (in ways which are similar to human

beings). To illustrate this first point Rachels runs through the examples given by Darwin, and how it can be visible that animals become lonely and miserable when separated from their herds or groups (such as horses, notably social creatures, become reserved and sorrowful when they are removed from their companions – and the same can be said for elephants separated from the herd). But Rachels also adds that social animals don't just live alongside each other in groups, but they interact with and help one another, such as with removing parasites from another's back where the animal can't get to it themselves. He writes:

> The removal of external parasites is no small matter for an animal, but we are apt to be unimpressed by such examples. After all, it is easy to explain such patterns of behaviour as prompted by simple self-interest, as a matter of 'you scratch my back and I'll scratch yours', unrelated to anything that deserves to be called moral. But animals can be seen to provide even more valuable services for one another: mothers tenderly care for their babies; orphans are 'adopted' by other members of the group; and we even find instances of animals caring patiently for old or feeble companions. If we were searching for a clear example of moral behaviour among humans, we might choose a case of someone caring for an elderly invalid, without hope of reward. (Rachels, 1991: 148)

These cases of animals acting to benefit others not only include caring for others, but protecting them too. In Darwin's example, baboons defend their group when they are in danger, including in instances where the baboon would then be in danger themselves (if they didn't defend others, they could leave and therefore be safe). There are also numerous animals which have been found to warn others of a threat or danger, even when it puts them at a risk – such cases have been found in birds, who cry out in order to warn nearby birds that a predator is close, however doing so means that the bird which calls out is exposing themselves to the risk

that the predator will hear them and be able to track where they are from their calls. As such, calling out to warn others puts the birds at a personal risk, when they have little or no motivations to help other birds rather than save themselves. This willingness to protect others at a personal cost demonstrates that animals are in possession of (at least) some social instincts, and then leads us to the question of whether animals can act altruistically.

To act altruistically, is often described as acting motivated by the strong desire to help others. Rachels argues that altruism is often seen as to be a 'paradigmatic moral trait' – particularly when acting altruistically means that there is a willingness to forego some good for the person acting, in order to benefit others. Although this is often thought to be a strictly human characteristic, Rachels argues that it is not; and that some animals, such as rhesus monkeys possess it. Rachels refers to a series of experiments which were conducted at the Northwestern University Medical School in 1964 where the monkeys involved consistently refused food, to the point of starvation, in order to prevent other monkeys suffering the pain of an electric shock.

Rachels says that the experimenters themselves reached the conclusion that the rhesus monkeys were altruistic, in a strong sense of the word, meaning that they were willing to put the wellbeing of others before their own, even when at a severe personal detriment (such as starvation). However, there are reservations about calling animals 'altruistic'. Rachels theorises that this may be because non-human animals lack human language, and are not able to form abstract moral concepts. Simply put: animals can't think of themselves as being altruistic, or even think that altruism is a good thing. However, as Rachels points out, it is not necessary to being altruistic that one must be able to think that acting altruistically is a good thing. Rather, what is necessary to the concept of altruism is that a being desires that other beings don't suffer, that they act upon that desire, (and in the strong cases of altruism) that they continue to act upon that desire even if there is a personal cost in doing so. Rachels continues:

> Animals may not form abstract conceptions, but they do have desires, and apparently it is a powerful desire of the rhesus monkey that he should not cause suffering to his own kind. (Rachels, 1991: 150)

On this matter, Rachels concludes that the results from this support the view that rhesus monkeys act in ways which are morally similar to the ways in which humans would act in the same situation. Of course, not all rhesus monkeys acted altruistically, as we would expect not all humans would either. After all, human compassion is on a varying scale – with some human beings being significantly more compassionate, and some being not compassionate at all. But, as such, it can be shown that animals *can* act morally in the same ways that humans do. However, one way in which human behaviour with regard to morality is thought to differ from non-human animals is that humans are thought to have a conscience and non-human animals are not. Rachels finishes by considering this point.

VII. Conscience

Drawing upon historical philosophical literature, Rachels argues that humans possess a 'moral sense' that other animals do not. He writes:

> The idea of a 'moral sense', or conscience, was prominent in their thinking, but they gave the notion a decidedly naturalistic interpretation. To have a moral sense was to gave a capacity for second-order attitudes— attitudes that have one's *other* attitudes as their objects. This, they thought, was what makes a man a moral agent in a sense in which other animals are not. A dog's attitudes (they said) are all directed at objects

> external to the dog himself: he desires food, he desires what will make him warm, he desires to avoid the sources of pain. Perhaps, they might have said if they had known more about altruism among the animals, a dog might even desire that other dogs do not suffer. But the dog cannot desire to have a certain attitude, and he cannot regret that he has certain attitudes. A man, on the other hand, can want something (I want to hurt the person who hurt me) and at the same time can regret that he wants it (I disapprove of myself for wanting revenge, and wish that I had a more generous temperament). It is this capacity for approving or disapproving of one's own attitudes that constitutes one's conscience. (Rachels, 1991: 160-161)

Rachels adds that it was Darwin's work that argued the conscience is closely related to the inner conflict. This is to say, if a person has conflicting internal signals – such as personal interests vs. community interests – then the inner battle commences upon reflection of the situation. So, if a person were to place their own personal interests over the need of the community's interests (and as such be shunned or outcast for that decision) then upon reflection of the situation the individual may feel guilt or regret for their actions, and for choosing personal gain over a community (social) gain. Rather than a being's conscience being responsible for harbouring these feelings of regret, Rachels states that the naturalistic explanation put forward in Darwin's work argues that it is instead just an individual's wish that one interest or instinct prevailed over the other (a different outcome to the one which they had previously chosen).

If this is true, and the 'conscience' is just a reflection of the social instincts that humans possess, it is not justifiable grounds for differential treatment between animals and humans. This is because it is no more rational to choose one behaviour or instinct over another, if one

instinct were simply stronger at the time of the decision being made, then that is reasoning enough to assume that it was a good or valid decision to make for the individual in the situation.

Moreover, if consciences can be reduced to a reflection of social instincts, then it can be argued that consciences do not exist, and humans have no conscience – or at least, not as we commonly believe it to be the case (i.e., an innately human trait which guides us to be better people). This would, again, not deliver us grounds to differentiate the treatment between humans and animals.

So, if consciences are just a reflection on which interest prevailed over another, then what is the difference between good and bad people? Rachels says it's clear:

> A thoroughly admirable person will be one whose social instincts are strong enough to overcome the particular inclinations — fear, hunger, etc. — which might otherwise lead him to act contrary to the general welfare. (Rachels, 1991: 163)

To put it simply: A good person is one who acts in the benefit of the social group (despite their own personal interests which might contradict the group interests), and so a bad person would be one such person who does not act in the best interests of the welfare of the group. Rachels argues that such people are thought to exists as they are variations of the ages of moral progress that humans are in.

VIII. Conclusion

This, then, completes my overview of Rachels's account of the differences between human beings and non-human animals, with which I agree. The key point to draw from this, going forward, is that although there are differences, especially with regard to the linguistic capacities

of humans, the differences are not as stark as many have taken them to be, and in the main are differences of degree, not of kind. As noted, this will be important in developing my position in later chapters. It is also worth noting that, as should be clear, in all of the above I have been ignoring marginal cases. The differences I have been outlining are differences between *typical* human beings and non-human animals. But there are, of course, some human beings who differ from typical human beings to the same degree that non-human animals do.

I now turn to the details of moral individualism.

Chapter Five: The Moral Individualist Stance on Moral Status

In this chapter I describe the moral individualist position on moral status. This position is most associated with the work of McMahan, who has developed the position based on the work of James Rachels. In what follows, in addition to Rachels's (1991), I rely mostly upon McMahan's book *The Ethics of Killing* (2002), and his article 'Our Fellow Creatures' (2005). Combined, these texts provide a clear picture of the moral individualist position on moral status. [77]

Once more, this is a largely descriptive chapter, with criticism to follow in chapter six. However, I will be able to keep things fairly brief in this chapter, for as we will see, the same issues that we have been dealing with in previous chapters arise here too.

First, in order to ground what follows, I briefly explain what the term 'moral individualism' means. In fact, what this position explicitly advocates is a view that has already been discussed, namely, that the intrinsic moral status of any *individual* being can depend *only* upon the intrinsic properties that it possesses, and cannot depend upon any relational properties. It is in this sense that Singer's view discussed in chapter three is also a moral individualist position. What distinguishes the moral individualist from Singer is more a matter of emphasis on this very point than anything else. But, as we will see, emphasising this point allows them to press the point we considered in the previous chapter, namely, that the morally relevant intrinsic properties possessed by humans and other beings (in particular, non-human animals) come, as it were, on a sliding scale. As such, they also emphasise that moral status itself comes

[77] I will, of course, be using other texts from those thinkers where appropriate and needed but it is important to note that these texts offer the largest collective bulk of the moral individualist view presented by both Rachels and McMahan. As such, these materials offer the best comprehensive view of the arguments I will examine.

on a sliding scale, and this allows them to highlight the moral status of (non-human) animals in a distinctive manner.[78]

I. Moral Individualism

I start, then, where I left off in the last chapter, with Rachels's work on Darwin's theory of evolution and the ethical implications that this holds. What we learned is that Darwin argued that non-human animals possess similar rational skills, cognitive abilities, and altruistic behaviour as us human beings. Rachels concludes from this that there are wide ranging ethical implications for how we treat animals. These special human characteristics (intellect, language, awareness, altruism, conscience) are what underpins the idea of human beings being special, and it is this idea, Rachels argues, that Darwin's work undermines.

Rachels argues that for the credibility of the view that humans are morally special to be vindicated, human beings must be shown to be radically different from non-human animals. But as we have discussed in chapter four this is simply not the case, with numerous examples being available to support animals being capable of rational behaviour, taught behaviours, altruism, and intelligence. Statistically normal members of our species do possess some abilities that animals do not, but certainly not all do, and as such there is no hard set line which divides human beings from non-human animals; no special human value, an innate human

[78] This would be more in line with the moral relationist accounts which instead argue that moral status is dependant on belonging to a group that has moral status. Or, different from the relational accounts of moral status which we discussed in relation to both the egalitarian position, and in relation to the utilitarian account presented by Singer. It is also important to note that there are variations in moral relationists, and some argue that there is a Wittgensteinian grounding to moral relationalism (for examples of this see: Crary, 2010; Diamond, 1978) and others argue we ought to offer assistance to animals (for examples of this see: Anderson, 2005; Palmer, 2010). However, the base view between the group remains the same – that moral status is attributable due to the group membership of a being.

dignity, or distinct quality. With this in mind, Rachels focuses on how we treat non-human animals and asks: if we do not have a human dignity or special quality to separate us from non-human animals, what is it that allows us to attempt to justify the reduced moral status that we give to non-human animals?

It is after the discussion of the issues above in Rachels's book that he presents a new way of looking at morality, one which aims to tackle the idea that non-human animals are more similar to humans than we are apt to suppose: this is moral individualism. Rachels argues that moral individualism is a natural idea for a Darwinian to adopt, and one which will complement our views on both non-human animals and human beings. On this, he writes:

> Moral individualism is a thesis about the justification of judgements concerning how individuals may be treated. The basic idea is that how an individual may be treated is determined, not by considering his group memberships, but by considering his own particular characteristics. If A is treated differently from B, the justification must be in terms of A's characteristics and B's characteristics. Treating them differently cannot be justified by pointing out that one or the other is a member of some preferred group, not even the 'group' of human beings. (Rachels, 1991:173-174)

To give an analogy: if, in a game of football, I had to pick my team members, I (morally) should not pick Hannah over Tony simply because Hannah is a brunette and I prefer to have brunettes on my team. This would be (morally) unjustified. However, if I picked Hannah because she was a faster runner than Tony, then this would then be (morally) justified. This is because the characteristics that Hannah has are relevant to the situation. This same principle applies when making moral decisions and with regard to beings outside of our own species group. As such we should not choose to value a human over a monkey, simply because we

prefer humans over monkeys. It would instead have to be because of the characteristics that the human and the monkey each individually possess.

As trivial as choosing who you'd like on your football team seems to be, moral individualism has some serious moral implications also, and applies to situations such as animal testing (either cosmetic or medicinal purposes). Rachels himself addresses animal testing:

> Suppose we are considering whether we may use a chimpanzee in a medical experiment. In the course of the experiment the chimp will be infected with a disease and the progress of the disease will be observed; then he will be killed and his remains studied. In fact, such experiments have often been performed, and they are commonly considered to be morally acceptable. We may note, however, that the same experiment, performed on a human being, would not be considered acceptable. Appealing to the traditional doctrine of human dignity, we might explain this by saying that human life has an inherent worth that non-human life does not have. Moral individualism, on the other hand, would require a different approach. According to moral individualism, it is not good enough simply to observe that chimps are not members of the preferred group — that they are not human. Instead we would have to look at specific chimpanzees, and specific humans, and ask what characteristics they have that are relevant to the judgement that one, but not the other, may be used. (Rachels, 1991: 174)

In short: Moral individualism demands that we look at a specific being's characteristics when making a moral decision, and that if more than one being is being considered, then the characteristics of each individual are to be considered in the judgement. We cannot consider group membership as a morally relevant characteristic. That I belong to the group of 'human'

means nothing more or less than a cat belonging to the group 'feline', or of a cow belonging to the group of 'bovine'. Rachels argues that this position, moral individualism, works hand in hand with Darwinism, because if we take an evolutionary perspective then it is apparent that humans aren't in any radical sense different from any other kind of animal, and as such we can't draw a clear line between 'us' and 'them' in terms of morality. As we have already discussed above, there are large overlaps between non-human animals and humans in all kinds of characteristics and capacities, including the ability to be altruistic, intellect, and feel pain. These overlaps of abilities and characteristics makes drawing a hard line between species impossible. Moreover, it also disproves that, as is believed with regard to the notion of human dignity, that *all* human beings are special or distinct from all other kinds of animals. This leads us to question whether there is any inherent additional value to human life at all. If this is not the case, then there are real life practical implications to this, of which we will return to later.

II. McMahan's Moral Individualism

At this point we can turn to McMahan, who builds upon Rachels's work. The idea that there isn't a hard line which divides the nature of human beings and the nature of non-human animals, is also at the core of McMahan's work. He agrees with Rachels that moral individualism is correct, but diverges from Rachel's view in terms of what characteristics ought to be considered when making a moral judgement. For Rachels, only intrinsic moral status matters, and as such we must only consider a being's intrinsic properties when making moral decisions. It is these properties alone that determine how a being can be treated, and he rejects the idea that relational moral status exists at all.

McMahan, however, does not commit himself to this. This is because rather than arguing that only intrinsic properties are relevant to moral decision making, McMahan argues

that there is also an *agent-relative* reasoning to this process also, which appeals to relational properties which he calls 'special relations'. He writes:

> For I accept that *some* special relations between or among individuals are morally significant and are a source of moral reasons, though only of "agent-relative" reasons – that is, reasons that do not apply to people generally but only to those who are participants in the relations. (McMahan, 2005: 354)

In this regard, then, McMahan agrees with Singer that, at least in certain circumstances, the holding of relations is a morally relevant matter.[79] This is to say that there may be some instances in moral decision making where we need to make a decision between two persons, and we choose one over the other for no other reason than we have a special relationship to the person we choose (i.e., we know or care for the person in question). Again, as noted in example [1.1] in chapter one, most would agree that it is permissible to save one's own mother over a stranger from a burning building. We can suppose that there's no difference in the intrinsic properties between my mother and the stranger; both are human, and possess all of the normal intrinsic properties and characteristics that typical adults do. The sole reasoning that allows me to justify this is because of the *relational* properties my mother possesses (to me – the decision maker), that the stranger does not. This idea should now be a familiar one.

With the above noted, however, the core argument of moral individualism is that if two beings (regardless of species) possess the same morally relevant characteristics then, all things being equal, we can't justify different treating them differently. At this point, once more, the argument from marginal cases becomes relevant, and McMahan takes the problem head on.

[79] Recall Singer's discussion about the choice of feeding two starving children, one being one's own child, and the other being a child from a place which is far away (e.g., Africa). See page: 95 for this.

McMahan argues that the implication of moral individualism is that if one being does possess a morally relevant characteristic, and the other does not, then we *can* treat them differently. And this would, he believes, apply to humans as well as non-human animals:

> [I]f we think it is permissible to treat an animal in a certain way because it *lacks* certain properties, it should also be permissible, if other things are equal, to treat a human being in the same way if that human being also lacks those properties. (McMahan, 2005: 354-355)

A way of looking at this would be if we believe that it is permissible to farm certain non-human animals because they have a low level of intelligence compared to typical humans, then we must also apply this to human beings who also share this characteristic. As such, the argument follows that we must be prepared to admit that *either* it is morally permissible to farm humans with low intelligence *or* that it is morally incorrect that we farm cows and pigs and sheep. I am sure that the former suggestion seems morally repugnant to all who read it. McMahan himself points out that this point is a contentious one, with people rejecting moral individualism rather than agreeing with this conclusion. However, McMahan himself sees no option but to admit the conclusion. However, he introduces the concept of 'status-inferring intrinsic properties'.

III. Status-Conferring Intrinsic Properties & Special Relations

Introducing the notion of a 'status-conferring intrinsic property', McMahan allows that the inverse conclusion regarding non-human animals with a level of intelligence comparable to a human also holds:

> This is a property that gives its possessor a moral status that is a source of "agent-neutral" reasons – that is, reasons that potentially apply to anyone. Most people believe that intrinsic properties are status-conferring independently of species membership. Thus, if a genetically anomalous nonhuman animal were discovered to be self-conscious and autonomous, most people would recognize that it would have a higher moral status than that of other animals –perhaps, indeed, a status comparable to that of a human being. (McMahan, 2005: 355)

The point is that if any being does *not* hold any of these status-conferring intrinsic properties, and does *not* stand in any morally relevant relations to anyone, then we are permitted to treat it however we like, no matter whether it is a non-human animal or a human. As such, if non-human animals can be treated in certain ways (i.e., that they can be killed, or utilised for human purposes), then any being equal to it in its possession of morally relevant properties can be treated in the same way, and this includes severely cognitively disabled humans, and non-human animals who possess the same characteristics.[80] So, for example, if killing A would result in a being with FMS being saved (e.g., a typical human being), and A had no relevant intrinsic moral properties, nor relational properties, then it would be *morally permissible under this view*, irrespective of whether A is a cat or a severely cognitively disabled human. Again,

[80] By "killed" I mean in processes such as euthanasia as we would see as permissible for non-human animals (which we use for when an animal is suffering, or if their healthcare and veterinary costs are too high for an owner to justify), or perhaps in the extreme cases it would be to kill and eat (as is in practice with the farming industry). And by "utilised for human purposes" I mean through cosmetic testing practices, medicine and medical treatment testing and experiments, or through scientific experiments for research into behaviour – such as was with the experiment mentioned on page 124 above, concerning altruism and rhesus monkeys (which is not typically thought to be ethically permissible with human beings).

McMahan acknowledges that this would be strongly rejected by many people who would draw upon the 'nature of the kind' argument:

> They believe that it would be seriously wrong to kill any human being as a means of saving several others no matter what intrinsic properties that human being lacks (other, of course, than any intrinsic properties that are essential to being human, *if* being human is more than a matter of genealogy). Many seek to justify this belief by arguing that membership in the human species is itself status-conferring and is therefore a source of moral reasons that potentially apply to all moral agents. They argue all human beings, even those with no status-conferring *intrinsic* properties that are not also possessed by certain animals, have higher status than any animal by virtue of being members of a species whose *nature*, as determined by what is characteristic of its normal or typical members, is to possess certain status-conferring intrinsic properties. (McMahan, 2005: 355-356)

McMahan continues to illustrate this argument through the example of anencephalic infants – that is, babies who are born without cerebral hemispheres due to some genetic defect or misfortune – who are still deemed by most (as part of the common sense view) to have the same moral status as all other human beings, because an anencephalic infant's nature that they *are human*. The argument being considered is that it is wrong to alienate these humans from the human moral sphere, for a condition which was outside of their control. It is useful here to consider an advocate of this view, Carl Cohen, who writes:

> A common objection, which deserves a response, may be paraphrased as follows:

> If having rights requires being able to make moral claims, to grasp and apply moral laws, then many humans – brain damaged, the comatose, the senile – who plainly lack those capacities must be without rights. But that is absurd. This proves that [the critic concludes] that rights do not depend on the presence of moral capabilities.
>
> This objection fails; it mistakenly treats an essential feature of humanity as though it were a screen for sorting humans. The capacity for moral judgment that distinguishes human from animals is not a test to be administered to human beings one by one. Persons who are unable, because of some disability, to perform the full moral functions natural to human beings are certainly not for that reason ejected from the moral community. The issue is one of a kind. (Cohen, 1986: 366)

This view, as presented by Cohen, is a one which characterises human beings by the rest of their species – as such just because A is unable to act in a moral way (perhaps through possession of such a disability like anencephaly) it doesn't mean that their moral status ought to be reduced – after all, their nature is still that of a human being. But, as should now be clear, this kind of view cannot be supported by a moral individualist, and McMahan rejects it. Instead, he argues, as we should now expect, that the individual's morally relevant properties must be considered on a case-by-case basis.

As a consequence of his defence of moral individualism, McMahan accepts that severely cognitively disabled humans (i.e., those who are psychologically comparable to non-human animals) do have a lower moral status than typical human beings, on account of lacking the morally relevant psychological properties that typical humans possess. However, it is important to note that he does not think they should be treated in the same way that we treat psychologically comparable non-human animals. This is because, on his view, they *do in fact* bear special status conferring relations to our moral community, and thus they have an elevated

moral position on this basis. On this score, then, McMahan gives more weight to special relations than Singer did. For example, McMahan allows that severely cognitively disabled children have a relationship with beings who *are* part of the moral community (i.e., their parents, or those that care for them). So then, he thinks, we ought to treat them with dignity in virtue of their relationship with such moral agents. And, indeed, this process can be extended, although to a lesser extent, to non-human animals also — and ought to be in cases where mistreatment or actions towards a non-human animals would impact a moral agent (i.e., their owner, or those responsible for their care).[81]

To make this clear, we can consider a case of two beings, Mary and Charlie. Mary is a typical normal fully grown adult human female, and Charlie is a highland cow (who is owned by Mary's farmer brother). Mary has reared Charlie since he was a newborn calf, and as such has a close bond and relationship with Charlie. Ordinarily under the confines of the law it would be permissible for Charlie to be slaughtered and used for meat, or products, and so Mary's brother could legally farm Charlie. However, as Mary is particularly affectionate towards Charlie, it would greatly upset her for Charlie to be slaughtered. And as such, in this

[81] An interesting side thought here is whether this is extendable to other objects which we would ordinarily deem to be outside of the category of moral agents altogether. This might be, as was discussed in chapter one of this thesis with the cases of stones (see page: 29 for a reminder of this) – and perhaps a stone which is a favourite possession of a moral agent. But this could indeed be other objects which are not seen to possess moral agency, such as: twigs, chairs, carpets, TV screens, computer mouses, handbags, rings, and a whole host of other objects. So, if I did possess a twig which for me held sentimental properties, then ought it to be treated in a way that makes it included in a moral community, also? As surely, by not it would upset or impact, or infringe on the dignity possessed by myself – a member of the moral community that possesses agency. However, this is not entirely clear to me, and the cases do not seem fully analogous, however I cannot produce a full account exploring this given the word constraints of this thesis, and I do not claim to be able to fully solve this either. It is, however, very interesting to consider, nonetheless.

case, it can be argued that Charlie ought not to be slaughtered due to the 'special relationship' he has with Mary.

Again consider a burning building case:

4.1. In room A: Charlie, Mary's beloved highland cow.

In room B: Another highland cow that is beloved by nobody.

Which should you save?

In this example [4.1], it would then be argued that the morally right action we ought to undertake would be to save Charlie, due solely to his special relationship with Mary. This decision would not be because Charlie possesses some other morally relevant intrinsic property that the other highland cow does not: It is purely because Mary has great care towards him. Perhaps you could argue that it actually does not matter which highland cow we save in this situation, but it seems that most would say that it does matter because of the impact it would have on the moral agent (with FMS) — Mary — and so then we ought to limit her suffering.

This shows that, intuitively, the relationships we, as moral agents, have with non-moral agents can have some impact on how we ought to treat them – it does not, however, say that there is any change to their intrinsic moral status (as was discussed in chapter one of this thesis). All of this meaning that, ultimately McMahan argues that Cohen and those who defend the nature of the kind view, are confused by taking the value that being human confers on an individual as being intrinsic value, where in fact all that is justified is that it is a relational value.

As we can see, then, the issues that arise when considering the moral individualist view are familiar ones. And as we can also see, the moral individualist position is structurally very

similar to Singer's. Both Singer and McMahan think that we must judge an individual being's intrinsic moral worth based only upon its intrinsic properties, which is the core of the moral individualistic position, and why Singer himself also counts as a moral individualist. They also both allow that relational differences can contribute to a being's relational moral status (though Singer is more circumspect with regard to how significant these differences are). That there are these similarities has allowed me to be fairly brief in this chapter. But to finish, I want to elaborate on one important aspect of McMahan's view, which will enable me to compare his view with Singer's in one final respect.

IV. Singer and McMahan

Singer, as we saw, focussed on the notion of interests. It is a being's interests that are its morally relevant intrinsic properties. Because of this, as we saw, Singer maintains the Unequal Interests Model of Degrees of Moral Status. However, whether McMahan adopts this model or the Unequal Consideration model instead is not quite so clear. McMahan's view is that beings themselves have an inherent value that is determined by the mental states they enjoy, which themselves have an inherent value. In short, he thinks that certain mental states or experiences (feeling pleasure, enjoying oneself, appreciating a piece of art) are inherently good, and that lives that instantiate such pleasures are good to a corresponding degree. We effectively 'sum' the pleasures to get the value of the life as a whole. Moreover, he also suggests that higher cognitive states are themselves more inherently valuable than lower cognitive states. For example, he suggests that the aesthetic pleasure gained from appreciating a great work of art is more valuable than the gustatory pleasure of eating. (See, e.g., McMahan, 2005: 195) In this respect McMahan adopts the Millian distinction between higher and lower pleasures, and as such, he deems the lives of typical human beings to be themselves more valuable than the lives of non-human animals, and it is this that grounds their higher moral status and would justify the moral decision to save a typical human being over a non-human animal.

As a consequence of the above view, McMahan is able to justify a hierarchy of moral status that, at least to a great degree, mirrors the common sense view. The lives of insects, for example, contain relatively few (if any) valuable experiences and so the insects possess little moral status. The lives of fish contain a few more valuable experiences, and so fish have a moral status that is a little higher. The lives of 'higher' animals, such as dogs and cats, have even more valuable experiences, and so their moral status is higher still. And typical human beings have a great many valuable experiences, and so human beings have the highest moral status. In this regard McMahan considers allowing that there are even differences of moral status between different human beings. To illustrate, he considers the following two people:

> Bright was a person with exceptionally high cognitive and emotional capacities that made possible for him an unusually high level of well-being.
>
> Dull was the same age as Bright but was constitutionally dim-witted and stolid. There was thus a range of goods—including engagement in rich, complexly and subtly layered personal relations, the experience of intense, refined aesthetic states, and so on—that were accessible to Bright but from which Dull was by nature excluded. (McMahan, 2005: 234)

If we stick with the idea that moral status is determined by the level of inherent value that a being experiences, it seems that we should deem Bright to have a higher moral status than Dull. But, McMahan thinks, this is abhorrent to common sense intuition, and as he adopts the method of reflective equilibrium and so takes intuition seriously (as I agree we should), he rejects this view and instead adopts the view that although there is a hierarchy of moral status, at some point we reach what he calls the 'threshold of equal worth', at which moral status levels out. All beings who have sufficiently valuable mental states to reach this threshold, no matter the

degree to which they exceed this threshold, have an equal moral status. He adds to this that the threshold of equal worth coincides with what he calls the 'threshold of respect', which is the point at which a being is capable of moral thought and autonomy, in a similar Kantian vein to Waldron in chapter two. His view thus seems to be that typical human beings have particularly valuable lives because their experiences are not only pleasurable in various degrees, but also because they contain experiences constitutive of a genuinely moral life. He says:

> [S]omewhere along the scale that measures psychological capacity, there is a point at which individual worth ceases to fluctuate with variations in psychological capacity. There is a certain level of psychological capacity such that the corresponding level of worth cannot be exceeded. All individuals above that level of capacity have equal worth. Call this point on the scale the *threshold of equal worth*…. It seems plausible to suppose that the threshold of equal worth and the threshold of respect coincide — that is, that the point at which individuals have sufficient worth to command respect is also the point at which worth ceases to vary in degree. If this is so, then for most purposes we can refer to the two thresholds together as "the threshold." We can also stipulate — though this seems independently plausible — that a "person" is simply an individual with psychological capacities sufficiently high to be above the threshold. (McMahan, 2005: 249)

It is on the basis of this that McMahan defines a thesis that he calls *the Equal Wrongness Thesis*, according to which it is equally wrong to kill any being that falls above the threshold. All of this suggests that McMahan endorses the Unequal Consideration Model of Degrees of Moral Status. And this is bolstered by his admission that the pain of animals matters less than the pain

of typical human beings. (McMahan, 2005: 229) So, to return to example [1.4] from chapter one, it seems that McMahan would favour saving Sarah, the infant human, from pain, over Mickey, the lab mouse, on the basis that Sarah is *herself* more valuable than Mickey. However, McMahan does also talk about interests, and thinks that in certain circumstances we *should* take into account the interests that beings have when making moral decisions. This can be made clear by reconsidering example [2.1] from chapter two, where we had the choice between saving a ninety-year-old and a twenty-year-old from a burning building. In this kind of case, McMahan maintains, the twenty-year-old has a greater interest in living on into the future than the ninety-year-old (i.e., because they have more life left to live) and so we should save the twenty-year-old. McMahan labels the fact that we should take such interests into account the 'Time-Relative Interest Account' of the moral wrongness of killing. This might suggest that he does have some sympathy with the Unequal Interest Model of Degrees of Moral Status, as here it seems like he must say that, in virtue of having different interests, the ninety-year-old has a lower moral status than the twenty-year-old. However, this is hard to square with what he says about the threshold of respect, above which all moral status is supposed to be equal. For certainly, he would consider the ninety-year-old and the twenty-year-old to both be above that threshold. What McMahan says about this is interesting:

> [T]he Time-Relative Interest Account asserts that the degree to which killing is wrong varies, other things being equal, with the strength of the victim's time-relative interest in continuing to live… [Yet the Equal Wrongness Thesis] insists that our understanding of the wrongness of killing should reflect our commitment to the fundamental moral equality of persons. But despite my choice of label, the Equal Wrongness Thesis does not imply that the wrongness of killing persons never varies. It is compatible with that thesis to recognize

> that the wrongness of killing can vary in ways that are consistent with the fundamental moral equality of persons. (McMahan, 2005: 235)

What are we to make of this? McMahan seems to assert both that the ninety-year-old and the twenty-year-old have the same moral status, but also that it would be wrong to treat the two equally when considering who to save. McMahan does not satisfactorily address this issue, in my view, but my suggestion is that McMahan should view moral status as being attributed to lives *as a whole*, such that the ninety-year-old has already 'banked' much of their moral status, and has little remaining, whilst the twenty-year-old has a great deal left. This would allow McMahan to claim that young and old all have the same moral status, whilst allowing that the right thing to do is to save the twenty-year-old. It would also allow him to claim that typical human beings have a greater moral status than any non-human animal, on the basis that every human being's life as a whole has a greater moral status than any non-human animal. There are no doubt complications with dealing with moral status in such a way, but I don't attempt to pursue them any further here. My aim here is simply to outline McMahan's position, and to note what model of moral status he adopts. From what I have said, it seems clear, that he does, in the end, adopt the Unequal Interest Model of Degrees of Moral Status.

V. Conclusion

In this fifth chapter I have considered the moral individualist approach to moral status, which maintains that there is no intrinsic difference that separates all human beings from all non-human animals, and that as such, we are not justified in treating *all* human beings as having a higher intrinsic moral status than *all* non-human animals.

I am now in a position to begin criticising the views I have so far considered, and to begin building my own positive account, which I begin to do in the next chapter.

Chapter Six: The Argument from Marginal Cases

In this chapter, I now begin to build my own view of moral status. I do so by turning to an explicit consideration of a problem that has featured a number of times in previous chapters and that is commonly discussed within the literature under the name 'the argument from marginal cases'. Considering this problem serves two purposes. First, it allows me to spell out precisely where my agreement with moral individualism lies. But, secondly, it also allows me to introduce the major disagreement that I have with the versions of moral individualism that have so far been defended. I will argue that once the argument from marginal cases is properly viewed as a methodological problem, it paves the way for the introduction of kind of case that has been largely ignored in the literature, but that is of vital importance. It is of vital importance because, I will argue, it mandates a major revision to the moral individualist view.

Before I begin my main line of argument, I first deal with a preliminary regarding the use of the term 'marginal case'. As we will see, it is usually used to pick out particular kinds of cases, with the most prominent being cases of human beings with severe cognitive disability. Such human beings are thus discussed as being paradigm examples of marginal cases, and some in the literature have expressed concern about this usage, with some deeming the terminology and the discussion to be, in itself, offensive. So, I briefly address this issue up front.

I. Is The Term "Marginal Cases" Offensive?

The term ‘marginal case’ originates from Jan Narveson’s (1977) work on animal rights. He defends a contractualist position according to which morality itself is nothing more than a tacit agreement amongst rational agents (i.e., human beings) and that, as such, moral rights only accrue to those capable of entering into such agreements. Because non-human animals cannot enter into such agreements, he thinks, they therefore fall outside of the scope of morality and have no rights, properly speaking. His position is thus an egoist position according to which moral truths reduce to truths about what it is in the self-interest of rational agents to do. As I mentioned in the introduction, in this thesis I am assuming the method of reflective equilibrium and its concomitant commitment to moral realism, and as egoist views are generally considered to be anti-realist positions, a full assessment of this view falls outside of the scope of this thesis. Nonetheless, it is easy to see how Narveson’s position, at least *prima facie*, comes into conflict with our common sense intuitions with regard to human beings with severe cognitive disabilities, because, as seems clear, such humans will also not be able to enter into rational agreements and therefore should also fall outside of the scope of morality and lack rights.

Narveson does have something to say about this issue, and argues that we have a reason for ‘extending the ambit of morality’ to severely cognitively disabled humans that we do not have with regard to non-human animals. Narveson’s view on this matter will, in fact, prove important in section IV below, but in this preliminary section what is important is the fact that it is for this reason that Narveson calls severely cognitively disabled persons ‘marginal cases’. They are not like typical human beings, who fall squarely within the ambit of morality. They are on the ‘margins’, falling within its ambit only because we have ‘extended’ it to include them. Clearly, those who hold different positions regarding morality (e.g., egalitarians and moral individualists) will not have this reason for calling severely cognitively disabled humans ‘marginal cases’. But, his terminology has stuck, and the term is now used to refer to this class of human beings, as well as other beings. I’ll say more about this in section II below.

Narveson's terminology, then, has stuck. But many within the literature have found the term objectionable in and of itself. Take, for example, the following from Clark:

> The second path is made more attractive by the argument from "marginal cases" — a title that I confess I think is misleading and even offensive. (Clark, 1988: 239)

Clark suggests that merely by using the term 'marginal cases' we fail to award dignity to those beings who fall under it, including severely cognitively disabled. [82] However, it is not explicitly clear if this is solely where Clark's offence to the term lies.

Anderson and Diamond similarly share a distain for the argument from marginal cases, both seemingly agreeing that the term is insensitive at best. Their disliking has been noted by Dombrowski, who says on the matter:[83]

> The point I wish to emphasize is that Anderson and Diamond would be correct to think that the views of Frey and Singer are obtuse (in the insensitivity sense of the term) regarding marginal human beings. (Dombrowski, 2006: 228)

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[82] Clark, in his work, argues against 'animal rights' as well as 'human rights', focussing on the work of Frey rather than Singer. Frey, however, takes more or less the same line as Singer in so far that that he argues vehemently against 'speciesism' (for more on this, return to the Singer chapter earlier in this thesis, see page: 99). He differs only in that he thinks instead of animals being treated like humans are now, he thinks that humans ought to be treated like animals are now. For more on this, see: Frey's (1983) work titled *Rights, Killing and Suffering.*

[83] Dombrowski discusses both Diamond and Anderson in his (2006) paper 'Is the Argument from Marginal Cases Obtuse?' It was easier here to use Dombrowski as he is showing two philosophers who take issue with the term. However, if desired, you can find Diamond's view in her (1978) 'Eating Meat and Eating People', as well as Anderson's in her (2004) 'Animal Rights and the Values of Nonhuman Life'.

Their distain seemingly is rooted in the idea that it is morally abhorrent to label some human beings as 'marginal' in a way that could reduce their rights down to that of non-human animals in which – if we follow the argument to its logical conclusion – they could be clearly mistreated, abused, or as Diamond points out in her (1978) eaten. In short, they believe the use of the term is insensitive.

And a further similar objection to the usage of the term 'marginal cases' comes from Mullin, who, when discussing the notion of children as marginal cases, states:

> I will refer to the argument from marginal cases by this name because it is in general philosophical currency under this label. However I share the significant uneasiness some philosophers have about speaking of young children and people with a variety of [severe cognitive disabilities] as marginal cases of humanity[…]. (Mullin, 2010: 292)

So, as we can see, there is the view that this term is distasteful, and so perhaps we ought to not use it. However, I do think that its existence and usage in the literature on the topic of moral status does have some value. It serves to clearly separate the cases of beings that are at least generally agreed to have FMS from those beings about which there is some disagreement. Applying it to a being X clearly signals that in the case of X, it is unclear, or a contentious matter, what level of moral status X has. Such cases are genuine issues of importance that need to be addressed within the moral status literature, and we need some way to signal which cases they are.

However, clearly some of those who partake in this discussion, such as egalitarians, ultimately think that certain beings that fall under the term *do* in fact possess FMS (e.g., in virtue of possessing some inherent dignity). And so, I think that what such people find offensive

about the term is that, on their view, it *falsely* suggests that beings with FMS, that fall squarely within the ambit of morality (in virtue of possessing an inherent dignity, or some such), do not fall squarely within the ambit of morality. If this is right, I wonder whether it is the view that such beings do not possess FMS itself that is really being objected to. And if this is right, I have to say, I have little time for the objection, for that is to take offence at the very airing of a point of view that is sincerely held to be true by those who hold it, and defended on rational grounds. Nobody should take offence at this, as to do so threatens to shut down free and open discussion, and hampers the search for truth itself. At any rate, so long as it is kept in mind that the use of the term 'marginal cases' does not, in itself, *entail* that those that fall under the term lack FMS, then I think there is little to take offence at.

II. What Is a Marginal Case?

In the literature, discussion of marginal cases proceeds from a recognition that our common sense intuitions (as discussed in chapter one) are such that all and only human beings have FMS, and that, as such, no non-human animal has FMS. An intuitional conflict is then created by asking us to consider examples of beings that have a certain intrinsic moral status *according to intuition* but have a different intrinsic moral status *according to some moral theory.* As my focus here is on moral individualism, it is that theory that I will take as my example (and anyway, it is the most discussed view in the marginal cases literature). The overwhelming majority of cases discussed in this regard are either (i.) human beings who *lack* the morally relevant properties that are supposed by moral individualists to give typical human beings FMS, or (ii.) non-human animals who *possess* the morally relevant properties that are supposed by moral individualists to give typical human beings FMS. So, as the issue is presented in the

literature, a marginal case might well be considered to be any being that fits into either one of these two categories.

It is worth emphasising again that so-called 'marginal cases' are *only* 'marginal' *if* the moral individualist view is correct. By contrast, if one is an egalitarian who thinks that there is some special property that attaches to all and only human beings (some special dignity, or similar) and that grounds their FMS then there will be no conflict between intuition and theory. As such, the argument from marginal cases is a *problem* only for views, such as moral individualism, that deems some human beings to lack FMS, or affords FMS to some non-human animals.

But what exactly *is* the problem for moral individualism? Here we have to remember that the method that is being employed by moral individualists, either implicitly or explicitly, is the method of reflective equilibrium. As was discussed in the introduction to this thesis, this method involves taking our moral intuitions seriously. Our attempt to build a moral theory is both guided and constrained by our intuitions. Where we have a conflict between intuition and theory, we then face a choice: either we reject the intuition, we accommodate it by revising the theory, or we reject the theory outright. And so the argument from marginal cases is a problem that bites, for moral individualists, at the methodological level. If moral individualists accept the examples as described they must either double-down on their theory of moral status and reject common sense intuition, or else revise their theory to accommodate the examples. In other words, we here get a case in which the reflective equilibrium method is brought directly into play.

As we will see, moral individualists have tended to reject the intuitions and double-down on their theory. They tend to, that is, endorse the view that human beings who lack the morally relevant properties of typical human beings do indeed have a lower moral status than our common sense intuitions allow, and non-human animals who possess the morally relevant

properties of typical human beings have a higher moral status than our common sense intuitions allow. However, it is worth noting that moral individualists do take common sense intuitions seriously, especially with regard to cases of type (i.), and so agree that rejecting these intuitions is a significant cost. Indeed, as we will also see, some moral individualists have made concerted attempts to accommodate cases of type (i.). And some who accept the theoretical strength of moral individualism have nonetheless sided with common sense intuition, again especially with cases of type (i.), and see these kinds of cases as providing a sufficient reason to reject moral individualism outright.

As mentioned above, my concern in this chapter is to draw upon the literature to argue for my own position in relation to marginal cases, which will serve to indicate where I am in agreement with moral individualism and provide the starting point in building my own account of moral status. In order to do this, I first wish to focus on cases of type (i.) above, treating the argument from marginal cases as I think it should be treated, namely, as a methodological problem for moral individualists. After I have done this, I then want to introduce a different kind of marginal case, which, I think, mandates a major revision of the moral individualist position.

In order to focus on cases of type (i.), I first dismiss cases of type (ii.). I do so by arguing that they can be accommodated by the moral individualist in a straightforward manner *without* rejecting any common sense intuition. To see this note that, as stated, the relevant common sense intuition is that *only human beings have FMS* and not the intuition that *necessarily, only human beings have FMS*. This is important because our common sense intuition, as stated, relates only to the world as it actually *is*, and the world as it actually *is*, is one in which no non-human animals *do* clearly possess the morally relevant properties that typical human beings possess. As such, it is perfectly possible to maintain that it is true that, the world being as it is, *only* human beings possess FMS, whilst rejecting the idea that this is *necessarily* so. And, in

fact, I think common sense intuition aligns with this kind of view. I think, that is, that common sense allows that *were* the world to contain non-human animals who *did* possess the morally relevant properties that typical humans do, then they *would* have FMS. It seems to me that, for example, we are perfectly willing to grant FMS to non-human animals in fictional settings (e.g., films and books) where such animals are depicted anthropomorphically.[84] Were such fictional cases actual, then, I think our intuition would be that such animals should be treated in the same way as we treat human beings. Take, for example, the following case of a genetically modified cows:

> In a laboratory, scientists have found a new method of genetically modifying cows so that they have the capacity for higher (human-like) intelligence, have the ability to communicate via language, and can solve complex puzzles. However, one cow*[85] in the laboratory is a beef cow which is usually meant to be slaughtered for its meat, and the farmer who loaned the cow to the laboratory has requested the cow* back so that they may send the cow* to be killed. The cow* learns of this, and worries about its future, fears death and wishes not to be sent to the slaughterhouse – and communicates this to the scientists working in the laboratory. However, under the laws and protections afforded to animals in the United Kingdom, the cow* is the property of the farmer, and it is permissible by law that the cow* be sent for slaughter to be turned into consumable meat for human beings.

[84] I'm thinking here of the (1995) film *Babe*, or Orwell's (1945) book *Animal Farm,* as just a couple of examples.

[85] For the sake of clarity in this discussion, we can call the modified cow a 'cow*'. The asterisk denoting, then, that there is a difference between this cow* and a statistically normal cow: That the cow* possesses different morally relevant intrinsic properties to the average cow we might ordinarily consider it be fine to farm and eat.

In this case, I think the reaction of the general public, were they to learn of the case, would be clear. They would support a rejection of current law and would deem it wrong to send the cow to slaughter. In other words, I think that common sense intuitions in this case would deem cow*s to have FMS. This, indeed, seems to support the moral individualist viewpoint, for consider the question of *why* intuition would deem this to be so? Put in terms of intrinsic properties, as McMahan would put it, it seems that our common sense intuitions would track the fact that cow*s seemingly possesses the same or similar inherent properties as a typical human beings. Put in terms of interests, as Singer would put it, it seems that our common sense intuitions would track the fact that cow*s seem to possess the same or like interests to typical human beings, and that as such it would be wrong to treat cow*s in a different way from how we treat typical human beings. [86]

This case of cow*s, as outlined above, obviously generalises to any case of type (ii.). However, cases of type (ii.) are somewhat easier to deal with than cases of type (i.), and it is thus no surprise that the literature on marginal cases focuses most often on cases of type (i.), that is, cases of human beings who lack the morally relevant properties that typical human

[86] As Singer does with his *principle of equal consideration of interests* (PEC) which was discussed in chapter three. For a recap on this principle jump back to page: 87. For more on this which has not already been included in discussion previously in this thesis, see: Singer's *Animal Liberation or Animal Rights?* (1987), in which he discusses his interest-based rights system in a reply to Regan. I do not have the space in this thesis to discuss this at length, but it is an interesting read as Regan is presenting (in its simplest form) the same argument as Singer – that is, that animals do have, and ought to have, rights — yet Singer is criticising Regan's view. This is because Regan argues that animals have rights based on their possession of *beliefs* (and Singer disagrees, saying they possess *interests*). Regan's view is not one which I have considered in this thesis (again, I stress, due to the limitations I have had to place on discussion of the topic as there is such a huge range of materials available on the topic of 'moral status' more broadly) but for an overview of this view see: *The Case for Animal Rights* (2004).

beings possess. Indeed, some present the argument from marginal cases exclusively in such terms. Witness, for example, Mullin:

> The argument from marginal cases is really a class of arguments claiming that if we consider a wide enough range of humans, including young children and people with severe [cognitive disabilities] then no morally relevant characteristic will distinguish all humans from nonhuman animals. (Mullin, 2010: 291)

As this also makes clear, we do not have to appeal, of course, to fiction in giving cases of type (i.), for the world already contains such human beings.

Now, finally, before I focus on cases of type (i.), I want to emphasise a point that will prove to be vitally important in section V below. First, note that although the vast majority of the discussion in the literature focusses on cases of type (i.), in fact, the argument from marginal cases need not be set up with regard to such cases. To see this note that many people seem to find the idea of farming and eating certain kinds of non-human animal morally acceptable (e.g., cattle, pigs), but balk at the idea of farming and eating other kinds of non-human animal (e.g., dogs, cats). Remembering that moral status correlates with the permissibility of treating beings in certain kinds of ways, it thus seems that at least some people have the moral intuition that some kinds of animal have a higher moral status than other kinds of animal. One could of course attempt to justify this by saying that, in this case, we bear a certain morally relevant relation to dogs and cats that we do not bear to cattle and pigs, and that as such dogs and cats merely have a higher relational moral status than cattle and pigs. But this move does not seem to be able to bear the weight that is put upon it, for the intuition remains even for stray cats and dogs, and with regard to the eating of cats and dogs within cultures that seem to have born no special relation to them (e.g., the ancient Mayan culture). On the moral individualist account,

however, that cats and dogs have a higher moral status than pigs and cattle is only true if cats and dogs possess morally relevant intrinsic properties that are not possessed by pigs and cattle, and there seems to be no justification for thinking this is so, especially if we consider that very young dogs (i.e., puppies) have underdeveloped cognitive capacities compared to adult dogs, and as such certainly have lower cognitive capacities than, for example, pigs. As Norcross puts the point:

> So, what gives puppies a higher moral status than the animals we eat? Presumably there is some morally relevant property or properties possessed by puppies but not by farm animals. Perhaps puppies have a higher degree of rationality than farm animals, or a more finely developed moral sense, or at least some sense of loyalty and devotion. The problems with this kind of approach are obvious. It's highly unlikely that any property that has even an outside chance of being ethically relevant is both possessed by puppies and not possessed by any farm animals. For example, it's probably true that most puppies have a higher degree of rationality (whatever that means) than most chickens, but the comparison with pigs is far more dubious. […] This is simply the puppy version of marginal cases […]. (Norcross, 2004: 234-235)

So, the point I want to emphasise is this: strictly speaking a 'marginal case' is any being or type of being with regard to which we can set up a puzzle about how we treat it in comparison to another type of being based on our moral intuitions that cannot be justified in theoretical terms. I will return to this crucial point in section V. However, for now, I ignore this complication, and treat marginal cases as cases of type (i.) described above (i.e., human beings who lack the morally relevant properties that moral individualists think ground the FMS of typical human beings).

III. The Argument from Marginal Cases as a Methodological Problem

The argument from marginal cases, then, is a methodological problem for moral individualists. To make this problem clear, consider a concrete example:

5.1 In room A: a severely cognitively disabled human being, who possesses a psychology comparable to a non-human animal such as a cat.[87]

In room B: a statistically normal cat.

When considering this kind of case from an intuitive point of view, the common sense intuition is that it is the human being that should be saved. But, from the moral individualist perspective there is no morally relevant difference between the human being and the cat. They both have the same interests in continuing to live, and neither has any morally relevant intrinsic

[87] Here the choice of Downs Syndrome is a deliberate and conscious choice. This is because when these marginal cases are discussed by McMahan in his (2005) book, a criticism to this is given by Kittay. In this criticism Kittay argues her daughter, Sesha, who has Downs Syndrome is able to enjoy music and show affection to those she recognises. However, it is my view that in this case Sesha would not be classed as a 'severely' cognitively disabled human, and as such would be excluded from McMahan's (and myself's) discussions on this topic in which it is the most severe cases discussed in order to illustrate a point. For more on this discussion between McMahan and Kittay see: Kittay (2008), and, McMahan (2005). For additional commentary on the view that Sesha would not meet McMahan's requirements, see: Curtis & Vehmas (2021). For more on Kittay's egalitarian view, return to chapter two (see page: 55).

psychological property that the other lacks. As such, both have the same intrinsic moral status. Of course, again here one could appeal to relational differences by claiming that we bear morally relevant relations to human beings that we do not bear to cats. But, again, this move does not seem to bear the weight that is put on it, for the intuition remains the same if we imagine that, for example, an intelligent alien who bears no special relation to the human being is making the decision. Indeed, we can even imagine a case in which we discover some previously unknown intelligent being that has a closer genetic affinity with cats than humans, and that as such considers itself to have a special relationship with the cat and not the human. Then it would have a good reason to afford the cat a higher relational moral status than the human, and thus a good relational reason to save the cat over the human. Still, the common sense intuition remains that such a being morally should save the human instead.

As such, moral individualists must say that, on their view as so far developed and relational moral status aside, it does not matter, morally speaking, whether the human being or the cat is saved. And so, as such, the moral individualist view conflicts with common sense intuition. They must, as a consequence, make a decision. They must either (i.) reject the common sense intuition, (ii.) alter their theory so that it delivers up the result that it is the human that should be saved after all, or (iii.) abandon their theory as altogether misguided.

There has been one attempt in the literature to take option (ii.). Shelley Kagan has attempted to develop the view that even when a severely cognitively disabled human being *is* psychologically comparable to a cat, there are still morally relevant intrinsic differences between the human and the cat. These differences, on the account that Kagan sketches, are *modal* differences. In short, he suggests that severely cognitively disabled human beings, in virtue of being human beings, *could* have possessed a higher level of psychological complexity than they do, whereas a cat *could not*. However, the consensus in the literature, with which I agree, is that this cannot work. First, it is hard to see how to justify the idea that all such human

beings could have had such properties, whilst cats could not. After all, there are some human beings who suffer from severe cognitive disabilities for congenital reasons to do with their DNA, and so their cognitive disabilities seem to be essential to them. But, if one allows that they are not essential for this reason, there is little reason to suppose that a cat could not also have possessed a more developed psychology than it does. And second, even if, as is doubtful, the metaphysics can be made to work, it is still difficult to see how a modal property like this is a morally relevant one. How can a property that being *could* have had, but does *not* have, be a morally relevant one? There seems to be little that can be said on this score.

The major point to take from the above is this: the one attempt to accommodate common sense intuition is widely considered to fail. And, no other way of accommodating common sense intuition has so far been developed. It remains possible that someone will come up with another way for moral individualists to accommodate common sense intuition, but I judge this to be unlikely. There simply seems to be no room within the theory to find a morally relevant intrinsic difference between psychologically comparable human beings and non-human animals. As such, I judge that pursuing this option is a dead end.

This leaves option (i.) and option (iii.). Of course, egalitarians will believe that option (iii.) is the option that moral individualists should take. They will suggest that moral individualists should abandon their theory and instead endorse egalitarianism. But I do not think that this is a viable option. The reason I think this should be clear from the discussion of egalitarianism and moral individualism that was given in chapters two to five, above. Although egalitarianism conforms with our common sense intuitions in this case, it is theoretically very weak indeed. Egalitarianism requires there to be some special property that is possessed by all and only human beings. But there is no reason to think that there is any such property. In addition, egalitarianism fails to conform with other intuitions that we have. For example, there is the intuition mentioned in chapter two that we should save a baby over an old person from a

burning building. And there is also the intuition mentioned in this chapter above that *were* there to be a non-human animal with the same level of psychological complexity as is possessed by typical human beings, then we *would* afford it the same moral status as we afford to human beings. Moral individualists, by contrast, can perfectly well accommodate these intuitions. So, methodologically speaking, on balance, I judge that overall it is better to reject our intuition with regard to [5.1] and maintain moral individualism than it is to accept our intuition with regard to [5.1] and maintain egalitarianism.

There is another way of developing option (iii.), however. One might simply accept our intuition with regard to [5.1] *without* accepting any alternative theory. This is the option taken by Curtis and Vehmas in their (2016). They recognise the theoretical weaknesses of egalitarianism, and the theoretical strength of moral individualism. But, they maintain, the strength of our intuitions with regard to cases like [5.1] are so strong that we are entitled to reject moral individualism without having any other theoretical view to replace it with. I myself view the making of this move as something more of a promissory note than a serious position. In effect, they maintain that there *must be* some theory other than egalitarianism and moral individualism that accounts for moral intuitions such as those that are involved in [5.1]. Perhaps they are right. But it is hard to see what such a theory could be. At any rate, in the absence of even a sketch of such a theory, I judge it is better to reject our intuition with regard to case [5.1], and continue to maintain moral individualism.

The above said, then, only option (i.) remains. Moral individualists must reject our intuitions with regard to cases like [5.1] and maintain that severely cognitively disabled human beings have the same moral status as psychologically comparable non-human animals. And this, indeed, is precisely what moral individualists have tended to do. It is what both Singer and McMahan do when they conclude that some non-human animals are equal (in terms of moral

status) to some human beings (e.g., those with severe cognitive disabilities). Here, for example, is Singer:

> For example, all humans, but not only humans, are capable of feeling pain; and while only humans are capable of solving complex mathematical problems, not all humans can do this. So it turns out that in the only sense in which we can truly say, as an assertion of fact, that all humans are equal, at least some members of other species are also 'equal' — equal, that is, to some humans. (Singer, 1975: 265)

But aside from McMahan and Singer, it is also what other moral individualists do, too. Consider another example from Becker:

> Animals (at least the "higher" ones) have some of the same interests that humans have: avoiding pain, for example, and seeking pleasure. Furthermore some human beings — such as infants and the severely [cognitively disabled] — have interests only in the sense that the higher mammals do: they lack the self-consciousness, complexity of purpose, memory, imagination, reason, and anticipation characteristic of normal human adults. Yet we treat the animals very differently from the humans. It is customary to raise the animals for food, to subject them to lethal scientific experiments, to treat them as chattels, and so forth. What justifies such differential treatment? It must be some morally relevant difference in the characteristics of humans and animals per se, or in their circumstances vis-a-vis the world at large, or in their rights and our duties to them, or in the consequences (for social welfare) of differential treatment. But in some cases it is plain that there is no such morally relevant difference between humans and animals.

> Hence our preference for the interests of the humans in these cases is just a prejudice. (Becker, 1982: 226)

I agree with the basic overall judgement made by moral individualists that our common sense intuition should be rejected in this case. Moral individualists could, I suppose, rest content with a mere rejection of our intuitions. Insofar as the methodology of reflective equilibrium goes, this seems perfectly acceptable. Having weighed up theory and intuition in such cases, the judgement is made that theory wins. But, the last quote above by Becker points towards a number of important issues. The rejection raises further questions that moral individualists should, at least, say something about.

IV. Further Developments of Moral Individualism

The first issue that is raised by the rejection is the fact that we, as a species, do treat human beings and non-human animals quite differently. Case [5.1] was a case in which we are forced to make a choice between saving a severely cognitively disabled human being and a psychologically comparable non-human animal. But this was just one case. If we reject the intuition in that case, maintain that certain human beings with severe cognitive disabilities have the same moral status as certain psychologically comparable non-human animals, we are then confronted by other real-life concrete cases. We farm and eat certain non-human animals for food. We test cosmetics on them. We sell and trade them as pets. And so on. If treatment like this is morally justified on the basis of their moral status, then if certain human beings have the same moral status, are we then justified in treating them in the same way? The moral individualist, it seems, has no option but to agree that the answer here is “yes”. But our intuition

here is clearly that it is morally much worse to treat severely cognitively disabled humans in these ways. Again, they might try appealing to relational moral status as the difference maker, to argue that if it is morally permissible to do these things to non-human animals, it is still not morally permissible to do these things to psychologically comparable human beings. But for the same kinds of reason as before this doesn't seem to be able to bear the weight that it needs to bear. Intelligent aliens who bear no special relation to humans would still be doing nothing worse in farming and eating severely cognitively disabled humans than in farming and eating cattle, for example.

The upshot of the above is that moral individualists must accept that if it is morally permissible to eat and farm non-human animals, then, special relations aside, it is also morally permissible to eat and farm severely cognitively disabled humans. It is the force of this kind of example that, I think, many (such as Curtis and Vehmas, mentioned above) find compelling. However, note that this is a conditional statement: *if* it is morally permissible to treat non-human animals in this way, *then* it is morally permissible to treat severely cognitively disabled humans in this way too. And so, moral individualists can mitigate against the strong intuition that we have against the farming and eating of severely cognitively disabled humans by denying the conditional. They can maintain that the lesson we learn from this is that *because* it would be wrong to treat severely cognitively disabled humans in this way, it is also wrong to treat psychologically comparable non-human animals in this way too. They still cannot maintain that it would be morally *worse* to treat severely cognitively disabled humans in this way, but they do not have to condone treating severely cognitively disabled humans as we currently treat animals. As such, moral individualists can, and I believe should, maintain just this position. Indeed, again, this seems to be what the method of reflective equilibrium requires, for to do so is to move at least some way towards accommodating our common sense intuitions, and the theory allows for this without any difficulty. In effect, moral individualists should, then,

recommend that we assign a greater moral status to non-human animals than we currently do. And indeed, this is precisely what Singer and McMahan do recommend. Here, for example, is McMahan on this point:

> [W]e must revise our understanding of the moral status of both animals and the severely [cognitively disabled]. According to this view, which we may call Convergent Assimilation, we must accept that animals have a higher moral status than we have previously supposed, while also accepting that the moral status of severely retarded human beings is lower than we have assumed. The constraints on our treatment of animals are more stringent than we have supposed, while those on our treatment of the severely [cognitively disabled] are more relaxed. (McMahan, 2005: 228)

The second issue raised by the rejection of our common sense intuitions here is, as Becker says, that 'our preference for the interests of the humans in these cases is just a prejudice'. This seems more or less right, too. The moral individualist must say that our intuition that severely cognitively disabled human beings should be favoured over psychologically comparable non-human animals is simply wrong, and therefore constitutes something like, if not an outright prejudice, then at least a bias. To a certain extent this is again mitigated by recognising that the relations we bear to other human beings is a morally significant special relation, and so we can perhaps justify our preference to at least some degree. But, as seems clear from the above, the moral individualist should think we go too far if we continue to permit the farming and eating of non-human animals but think it would be morally horrific to farm and eat psychologically comparable human beings. But this does seem to be the general consensus within society. Of course, many within society are vegetarians, and some are even activists. But huge numbers

within society still eat meat, and even those who are vegetarians or activists tolerate this without too much complaint. Even meat eaters, I suggest, would be at the very least highly uncomfortable sitting down to eat a meal next to a cannibal. Yet vegetarians and even activists are, for the most part, happy enough to sit down to eat a meal with a meat eater. As such, that there is a strong bias towards humans seems quite plausible.

That there is such a bias, and one that is encapsulated in our moral intuitions themselves, cries out for explanation. To explain them doesn't excuse them, morally. But it makes it clear why we have them, and may help to explain why they are so powerful, even though misguided, which would in turn help to bolster the moral individualist's case. There are a number of plausible explanations possible, and I shall not attempt to pursue them all. But, I will give a line of argument that seems to me quite plausible, and that illustrates the general point.

To see the line of argument, consider the following, by Machan, who seems to think that we can derive a *moral* reason for thinking that human beings are of greater value than non-human animals and the environment by appealing to reasons of self-interest. He says:

> How do we establish that we are more important or valuable? By considering whether the idea of lesser or greater importance or value in the nature of things makes clear sense and applying it to an understanding of whether human beings or other animals are more important. If it turns out that ranking things in nature as more or less important makes sense, and if we qualify as more important than other animals, there is at least the beginning of a reason why we may make use of other animals for our purposes. (Machan, 1991: 167-168)

He goes on to argue that it makes sense for us to treat human beings better than non-human animals because it benefits us to do so, and so makes 'rational sense'. For example, he says:

> Clearly among these highly varied tasks could be some that make judicious use of animals — for example, to find out whether some medicine is safe for human use, we might wish to use animals. To do this is the rational thing for us to do, so as to make the best use of nature for our success in living our lives. (Machan, 1991: 169)

Machan further argues that, in effect, for this very reason we are morally justified in treating non-human animals as inferior beings. I don't have much to say about his argument itself, as it seems to me to simply conflate self-interested reasons with moral reasons. But the point he makes is nonetheless useful, for it illustrates that there are clearly good reasons, albeit non-moral reasons, for us to consider non-human animals as inferior to humans. That is, there is a sense in which it is *rational* for us to do so. Such reasons are present in situations that occur between human beings, and can also be present between humanity as a whole and the non-human world. Consider, for example, the following example:

> Livia and Luke are at dinner. Livia is told in secret that her soup may be poisoned. Luke is unaware of this knowledge. Livia is faced with two options: (1) Try the soup herself, and potentially be poisoned and die; or, (2) Say to Luke that she's worried the soup tastes salty and get him to try it first, potentially exposing him to the poison.[88]

[88] This is, of course, limiting the situation. It would obviously be different if Livia could alert the authorities, and tell them of the mystery poisoner. Or if she could call over the waiter and tell them that the soup isn't right and return it. We must also assume the poison is fast acting and Livia would see the effects of it almost instantly. But given the confines of this hypothetical situation then we can suppose

In this situation it is clear that, at least in in good sense of the term, the *rational* thing for Livia to do would be to not try the soup, and to use Luke to try the soup for her. This does not mean that Luke has less moral status than Livia, or that he is somehow morally less valuable. Instead it simply means that Livia places a greater value on herself than she does Luke. So, we might say, the relational value Livia holds (to herself) is higher than the relational value Luke holds to her.

So, then, the suggestion is that this is analogous to the case in which we (humans) choose to test our medicines on animals, or choose to use them for food, and so on. This is not because it is *morally permissible* to do so, but because it is in our *best interests* to test on them, or to use them as a food source. In short, we would rather someone or something else suffered instead of ourselves. This line of argument can be extended by noting that it stands to reason that if we tested on humans that we might ourselves be required to be tested on.[89] So, of course, it would be the rational self-interested thing to do to test on another group entirely, one which would not impact us or have the ability to make us suffer ourselves.

Here I want to return to Narveson's account, outlined above in section I. Narveson's position, remember, was an egoist one according to which morality is derived from self-interest. As I have said, I assume a broad realism in this thesis and so reject his overall position. But that is not to say that there is no truth at all to Narveson's view. Narveson himself thinks

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that she is faced with only two options: potentially expose herself to poison, or, potentially expose Luke to the poison. Kill or be killed, if you will.

[89] It stands to reason that if there was such a need for humans to be tested on, that human beings would not willingly sign themselves up without large incentives (which we can see already in the United Kingdom being offered) which is not financially viable in the long term. So, perhaps we could think of something like was suggested by John Harris in his (1975) paper 'The Survival Lottery'. However this would not be preferred by many (if any) human beings, as we risk our own survival or wellbeing. So it seems to be the rational thing to do to test on an entirely different group, that being non-human animals.

that we can explain *all* of our moral intuitions on the basis of self-interest. Realists must reject this much. But they can allow that *some* of our intuitions can be so explained. And it seems to me to be plausible that our moral intuitions surrounding the use of humans with severe cognitive disability and non-human animals can be explained in this way. The rough idea here is that we cannot safely rule out becoming cognitively disabled ourselves, losing our intelligence, or having our own children or relatives suffer such a fate, and this means that if we choose to say that any of these groups have a reduced moral status, we risk potentially ourselves being subjected to a reduced level of obligations being afforded to us. This would mean that we might be tested on, if we become a marginal case ourselves. So, declaring that *all* human beings are of a higher moral status would protect us from this being the case. By contrast, there is no risk of our becoming a non-human animal, so we do not have the same kind of reason to protect the interests of non-human animals. Consider, in this regard, what Narveson says about the argument from marginal cases. After ruling out the idea that non-human animals have rights on the basis that they cannot rationally enter into a contract, he then considers whether he ought to say the same for marginal cases, such as severely cognitively disabled humans:

> I don't think that these pose intractable problems, even granting the unacceptability of "speciesism". While species, as such, has nothing to do with the case at the level of foundations, there are reasons of a straightforward kind for extending the ambit of morality to infants and [severely cognitively disabled humans], etc. We want to extend it to children because most of us want to have our own children protected, etc., and have really nothing to gain from being permitted to invade the children of others; we have an interest in the children of others being properly cared for, because we don't want them growing up to be criminals or delinquents, etc. (and we do want them to be

> interesting and useful people). And we shall want the [severely cognitively disabled] generally respected because we ourselves might become so, as well as out of respect for their rational relatives who have a sentimental interest in these cases… Catering somewhat to such extensions, which are the only non-rational components of the case after all, is reasonable because it costs us very little and there is a modest amount to be gained by it… So it seems to me that the marginal cases are not a major problem. (Narveson, 1977:177)

My suggestion is that even if we reject Narveson's account of morality, we can still make use of this explanation for *why* we have the intuitions that we do about severely cognitively disabled humans in comparison to animals. The moral individualist will think of these intuitions as misguided, of course, but this at least provides a reason for their existence.

V. Issues of Desert as Marginal Cases

So far, then, I have argued that the argument from marginal cases is a methodological one for moral individualists, consideration of which should lead them to reject those common sense intuitions which suggest that every human being has a higher moral status than every non-human animal. My (provisional) agreement with moral individualism, then, as so far developed, can be summed up as follows:

- A being's intrinsic moral status depends upon its possession of morally relevant intrinsic properties.
- Non-human animals have the capacity to suffer, which is an important morally relevant intrinsic property and is the chief determinant of their intrinsic moral status.

- Typical human beings also have the capacity to suffer, but in addition to this they have higher level psychological capacities, which gives them a higher moral status than non-human animals.
- Humans who lack the higher level psychological capacities that typical human beings possess and are psychologically comparable to non-human animals have the same intrinsic moral status as those non-human animals.
- But, we may be able to explain our intuitions regarding severely cognitively disabled human beings by reference to morally relevant relational properties, and so relational moral status.
- And, non-human animals have a higher moral status than they are typically afforded (and as such should not be treated in the ways in which we currently treat them).

I have reached these conclusions by explicitly treating the argument from marginal cases as a methodological one. Although this is not how the problem is generally treated in the literature, the conclusions that have been reached by the most prominent defenders of moral individualism (in particular, Singer and McMahan) are broadly the same as mine. As such, I am in broad agreement with moral individualism, as it has been developed in the literature. However, now I turn to the major disagreement.

In order to illustrate my disagreement, I turn once more to a simple burning building case. Consider:

5.2. In room A: A human being who has severe cognitive disabilities

In room B: A human being with no cognitive disabilities but who has committed the most abhorrent crimes known to our society, and is not remorseful.

What is our intuition here? My strong intuition is that it is the human being with severe cognitive disabilities that ought to be saved, and I suspect that this is the strong intuition that most would have. That is, I think that this is another common sense intuition, on par with those I outlined in chapter one. But, as the view has been defended, what would moral individualists say about this case?

The answer, it seems, is that defenders of moral individualism would say that it is the criminal who should be saved. There has, so far, been very little consideration of this kind of case, but by considering what little attention it has received it seems that moral individualists are apt to maintain that we should ignore what actions a person has committed and their moral character when considering their moral status. In other words, it seems that defenders of moral individualism would maintain that in this example the criminal, despite his actions, has a higher intrinsic moral status than the severely cognitively disabled human being (i.e., in virtue of possessing a greater psychological capacity, or having more extensive interests, than the severely cognitively disabled human).

That this position is, at least prima facie, radically at odds with common sense intuition can be illustrated by considering another case:

5.3. In room A: A saintly human being who has throughout their lives put others before themselves and done a huge number of good moral acts.

In room B: A human being who has intentionally committed the most abhorrent crimes known to our society, and is not remorseful.

If we are to ignore the moral actions that a human has committed then, it seems, in this case the two humans should be considered to have the very same moral status, and that, as such, it should be a matter of indifference which we save. We should, as it were, toss a coin. But this result, I think it is safe to say, is repugnant to common sense.

I have said that this issue has received very little attention in the literature on moral status, but what attention has it received? So far as I can see, it has been explicitly considered in the context of moral status and moral individualism in only three relatively recent published papers (two of which are by the most prominent defenders of moral individualism): McMahan (2005), Kagan (2015), Singer (2015).

In his (2015) Kagan challenges moral individualism on precisely the kinds of ground that I am here considering. He is discussing the view in the context of Singer's formulation of it in terms of the equal consideration of interests, and says:

> Suppose, for example, that you and I are both suffering in jail. We are equally miserable, and for an equally long time. But you are innocent, while I am being justly punished for some horrible crime. Can't the fact that I *deserve* to be punished, while you do not, give us reason to think that the pain you are suffering should *be given more weight* than the pain that I am suffering? (Suppose someone could free one of us. Shouldn't your suffering count for more than mine?)
>
> It certainly seems to me that this matter of desert *is* a morally relevant difference. At any rate, Singer offers no reason to think otherwise. (Kagan, 2015: 6)

I am in total agreement with this point by Kagan, and I think his expression in the last paragraph is representative of the common sense view on the matter. I would have liked to have seen Kagan develop this criticism in more detail, but, unfortunately, he doesn't say any more than

this, and so these remarks remain the only extant expression of the criticism that I have been able to find. Perhaps because of their brevity, Singer's response is equally brief. In his (2015) Singer responds as follows:

> [Kagan objects to the principle of equal consideration of interests] on the grounds that it would make it illegitimate to give more weight to undeserved suffering than to deserved suffering. But there are familiar utilitarian theories of punishment that explain why, within a framework that gives equal weight to interests that have a similar impact on the welfare of the beings whose interests they are, we should take account of desert. (Singer, 2015: 33)

And this is all that Singer says. However, this does at least make clear that Singer does not think that a person's moral actions are relevant to their moral status. His idea here seems to be that we can account for the differential treatment of morally bad and morally good people without supposing that this impacts their moral status. However, I do not think that this accounts for our intuitions. I say no more about this point now, but will return to it in chapter seven.

Finally, in his (2005), McMahan also considers the kind of case I considered in example [5.3] above. However, McMahan's treatment of it is somewhat difficult to fathom. To explain why I need to first give some background to what McMahan's purpose is in his (2005) paper. In the paper he takes the common sense view to be an egalitarian one according to which all human beings have the same moral status, and reveals that this is his intuitive position too. As we have seen, however, McMahan does not ultimately endorse egalitarianism. This is because he accepts, as I have outlined above, that in certain cases, and in particular in the case of cognitively disabled humans, the moral individualist thesis should be accepted and our

intuitions rejected. However, in his (2005) McMahan is taking an egalitarian perspective and considering what challenges the view faces. Notably, he considers severely cognitively disabled human beings once more, and reiterates his conclusion that we should reject our intuitions with regard to them. But then he considers other challenges, including the challenge I am considering in this section. He says:

> Suppose [we consider] a choice between saving a virtuous person and saving a murderer of the same age (a murderer who has been punished according to his desert and is no longer dangerous but who feels no remorse), and the second a choice between diverting the train onto a track on which a virtuous person is trapped and diverting it onto a track on which the unrepentant murderer is trapped. When I ask my students about these cases, they are unanimous in thinking that one ought morally to save the virtuous person and, in the second choice, kill the murderer. Yet there is no sense in which the murderer is liable to be allowed to die, or to be killed. (McMahan, 2005: 102)

Here the fact that McMahan's students are unanimous in their judgments is again evidence that this intuition is a prevalent common sense one. This is important because it strongly suggests that common sense morality is not so egalitarian as egalitarians like to think. That is to say, in this kind of case, our intuitions seem to be *anti*-egalitarian. I also want to note that the view McMahan expresses in the last sentence is by no means obviously true. First, there are some who think that the only way a murderer could possibly receive punishment according to their desert is for themselves to be killed. Secondly, even if this is not true, the point of examples like the one he considers (and that I have considered) is that we face a choice between saving one or another person. Even if the *unqualified* statement that a murder is not liable to be allowed to die is true, it may well be true that a murderer is liable to be allowed to die *if there is a choice*

between a murderer and a virtuous person. At any rate, McMahan continues by stating the key point, as follows:

> If there is a moral reason to favor the virtuous person in these cases, it therefore seems that it must derive from a comparative evaluation of the each person's overall moral worthiness, whether this is a function of the persons deeds or of his dispositions or character, or both. (bid.)

Indeed. I entirely agree with this, and that is the position that I think that the moral individualist should take, and the view that I will go on to develop in the next two chapters. Yet McMahan, in this instance, is remarkably circumspect. In the closing paragraph of the paper he says:

> All this leaves me profoundly uncomfortable. It seems virtually unthinkable to abandon our egalitarian commitments, or even to accept that they might be justified only in some indirect way– for example, because it is for the best, all things considered, to treat all people as equals and to inculcate the belief that all are indeed one anothers moral equals, even though in reality they are not. Yet the challenges… support… skepticism about the compatibility our all-or-nothing egalitarian beliefs with the fact that the properties on which our moral status appears to supervene are all matters of degree. It is hard to avoid the sense that our egalitarian commitments rest on distressingly insecure foundations. (ibid. 104)

And so, in this paper McMahan does not go on to endorse the idea that a human being's moral actions or character can impact their moral status. And neither does he do so anywhere else, so

far as I can see. Instead, he rests content with saying that the idea that it does have such an impact leaves him 'profoundly uncomfortable'

What I find hard to fathom about all of this is that the evidence McMahan cites regarding our intuitions about morally vicious and morally virtuous human beings is evidence for the fact that common sense morality is *not* egalitarian when it comes to the moral actions and character of human beings. As such, it is hard to see why the rejection of *these* intuitions should make him profoundly uncomfortable. I can *perhaps* understand why it might make someone who had come to think that egalitarianism is true at the theoretical level, and internalised that view, uncomfortable. Such a person may have taken on a deep commitment to such a view which might be hard to shake when faced with particular common sense intuitions that conflict with it. But McMahan is not such a person. McMahan maintains moral individualism at the theoretical level, and indeed his commitment to this view is strong enough to reject the intuition that severely cognitively disabled persons have a moral status equal to typical human beings, which has a *much* better claim to being a common sense one. The only thing that I can think that makes sense of McMahan's comments here is that he himself fails to share the intuition that his students do. But, then, I think he ought to recognise that his intuition is at odds with common sense.

Whatever we are to make of McMahan's comments, the key point that I want to make here is simply this: cases such as [5.2] and [5.3] that involve vicious individuals should be treated as giving rise to a methodological problem in the very same way that cases like [5.1] that involve severely cognitively disabled humans do. Indeed, if one holds the theoretical view that a being's intrinsic moral status is determined *only* by their level of psychological development (as both Singer and McMahan do in their published work), then cases [5.2] and [5.3] are cases involving a marginal case. For remember my point at the end of section II above. There I said that, strictly speaking, a 'marginal case' is any being or type of being with regard

to which we can set up a puzzle about how we treat it in comparison to another type of being based on our moral intuitions that cannot be justified in theoretical terms. And this is precisely what cases [5.2] and [5.3] do with regard to vicious individuals. Our intuitions tell us that we should not save the vicious person in either case, yet the version of moral individualism we are considering tells us that this is not true.

Given the above, what we have is just another methodological problem. Moral individualists of the kind we are considering should therefore either: (i.) reject the intuition, (ii.) alter their theory to accommodate it, or (iii.) reject the theory altogether. But, in this case, unlike in the case of severely cognitively disabled humans, I think option (ii.) is a perfectly viable one. That is, the moral individualist *can* alter their theory to accommodate our intuitions. As such, I think that moral individualists have no motivated reason to take option (i.) or (iii.). In short, if moral individualists take our intuitions seriously, as they should, then they should seek to reject the theoretical view that a being's intrinsic moral status is determined *only* by their level of psychological development, and instead develop the view that a being's intrinsic moral status is determined *both* by their level of psychological development *and* by the moral actions they have performed

V. Conclusion

In this chapter, I have explored the 'argument from marginal cases', a significant issue within the discussion of moral status. I began by addressing the terminology, acknowledging concerns about the potential offensiveness of the term 'marginal cases', particularly when referring to individuals with severe cognitive disabilities. This term, originating from Jan Narveson's work, has been contentious due to its implication that such individuals are on the periphery of moral consideration.

I have defined marginal cases as beings with regard to which we can set up a puzzle about how we treat them in comparison to another type of being based on our moral intuitions that cannot be justified in theoretical terms, with a specific focus on moral individualism. I then focussed on severely cognitively disabled human beings and argued that the argument from marginal cases with respect to our intuitions regarding them should be viewed as a methodological problem. I argued in favour of the view that those intuitions should be rejected, and argued that the view that severely cognitively disabled humans have the same intrinsic moral status as psychologically comparable non-human animals should be endorsed. However, I also sought to mitigate the conflict with intuition that this creates by adopting the position that non-human animals have a greater moral status than we currently afford them.

Finally, I introduced the idea that our common sense intuitions are such that we judge that a person's moral actions and/or character effect their moral status. I considered the fact that this issue has received scant attention in the literature, and that no moral individualists have sought to accommodate this intuition in the theory. However, I have also argued that they should seek to do just this. This, then, paves the way for the development of just such a view. In the next chapter I begin by considering the notion of desert in more detail, which will help to bolster my view and lead to its full development in chapter eight.

Chapter Seven: Desert and Moral Status

At the end of the previous chapter I introduced my main thesis. This is the thesis that, very roughly put, a being's moral actions should be taken into account in determining its moral status by moral individualists. To be clear, I do not think I have yet done enough to defend the thesis, and it is the purpose of this chapter and the next to do this. In this chapter my aim is first to clarify the nature of my thesis and its scope, and raise some issues regarding its development that I will need to address. I begin by clarifying how my thesis is to be framed, before considering a more foundational issue.

I. Framing the Thesis

To begin, then, how is my thesis to be framed exactly? It is important that I address this question because there are a number of different possible theses in the vicinity of the one I will defend, and it is important that I clearly distinguish mine from them. To illustrate, my thesis is *not*, for reasons I'll explain, the following simple thesis:

> T1: A being's intrinsic moral status is partially determined by the moral actions it commits.

To see why, I want to remind the reader of what I said in the introduction to this thesis. There I noted that I was relying upon a particular methodology, the method of reflective equilibrium (which itself assumes a broadly moral realist position), according to which we should take our moral intuitions seriously when constructing our moral theories. Of course, moral intuitions can vary, but the ones I think we should take seriously are the most common moral intuitions

we have (what I am calling our 'common sense' intuitions). These moral intuitions are, as it were, the data that feed into the construction of our moral theories. They are assumed to, in some way or other, track moral truth. However, although all of our common sense intuitions are to be given weight, they are not sacrosanct. They are defeasible, and can be rejected if doing so enables a greater coherence between overall intuition and theory. As also noted in the introduction, although I think that this method is the correct methodology to employ, I have not offered, and will not offer, anything like a full defence of this methodology in this thesis. As such, my thesis is a conditional one, and this is why it is not the simple thesis stated above. As a first approximation, then, my thesis is better stated in conditional form, as:

T2: If the reflective equilibrium methodology is correct, then a being's intrinsic moral status is partially determined by the moral actions it commits

Even in conditional form this is still a very substantial thesis because the reflective equilibrium methodology is adopted, either implicitly or explicitly, in the literature on moral status.

Next, consider that, as I have already alluded to, I think that our common sense moral intuitions are at least *broadly* egalitarian, in the following sense: when we are presented with a straight moral choice between a human being and a non-human animal (i.e., a choice without any further context given), we favour the human being. This is seen by considering simple burning building cases such as the following:

7.1 In room A: A typical human being (who is a stranger).

In room B: A dog (who is a stranger).

Such intuitions remain even if further context is given and we replace the human being with a severely cognitively disabled one who has a psychological development comparable to a dog:

7.2 In room A: A severely cognitively disabled human being (who is a stranger).

In room B: A dog (who is a stranger).

However, as I have already made clear, the only way to vindicate these intuitions would be to give a theoretical account according to which *all* human beings possess some morally relevant intrinsic property that is not possessed by non-human animal such as dogs, and I do not think such an account is possible. As such, I think the theoretical account given by the moral individualist should be accepted, and the intuitions regarding cases like [7.2] should be rejected. I also accept the moral individualist view that a being's psychological properties are morally relevant properties. And so to a further degree of approximation, my thesis is:

T3: If the reflective equilibrium methodology is correct, then a being's intrinsic moral status is partially determined by its possession of morally relevant psychological properties and partially determined by the moral actions it commits

It thus differs from the versions of moral individualism that have so far been developed by taking into account the moral actions that an individual has committed. I do so because although I think that our common sense moral intuitions are *broadly* egalitarian in the sense

outlined above (i.e., in the sense that we favour humans over non-human animals when given a straight choice), they are not *entirely* egalitarian. So far the cases I have considered strongly suggest that they are not egalitarian when a human being's moral actions are taken into account and we compare two different human beings. In such cases, we favour morally good human beings over morally bad human beings, as evidenced by the following kind of case:

7.3 In room A: A saintly human being who has throughout their lives put others before themselves and done a huge number of good moral acts.

In room B: A human being who has intentionally committed the most abhorrent crimes known to our society, and is not remorseful.

It is consistent with this that *all* typical human beings, vicious or not, still have a moral status higher than any non-human animal. However, whether this is the case remains to be seen. It may be the case, when we consider further intuitions, that in certain circumstances we in fact favour non-human animals over vicious human beings. And if this is the case, it might be necessary to incorporate this into the development of moral individualism as well.

A related issue is that one might think that I can develop my account of moral individualism simply by endorsing the standard moral individualist view defended by Singer and McMahan (i.e., that beings with more highly developed psychologies have, *pro tanto*, a higher moral status than those with less highly developed psychologies). My thesis would then be to simply *add* to this view that their moral actions must also be taken into account, in a way that would modify the moral status they have in virtue of their psychological development. However, matters are not as simple as this. To see why consider what would need to be said about cases like [7.3]. According to the current standard moral individualist account of moral

status, the saintly human and the vicious human being, in virtue of having the same degree of psychological development, have the same moral status. This does not accord with our intuitions, and so my contention is that their moral actions must be taken into account. In effect, the proposal is that there are two independent determinants of moral status: psychological development and moral actions committed. As such, the result of taking moral actions into account must result in the saintly human being having a higher moral status than the vicious one. But, there are a number of ways that this result might be achieved, which will require considering issues such as the issue of whether we have intuitions that favour, in certain circumstances, non-human animals over vicious human beings.

Next, I wish to point out that so far, in this chapter and the previous one, I have only given examples, such as [6.3] in which human beings have committed virtuous and vicious actions. There is also the issue, to be considered, regarding whether non-human animals can commit such actions. In addition, in the previous chapter when discussing McMahan's view, I allowed (as McMahan himself considered) that it is not only a human being's moral actions that might affect their moral status, but also their moral character. This is a relevant point, for a human being might, for one reason or another, never have committed any immoral actions despite having a strong disposition to do so, and as such it might well be that we ought to take this into account too. This will also need discussion, but for the time being, I remain agnostic about this issue, and incorporate it into my thesis with a disjunction as follows:

> T4: If the reflective equilibrium methodology is correct, then a being's intrinsic moral status is partially determined by its possession of morally relevant psychological properties and partially determined by the moral actions it commits and/or its moral character.

This completes the clarificatory remarks regarding the framing of my thesis. I want to add to these two further remarks. The first concerns the fact that what action a being has performed, and what character they have, varies over time. And so something will need to be said regarding how a being's *past* moral actions/character contribute to their moral status at a time. The second is related to this, and concerns whether my development of moral individualism even deserves to be called a development of 'moral individualism'. The issue here regards the metaphysical issue of whether we can rightly conceptualise a being's past actions and character as being intrinsic properties of them at all.

To summarise, then, the issues that have been raised and that will need to be addressed, are as follows:

1. Should the account be developed in such a way that vicious human beings can have a lower moral status than non-human animals?
2. How do the two factors of being's psychological development and their moral actions/characters interrelate to determine their intrinsic moral status?
3. Do the two factors apply to all beings, or just human beings?
4. Is it a being's moral actions, their moral character, or both, that matter, and to what degree?
5. How should a being's varying actions and/or character over time be taken into account?
6. Are a being's moral actions/character an intrinsic property of that being?

I will explicitly address each of them in the final chapter of this thesis. But each of them should be borne in mind throughout the remainder of this chapter, where I address a slightly different issue, for the addressing of this issue will turn out to be of relevance to many of those above.

II. Desert

The issue I address in the remainder of this chapter is a more foundational one than the ones given above. Clearly my thesis relates to the notion of desert. My thesis can be understood as the claim that matters of desert should be incorporated by moral individualists into a being's moral status. If a being performs morally bad actions, according to my thesis, then they deserve to be treated differently than they otherwise would, and this is reflected by their having a lower moral status than they otherwise would have.[90] The support for my thesis, as outlined above, is that our common sense intuitions strongly favour treating people differently depending upon how they have acted, which I illustrate with the following burning building cases:

7.4. In room A: A human being who has severe cognitive disabilities

In room B: A human being with no cognitive disabilities but who has committed the most abhorrent crimes known to our society, and is not remorseful.

7.5. In room A: A saintly human being who has throughout their lives put others before themselves and done a huge number of good moral acts.

In room B: A human being who has intentionally committed the most abhorrent crimes known to our society, and is not remorseful.

[90] I.e., if they had not committed these bad acts.

However, it might be objected, to take this line is to fundamentally misunderstand the nature of our intuitions in such cases, and the nature of desert itself.

Here I return to Singer's response to Kagan from the last chapter, which I postponed dealing with. Kagan had suggested that facts about what a human being deserves are morally relevant facts that should indeed be reflected in their moral status, and Singer responded by claiming, in effect, that there are familiar utilitarian theories of punishment that explain why we should take account of facts about desert *without* this being reflected in a being's moral status. As a reminder, Singer's response was as follows:

> [Kagan objects to the principle of equal consideration of interests] on the grounds that it would make it illegitimate to give more weight to undeserved suffering than to deserved suffering. But there are familiar utilitarian theories of punishment that explain why, within a framework that gives equal weight to interests that have a similar impact on the welfare of the beings whose interests they are, we should take account of desert. (Singer, 2015: 33)

As noted, Singer's response is quite brief, and so it is not entirely clear what he has in mind. But, I am somewhat surprised by Singer's response here. For although Singer does not spell matters out, there are a couple of ways in which utilitarians have attempted to take account of desert in the literature on punishment. The problem for Singer is that the first way of taking account of desert does not do justice to our intuitions, and the second way, it seems to me, does not address Kagan's point.

Let us consider the first way first, which draws on certain distinctions in the literature on punishment between different conceptions of what justifies punishment, or what the aims

of punishment are. Retributivists, on the hand, see punishment as being justified directly in terms of desert. In short, retributivist think that those who commit immoral actions morally deserve to suffer a punishment that is proportional to the wrongness of their act. On the other hand, a range of other views see punishment in a different light. Some think that punishment is primarily justified in terms of deterrence. Punishment should be meted out to those who commit wrongs not because they deserve it, but in order to prevent others from committing such wrongs. Others think it is primarily justified in terms of rehabilitation. Punishment should be meted out to wrongdoers not because they deserve it, but because it helps the wrongdoer to reform themselves, becoming a better functioning member of society. And there are other views too. It is not my purpose here to offer an evaluation of these positions. The important point for my purposes is that there are a number of developed accounts according to which, strictly speaking, nobody *deserves* to be treated differently based on their past misdeeds, but that, it might be thought, our intuitions regarding desert can still be accommodated.

The way they can be accommodated under this first way of doing so is in a similar way to the way in which we saw Singer accommodated the idea that a doctor's life should be saved over other people's in an emergency situation (see section 3.1). His idea there was that saving a doctor's life would be the best thing to do, overall, as the doctor could then go on to help other people, and this was notwithstanding the fact that a doctor is not intrinsically more valuable than anyone else. In a similar vein, if one views the fundamental aim of punishment in terms of deterrence or to prevent further harm, for example, one might justify punishing a criminal for their wrongdoing because the overall deterrent or preventative effects would improve the lives of many others, and, as such, this would be justified, notwithstanding the fact that a criminal is not intrinsically less valuable than anyone else. That this is what Singer has in mind is quite plausible, as this kind of view is popular within the utilitarian/consequentialist literature, as Darley et al. note:

> [A] currently popular consequentialist view is a more pessimistic one: We lock up people in prisons so that they cannot commit any more crimes because they are locked up. (A qualification is relevant here: they cannot commit any more crimes for the duration of the time for which they are locked up except against other prisoners and occasional guards.) (Darley et.al, 2000: 660)

And indeed, this narrative of protection as the founding basis for punishment is echoed by the founding father of Utilitarianism, Bentham, in his work Principles of Penal Law, in which he states: "general prevention ought to be the chief end of punishment, as it is its real justification" (Bentham, 1962: 396). Given Singer's commitment to this kind of idea in the doctor example, perhaps it is this kind of utilitarian account that Singer has in mind.

However, if this is what Singer has in mind, then I think this entirely fails to do justice to our intuitions regarding desert. I'll say more about our intuitions in this regard shortly, but for now note that our intuitions remain steadfast even in cases where there is no deterrent (or rehabilitative, etc.) effect whatsoever. This is already apparent in the burning building cases [7.4] and [7.5] above, where the issue was not whether to punish someone as a means to deter others from committing such acts, but about who to save. But the point can be made even more clearly by considering that the burning building in case [7.5], for example, is on a desert island where only the saintly individual and the vicious individual reside, with no chance of rescue. We do have to introduce some artificial means here for you to be able to save one of them. For example, we would have to suppose that you, whilst not on the island, are somehow aware of their plight, and can instruct a robot that is also on the island to save the one and not the other, or some such. Nonetheless, the point should be clear enough. I think our intuitions are clearly

sensitive to matters of what people deserve, and are not explained by an appeal to deterrence or some other notion. And so, if this is what Singer has in mind, I think his response fails.

The second way in which utilitarians might try to accommodate our intuitions in cases like [7.4] and [7.5] is sensitive to matters of desert, and so perhaps it is this that Singer has in mind. In the literature there has been a good deal of discussion of what is known as 'desert-adjusted utilitarianism/consequentialism'. On such positions some way of accounting for what people deserve is incorporated into the basic consequentialist calculus for deciding what action should be performed. Somewhat ironically, the best worked out version desert-adjusted consequentialism is by Kagan himself, who develops it in his (2012) book *The Geometry of Desert*, which I can only assume Singer was not aware of. At any rate, one way in which Kagan attempts to take account of desert within a consequentialist framework is by treating desert as a kind of multiplier, according to which the value of the outcomes of an action are multiplied by some number, depending upon what the people who feature in that outcome deserve. Suppose, for example, that I have to choose between the following two options:

Option 1: Give 10 units of value to A, and 5 units of value to B

Option 2: Give 9 units of value to A, and 8 units of value to B

On a classical utilitarian view the value of the options is simply the addition of the value distributed, so for option 1 it is 15 and option 2 is 17, and so utilitarianism will recommend performing option 2. However, if we suppose that A is particularly deserving of the units of value, and B is not, then we can introduce a multiplier that changes the recommended outcome. We may suppose, for example, that A is deserving to degree 100, whilst B is only deserving to degree 1. Then we have to multiply the value of the units to get the value of each option, which

gives us for option 1 (100 x 10) + (1 x 5) = 1005, and for option 2 (100 x 9) + (1 x 8) = 908, and thus desert-adjusted utilitarianism recommends option 1.

There are other options that the desert-adjusted utilitarian might take here, and the issue of how to correctly incorporate desert becomes much more complicated than in this simple illustrative example. But none of this matters, for the point is that desert-adjusted utilitarianism is a technical theory for incorporating desert into utilitarianism, and does not itself say anything about why we should want to incorporate desert into utilitarianism. In other words, it is assumed that we should so incorporate it, but it does not say why we should. This point is made explicit by Kagan in his (2012). Consider, for example, the following from the first chapter of his book:

> One such familiar question, then, is this: what exactly is the basis of moral desert? Presumably, if some people are more deserving than others, then this is by virtue of having some features that the others lack, or perhaps having those features to a greater or lesser degree. But what, exactly, are the relevant features? What is it, exactly, that makes someone more deserving than someone else?
>
> This is obviously an important question, and the answer is far from clear. We can agree, perhaps, that your "moral worth" determines your level of desert, but it isn't at all obvious what, exactly, affects your level of moral worth…. I won't take much of a stand on any of these matters. I will simply assume that there is some relevant desert basis, and that in principle, at least, we can rank people differentially in terms of this basis. Of course, it will be useful to have some way to refer to this basis, and so I will help myself to the language of virtue and vice. That is, I will assume that the more deserving are more deserving by virtue of being more virtuous, and that the less

> deserving are so by virtue of being less virtuous—and that those who rank very low indeed in terms of how deserving they are do so by virtue of being vicious overall, rather than virtuous. (Kagan, 2012: 6)

The major point here is that developing a desert-adjusted account of utilitarianism does not commit one to any particular view of why people deserve what they deserve. *Perhaps* it is because performing vicious acts impacts one's moral status, as Kagan suggests here, or perhaps it is for some other reason. However, that it *is* because vicious acts impact one's moral status is clearly compatible with desert-adjusted utilitarianism. As such, if this kind of account is what Singer has in mind, then his response to Kagan again fails.

What the above illustrates is that my thesis is not about how to incorporate desert into a moral theory like consequentialism. Rather, it is about the very basis of those theories that do attempt to incorporate desert. My thesis is about why we should want to so incorporate desert. My thesis is that, if reflective equilibrium is endorsed, we should take our moral intuitions seriously, and if we do, then we will find that we should conclude that a being's moral status is impacted by their moral actions/character.

III. Retributivism and Punishment

With that said, then, I now want to turn to our desert based intuitions in a little more detail, and outline what I think these intuitions consist of. As should be clear, I see these intuitions as being retributive in character. Much has been written about this in the literature, as one can imagine, and so I do not pretend here to offer anything like an exhaustive overview of this. Instead I will be selective, and pick out a number of quotes that best illustrate the sentiments that I think lie behind our moral intuitions regarding desert.

First, I think our intuitions regarding desert are such that desert is viewed as being an intrinsic good with no further need of justification. That people get what they deserve is, in short, valuable in and of itself. There are numerous expressions of this point, put in just these kinds of terms. For example, in the context of punishment consider Darley et al.:

> One justification metes out punishment because the perpetrator deserves to be punished for the past harm he or she committed. The punishment is a valuable end in itself and needs no further justification. This approach is typically referred to as a ‘‘just desert’’ or ‘‘retributionist” perspective. (Darley et. al., 2000: 660)

But, I want to emphasise that our intuitions are not just about *punishment*, for punishment seems to require a punisher (i.e., a person, or institution, that administers it). Yet, our intuitions are such that when a chance bad event befalls a person who has done wrong, we are apt still to say “they got what they deserved”. This is especially so if the nature of the bad event is somehow linked to the nature of the bad action. For example, if I have been malicious towards animals, causing unnecessary suffering and harm, and then I get trampled to death in a field of cows, then we would also see this as me getting my just desert. Moreover, it is not only bad actions that we feel deserve recompense. We also think that good actions are worthy of desert, and that good people deserve good things to happen to them. Consider the following, from Leibniz, who suggests that our sentiments are universal in scope in just this way, suggesting that we tend to think about desert from the perspective of something like cosmic justice, where the best overall world is one in which good and evil are distributed to those who deserve good or evil things:

> It should be realized that, just as in the best constituted republic, care is taken that each individual gets what is good for him as far as possible, so the universe wouldn't be perfect unless individuals were taken into account as far as is consistent with the universal harmony. There couldn't be a better standard in this matter than the *law of justice,* which lays down that everyone is to participate in the perfection of the universe, and to have personal happiness, in proportion to his own virtue and to the extent that his will has contributed to the common good. (Leibniz, 2017: 6)

In this regard, I think we see a link between one's own actions and the treatment which we ought to receive in light of this, but we also forgive actions that are in some way out of our control. The only way to really make sense of this, in my view, is if we ordinarily consider that our actions in some sense reflect the characteristics or traits that we possess. And this goes some way to explaining why desert should be incorporated into moral status. Bad actions reveal a bad character, and good actions reveal a good character, and these are not relational properties but morally relevant intrinsic properties of us, just as the level of psychological development we possess is, and so should be expected to have an effect upon our intrinsic moral status. The following by Feinberg gestures towards this point:

> A characteristic of mine cannot be a basis for a desert of yours unless it somehow reveals or reflects some characteristic of yours. In general, the facts which constitute the basis of a subject's desert must be facts about that subject. (Feinberg, 2000: 223)

It also worth noting that Feinberg also recognises that such intuitions regarding desert are also widespread and 'natural', thus agreeing that they constitute common sense opinion:

> […] what is the relevance of social utility to "modes of deserved treatment"? Let us start from the beginning and work up to it. Men, or at least "reasonable men," naturally entertain certain responsive attitudes toward various actions, qualities, and achievements. (Feinberg, 2000: 237)

For my purposes, given the method of reflective equilibrium and the assumption that our moral intuitions are apt to track moral truth, it is enough that we do in fact have such intuitions. But, there is also question about what justifies them. In this regard I find the work of Kant on punishment to be illuminating. Kant, as is well known, held a strict version of deontology, according to which any action that a rational agent commits must be one that they will to be a universal law. As Kant himself puts it:

> The question is therefore this: Is it a necessary law for all rational beings to judge their actions always in accordance with those maxims of which they themselves can will that they should serve as universal laws? If it is then it must be bound up (fully a priori) which the concept of the will of a rational being in general. (Kant, 2002: 44)

Put, in rather simplistic terms, but terms that will suit my purposes: a rational being must morally only commit acts which they would be happy for every other rational being to also commit.

What is perhaps less well-known about Kant is that he is a retributivist, and as such advocates punishment as penance for the harms an individual has committed (and that each

punishment must fit the crime that the individual has committed). This is connected with his universalising maxim. As a rational agent, if you commit a bad action, in some sense you will that this action be committed against yourself also. As Kant puts the point:

> So: what undeserved evil you do to another in society, you do to yourself. If you insult him, you also insult yourself; if you hit him, you hit yourself; if you kill him, you kill your self. Only the law of retaliation (jus talionis), but of course understood within the chambers of a court (not in your own private judgment), can determine the quality and quantity of the punishment… (Kant, cited in Byrd 1989: 152)

I think that our intuitions track something like this idea. When a person performs a bad action, they are in effect signalling that they themselves think it is okay to treat others in a harmful way for their own purposes. Our intuition is that they are wrong about this, and that in so doing they have not only denigrated those they have wronged, but have also denigrated their own character in such a way that we should no longer treat them as *we* treat others, but as *they* treat others. I admit that this idea is somewhat sketchy. But I emphasise that for my purposes, quite why we have the intuitions we do regarding desert, and quite what justifies them, is not of primary importance. What matters is that we do have such intuitions, that they have the character I have adverted to, and that we take them seriously.

To finish in this chapter I want to take a break from the burning building thought experiments to bring attention to another example from the literature. The example raises an important point regarding desert that will prove important in the next chapter. In the burning building examples we always face a choice between two beings, and as such we are concerned with comparative moral status. This is appropriate when attempting to find a basis upon which

different kinds of beings have differing levels of moral status. But, consider an example where this is not comparative choice, the case of the drowning dictator, discussed by Plant (2021):

> Drowning Dictator: You live in a country ruled by a dictator. One day, when walking past a pond you see him drowning—he has a distinctive appearance, and you recognise him from his ubiquitous propaganda posters. You can easily rescue him. However, you realise that saving him will not only ruin your new expensive shoes, but he will foreseeably go on to torture and terrorise thousands of people in the future. (Plant, 2021: 3)

In the example, as given, there is the complicating factor that he will go on to torture and terrorise thousands of people. But, let us imagine that this is not so. Let us suppose that he is now old, or has lost power and is guaranteed never to regain it, or some such. But let us also suppose that he has tortured and terrorised hundreds of thousands of people in the past. Then we are facing not a choice about whether to save the dictator or someone else, but simply the choice whether to save him. We are considering the moral status of a human being who is typical in terms of his psychological development. We can suppose that the dictator has all the morally relevant intrinsic properties that moral individualists think matter. So, on the standard moral individualist account, he has full moral status. And so, on the standard account, as we will suffer only the loss of our shoes, it seems clear that we ought to save him. But, is this our intuition in this case? Do we not think that, in this instance, we ought to consider the just desert of the dictator? Don't we think that he deserves to drown? I find myself torn on this point. However, I do think that it is plausible that common sense does at least lean in this direction.

It seems to me that many people who are, generally speaking, against the death penalty, are happy to make an exception in the case of the Nuremberg trials, and for Saddam Hussain. And many were happy to make an exception with regard to the violent death suffered by Gaddafi on the streets of Sirte. Dictators who have performed heinous actions over many years and faced no consequences serve as a good example, it seems to me, regarding the scope of our intuitions. And it seems to me that, in the case of very morally bad people (perhaps, we would say, evil people), it is plausible that our intuition is that they do in fact deserve to die.

IV. Conclusion

In this chapter, I have expanded on my main thesis that moral individualists should consider a being's moral actions when determining its moral status. I began by clarifying the precise framing of my thesis, distinguishing it from other related theses, before raising some issues that I will need to consider. My thesis, when framed conditionally, is the thesis that *if* the reflective equilibrium methodology is correct, *then* a being's intrinsic moral status is partially determined by its possession of morally relevant psychological properties and partially determined by the moral actions it commits and/or its moral character.

I then went on to consider the foundational issue regarding the nature of our intuitions regarding desert. I argued against Singer's view that they can be adequately captured without supposing that being's moral actions and character impact their moral status, before elaborating on what I take our intuitions regarding desert to consist of. I finished with a thought experiment that was intended to illustrate that, in certain cases, it is plausible that our intuitions regarding desert are radically inegalitarian. In the next final chapter I will bring together all of the material I

have so far considered to develop my own positive account of moral status that incorporates the notion of desert.

Chapter Eight: The Fluctuating Moral Status View

In this chapter I now turn to my positive account of moral status, drawing upon what has come before. I have endorsed the basic moral individualistic framework, understood in terms of the idea that a being's intrinsic moral status can depend only upon facts about that being itself, and not facts about the relations it bears to any other being. I have also agreed with Rachels and McMahan, who defend moral individualism, that intrinsic psychological properties are morally significant and are at least relevant in grounding the possession of moral status. However, I have raised a significant problem for their account, namely, that they do not take a being's moral actions or character into consideration and so cannot, for example, account for the intuition that a human being who has committed significantly bad actions should not be saved over a human being who has committed significantly good actions. I have further argued that as there is no theoretical reason not to take this into account, if we take our intuitions seriously (as we should if we adopt the method of reflective equilibrium), we should look to build an account of moral status that does take this into account. It is this insight that guides the positive account I propose in this chapter.

I. PPP and MMP

To begin, I want to return to the core of the standard moral individualist viewpoint according to which it is certain intrinsic psychological properties that are the morally relevant properties that beings possess. The psychological properties that Singer focuses on are, of course, interests, whilst McMahan focuses on positive mental states, such as pleasure and aesthetic experiences. Now I want to pose the question: why should we think that these properties *are* morally relevant? In fact, neither Singer nor McMahan say very much about this issue, but rather they seem to take it as a primitive fact that they have a kind of value that is

relevant when deciding how we should act. There is nothing wrong, in itself, in taking certain properties as primitive in this sense, as all theories must have at least some primitives. But, I do not, of course, think that we can take *any* property whatsoever as being primitively morally relevant. The egalitarian cannot, for example, take *being human* as primitively morally relevant.

But what is the difference? Why is it that the moral individualist is permitted to take certain psychological properties as primitively morally relevant, whilst the egalitarian is not permitted to take *being human* as primitively morally relevant? The difference, I think, lies in the fact that the value of satisfying one's interests, or of experiencing a positive mental state, is in some sense *luminously* valuable. We can understand 'from the inside', as it were, that these states are good states to be in, and are therefore at least subjectively valuable. And once we identify them as subjectively valuable, *why* they are morally relevant makes a good deal of intuitive sense. Consider the rule: "Do not cause unnecessary pain." Now consider someone who asks: "Why shouldn't I?" We would be apt to think such a person as being not altogether serious. Certainly, we would be hard pressed to say very much other than: "Because pain is bad". By contrast, there is no sense in which *being human* is, in itself, subjectively valuable. Anencephalic infants possess this property, but none of us would think there is any value in possessing it in their case. What subjective value *being human* has derives instead from being in the subjectively valuable psychological states that typically accompany being human, not from the mere possession of *being human* itself.

Of course, that something is subjectively valuable does not automatically entail that it is a morally relevant property that determines a being's moral status. This is where the method of reflective equilibrium comes in. We must consider not only what states we find to be subjectively valuable, but how they tend to feature in common sense judgments about right and wrong. The moral individualist considers a range of intuitions regarding, for example, who to

save from a burning building, and notes that by taking certain subjectively valuable intrinsic properties as primitively morally relevant we can lay down a good deal of order upon these intuitions, so long as we are willing to give up at least some of our intuitions.[91] Beings with a high degree of psychological development can have a broad range of interests satisfied, or can be in a broad range of positive mental states, and so they have a high moral status because it is morally good to enable a being to satisfy interests or have positive mental states.

Now, here is the point of this discussion: so long as one limits oneself to considering the kinds of intuition that we considered in chapters one to five of this thesis, the standard moral individualist thesis is, I think, the strongest thesis available. The kinds of intuition I have in

[91] As an aside, it is interesting to note that Bentham also takes certain mental states as having a kind of primitive moral relevance in his *Principles of Morals and Legislation*, for consider the opening of his first chapter where he says pretty much all that he has to say about this matter:

> Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it. In words a man may pretend to abjure their empire: but in reality he will remain. Subject to it all the while. The principle of utility recognizes this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law. Systems which attempt to question it, deal in sounds instead of sense, in caprice instead of reason, in darkness instead of light. (Bentham, 1789: 261)

There is a concern that Bentham himself commits the naturalistic fallacy here by moving from the view that mankind as a matter of natural fact seeks pleasure and avoids pain to the fact that this is what mankind *should* do. But, the point that I am emphasising here is that if one adopts the method of reflective equilibrium one is permitted to consider what kinds of states we, as a matter of fact, find to be morally relevant when making our intuitive judgments. And then, if it makes intuitive sense to us, in virtue of their subjective value to us, *why* these states are morally relevant, we are then entitled without any further reason to take them as being morally relevant.

mind are those that make comparisons and considers how to treat rocks, insects, typical human beings, non-human animals such as cats and dogs, severely cognitively disabled humans, and so on, but that does not include cases of vicious and virtuous persons. As noted, the intuitions we draw upon in building our moral theories are analogous to data points in scientific theories. And so, if we consider just the data above, the best theory is indeed the standard moral individualist account. However, my view is that moral individualists have not taken into account all of the available data, as this does include cases of vicious and virtuous persons, and once this is taken into account, moral individualism needs to be revised.

The immediate upshot, I think, of taking the new data into account, is that it is, in fact, no longer clear that the subjectively valuable intrinsic psychological states mentioned above are indeed morally relevant properties, at least not in the way that those like Singer and McMahan think that they are. In particular, it no longer seems right to say, without qualification, that it is morally good to enable a being to satisfy interests or have positive mental states. Consider, for example:

8.1. Smith is a vicious criminal who has committed rape and murder, has never been caught, and remains unrepentant. However, he has now become bored of rape and murder, and has decided never to commit such actions again. That is, he is not a reformed character, but rather due to a change of whim, will not commit any further crimes. A sadistic billionaire becomes aware of Smith's past crimes, and becomes a fan of his. In view of this, the billionaire gets in contact with Smith, admits his admiration for his past actions, and bankrolls him, allowing him to lead a life of luxury where he is able to satisfy his every desire, and enjoy positive mental states for the rest of his life.

There is a very clear intuitive sense in which we do not view the sadistic billionaire's action here as a good action. Indeed, there is a very clear intuitive sense in which the sadistic billionaire's action is bad. It is morally *wrong* for the billionaire to enable Smith to satisfy his interests and have positive mental states.

It is perhaps tempting to draw from this the conclusion that a being's psychological development is entirely neutral with regard to their moral status. It is tempting to say, that is, that the satisfaction of desires, or being in positive mentals states, is, in itself, neither good nor bad, but depends upon whether the being who can satisfy those desires or be in those states, deserves to satisfy their desires or be in those states. It is tempting, that is, to suppose that only virtuous individuals have a high moral status in virtue of possessing a highly developed psychology, whilst vicious individuals have a low moral status despite possessing a highly developed psychology. However, this kind of view faces a difficulty, and so we should be cautious about being too hasty.

The difficulty this view faces concerns morally neutral individuals – individuals, that is, who are neither good nor bad. Such individuals, on the view we are here considering, do not deserve to satisfy their interests or be in positive mental states. But, they do not deserve *not* to satisfy their interests or be in positive mental states either. So, what are we to say about them? Suppose one had the opportunity, at no cost to oneself, to confer a substantial benefit on such an individual. Indeed, suppose that one could save such a neutral individual from a burning building without risk to oneself. Would it be right to do so (supposing there is no-one else you could save in this case)? I think it is fairly clear, intuitively, that you should. But, if a being's psychological development was in itself entirely neutral, this would not stand. It would be a matter of indifference whether you saved such an individual or not. It is true that such an individual would also not deserve to suffer and to die. But, equally, it would be true that they do not deserve *not* to. If a being's level of psychological development was entirely neutral, then

a morally neutral individual would have to be considered to have no moral status at all, and this does not fit with our intuitions.

Now, I have yet to consider whether non-human animals are capable of morally good actions or not, and it may be that all non-human animals are morally neutral. Be that as it may, consider another burning building case in which we compare a morally neutral human with a morally neutral non-human animal (which, for all I have so far said, may be any non-human animal at all):

8.2. In room A: A typical human being who is morally neutral.
In room B: A dog that is morally neutral.
Which do you save?

Once more, our intuition here seems clear. One ought to save the human being. And so, not only do we allow that morally neutral human beings have a positive moral status, but we also recognise that they have a moral status that is higher than a morally neutral non-human animal. As such, I think the thing to do here is to introduce the notion of a base level moral status that is determined by the intrinsic psychological properties a being possesses, but that can be modified, or fluctuate, depending upon the moral actions they commit or the moral character they possess. We can suppose that each base level moral status is, at least roughly, in line with the level of moral status that standard moral individualists allow. As such, I propose the following two conditions:

1. The Psychological Property Principle (PPP): A being's base intrinsic moral status is proportional to its psychological capacities (i.e., higher level psychological properties entail a higher base intrinsic moral status).
2. The Moral Modification Principle (MMP): A being's base intrinsic moral status can fluctuate depending upon the moral actions that a being performs/the moral character that being possesses.

What this then allows us to say is that vicious human beings, like the criminal Smith in [8.1], start off, as it were, with a high moral status, but then cause their moral status to fall by performing morally bad actions. If we consider again the burning building case that was introduced in chapter six, we can now vindicate the common sense intuition. Here is the case again:

8.3. In room A: A saintly human being who has throughout their lives put others before themselves and done a huge number of good moral acts.
In room B: A human being who has intentionally committed the most abhorrent crimes known to our society, and is not remorseful.

We can now say that the human in room B has lowered their moral status by performing vicious actions, and for this reason we should indeed save the human being in room A.

II. Can a Being Have More Than Full Moral Status?

However, there is, at this point, another complication. The complication concerns the assumption that there is such a thing as FMS, *full* moral status (i.e., a moral status such that there can be no higher). For the sake of argument, let us suppose that moral status comes on a

scale from 0-10, with 0 representing no moral status at all, and 10 FMS. On the standard moral individualist account where a being falls on this scale depends only upon its psychological development. Beings without any psychological properties, such as tables and rocks, have a moral status of 0. Non-human animals have varying levels of psychological development, and thus have PMS, falling somewhere on the scale between 1 and 9 (we may suppose, for example, that insects have a moral status of 1, cats a moral status of 6, and apes a moral status of 9). Typical human beings have a very high level of psychological development, and thus have FMS, a moral status of 10.[92]

Now let us consider what we must say if we suppose that a being's moral actions/character also partially determine its moral status, focussing on the case of human beings. We can certainly now say that the vicious human being in room B has a reduced moral status in virtue of their morally bad acts. And this alone allows us to vindicate the common sense intuition. But, as it stands, because we have supposed that a moral status of 10 is FMS, the virtuous human being cannot be raised up higher than this. But, it might be objected that if a vicious human being has a reduced moral status, by parity of reasoning a virtuous human being ought to have an increased moral status. We can perhaps test what we ought to say in this regard with another burning building case:

8.4. In room A: A saintly human being who has throughout their lives put others before themselves and done a huge number of good moral acts.
In room B: A morally neutral human being.

[92] NB This just an illustrative example. I don't commit myself to this being the positionings on the scale being correct here.

My intuitions here are not as clear cut as in other cases, and so it is difficult to say precisely what the intuitive evidence is here. Insofar as my intuitions do indeed correspond with the intuitions of most others, I suspect that the general common sense intuition is also not clear cut. I am unsure, that is, whether the general common sense intuitive view is that bad acts reduce moral status, but good acts do not increase it. That there are cases that are not clear cut in this manner is one (unavoidable) consequence of the method of reflective equilibrium. There may well be cases in which intuition delivers up no clear result. Upon reflection, I do, however, tentatively favour saving the saintly human being, and I have some confidence that this is what most would think. In a case that doesn't involve life and death, the intuition is certainly clearer. For example, consider that you have the choice between relieving a morally neutral person or a moral saint from hunger in a non-life threatening situation. In that case my intuitions clearly favour saving the saint from hunger.

Anyway, given such a leaning, and a more clear cut intuition in certain cases, we can perhaps let theory lead the way. There is at least a theoretical symmetry in saying that if vicious humans lower their moral status by committing bad actions, then virtuous human beings raise it. For this reason, I tentatively suggest that we should raise the cap and allow moral status to rise above the level usually thought of as constituting FMS. On the scale above, the idea would be to retain 10 as being full *base* moral status, but allow that virtuous individuals can raise themselves up to an even higher moral status. I thus modify MMP as follows:

2*. The Moral Modification Principle (MMP): A being's base intrinsic moral status can fluctuate depending upon the moral actions that a being performs/the moral character that being possesses, with good actions/character raising a being's moral status, and bad actions/character lowering it.

III. How Far Can a Being Modify Their Moral Status?

At this point another issue comes into focus. The issue is how far it is possible for a being to modify their moral status? I am presuming as obvious that the more morally bad an action or character is, the more of an effect it has on a being's moral status. But for actions that are very bad indeed, such as for the criminal in [8.3], how much of an effect can this have? Taking the above scale as our example again, we supposed that cats have a base moral status of 6, and typical human beings 10. Could it be, then, that a person commits actions that are so bad that they drop below the moral status of a cat?[93] Here it seems to me that common sense intuition is of some help. Consider the following burning building case:

8.6. In room A: A human being who has performed many bad actions, and is generally not all that nice, but has at least some redeeming qualities.
In room B: A typical cat.

In this case I think the common sense intuition would be that one should still save the human being, which suggests that a certain level of bad action does not reduce moral status below that of a cat. However, when we consider a different case:

[93] Again, to emphasise, the relative 'scores' given to the various beings on this scale are not to be taken too seriously. I am unsure quite how to place different beings on the scale. But this won't matter for what I have to say.

8.7. In room A: A human being who has intentionally committed the most abhorrent crimes known to our society, and is not remorseful.

In room B: A typical cat.

If one uses one's imagination a little here, and consider a genuine example of a moral monster – one of the dictators mentioned in the previous chapter, for example, I think it is clear that in this case at least many people, and I suspect most, would say that it is the cat that ought to be saved. And so I think the answer is that human beings can commit actions that are so bad that they reduce their moral status below that of non-human animals such as cats.

In fact, I am tempted to go further than this. I refer the reader to the Drowning Dictator example in chapter seven. There I suggested, albeit with some hesitation, that the common sense view is that in certain cases of very morally bad people, they should not be saved even if there was no other being to be saved instead. And what this suggests is that not only can a being reduce its moral status by committing morally bad actions, but it can also reduce it into negative territory. I am, however, somewhat dubious about drawing this conclusion. At least, I find myself to be conflicted when considering such cases, and although there is a sense in which I judge that such a person does not deserve to be saved, I also feel a sense of unease that makes me hesitant to endorse the judgment. To be clear, the point of my saying this is not for mere autobiographical interest, but because I think that my intuitions are broadly in line with common sense, and so suspect that others would feel the same way.[94]

[94] As mentioned in the introduction, I think I have good reason to think this. One could always perform a survey on these matters to try to gauge actual common sense intuitions. If I am wrong about this particular case, then I would develop the theory along different lines. But, at the very least, one has to consider the issues and develop the theory as best as one can, using one's own intuitions, to find out what kinds of intuitions need to be tested in the first place.

One point that I suspect may be driving my unease is this: If a person could reduce their moral status into negative territory, then this seems to have the consequence that they are owed no moral consideration, and so deserve no moral protection from any kind of treatment whatsoever. However, it also seems to entail that we would be morally obligated to mete out recriminatory treatment of some kind. But given such a person would deserve no protection from any kind of treatment whatsoever, this, it seems, would permit the infliction of cruel and inhumane treatment upon them. Perhaps the right thing to say is that very bad human beings can reduce their status close to 0, perhaps to a point at which one no longer has a positive duty to save them from drowning, but at a point at which they still receive protection from cruel and inhuman treatment.

This is a good place to consider the issue of whether MMP applies to non-human animals as well, for the point above gives rise to a parallel consideration. Just as we can ask whether a human being could reduce its base moral status to a status that is below that of a cat, we can also ask whether a cat could raise its base moral status up higher than a typical human? I think the answer that most would give to this question is something like the following:

> "MMP only applies to beings capable of moral agency. There are, of course, difficulties in spelling out precisely which beings are capable of moral agency, but a necessary condition is that a being is able to understand the difference between moral right and wrong, and is in sufficient control of their actions to be classed as an autonomous being. Insofar as knowing the difference between moral right and wrong involves having a degree of self-reflection and the capacity to conceptualise the world in moral terms, it seems clear that non-human animals do not have such knowledge and that, as such, the MMP does not apply to them. So, only PPP applies to them, their moral status thus

depends only upon their possession of intrinsic psychological properties. Their moral status is always equivalent to their base moral status."

However, I ask the reader to remember the discussion in chapter 4.6 of Rachel's views on the capacities that non-human animals possess, with which I agreed. There, I noted that Rachels gives convincing evidence of altruistic behaviour amongst non-human animals. I also noted that Rachels's points out that it is not necessary to being altruistic that one must be able to think that acting altruistically is a good thing. Rather, what is necessary to the concept of altruism is that a being desires that other beings don't suffer, that they act upon such desires, and continue to act upon them even if there is a personal cost in doing so. And, as it seems that some non-human animals are capable of this, I endorse the view that at least for some animals, both PPP and MMP applies.

By contrast, in cases where a human being is mentally ill or has committed a crime while suffering from psychosis I do think that only PPP applies. We do not think it is right to treat them in the same way as we would treat someone who committed the same crime in a sane frame of mind. We do not have the view that we must punish them in retribution. Instead, in these cases, we do treat their confinement in care facilities as being for the purpose of rehabilitation or to prevent further harm to society. In these cases we recognise that they are compelled by their own illness to act in a certain way – not because they are choosing to inflict suffering.

There is also the question of how we consider human beings with severe cognitive disabilities. Is it only PPP that applies, and not MMP? Here I think it will vary on a case-by-case basis. Severe cognitive disability exists on a spectrum. All humans with severe cognitive disability, as the term is understood in the literature on moral status, are by stipulation psychologically comparable to some non-human animal. But there will doubtless be many

humans with severe cognitive disabilities who are just as capable as some non-human animals are of engaging in moral behaviour. At its extreme, with cases such as anencephaly, where the is little or no consciousness present at all, it is not plausible that such humans are capable of moral behaviour. And so, MMP will apply to some humans with severe cognitive disabilities, but not all.

IV. Actions or Character?

I now turn to the issue of whether it is a being's moral actions or moral character that matters for determining the operation of MMP. As mentioned in chapter seven, I think that our intuitions regarding desert are such that we take a person's moral actions to be a reflection of their moral character, and as such it is tempting to say that the question is of no real consequence. Strictly speaking, the idea goes, it is moral character that matters, but moral actions reflect this, and it doesn't really matter which we consider. However, I think that there is more to say here. Consider that, on the one hand, someone might have a very bad moral character but, for some reason or other, never be in a position to produce any bad actions (suppose, for example, that the person suffers from locked in syndrome). On the other hand, a person might have a generally good character, but through a series of incredible stresses and pressures not faced by typical people, end up committing some bad actions. Both of these kinds of cases seem perfectly possible, and so it is at least in principle possible for there to be a mismatch between a being's character and their actions. And so we do need to consider which of the two matters, after all.

Perhaps we can again consult intuitions here to make some progress. Consider:

8.7. In room A: A human being with a bad character who has never in fact committed any wrongdoing.

In room B: A human being with a generally good character who has, due to unfortunate circumstances, performed a number of bad acts.

I have to say that, in this case my intuitions lean towards saving the human being in room A, and I think that this is the common sense judgment too. I have to say that when I first considered cases like this, my intuition struck me as somewhat surprising. This, I think, is because I have been educated in the philosophical tradition according to which luck should play no part in one's moral assessments, and it does seem to be something of a matter of luck that the human in room A has never committed any bad acts, and the human in room B has. If circumstances had been different, the thought goes, and the humans in A and B had lived lives that enabled their moral character to shine through in their true light, then the human in A would have performed far worse actions than the human in B, and the human in B would even have performed good actions. In this case, however, there is a phenomenon that is now reasonably well known and reported in the literature, of moral luck. In two classic articles, Williams (1976) and Nagel (1979) are generally taken to have shown that common sense intuition *does* in fact allow that there can be cases of moral luck, and that people should be judged differently even if the only differences between them are due to factors that lie beyond their control. Consider the following example:

8.8. Case A: Bill gets drunk, but still decides to drive home, knowing he is not safe to drive. He drives badly, and mounts the pavement a number of times. Had there been anyone there, he would have mowed them down. Luckily, nobody was there, and he gets home without incident.

Case B: Ben gets drunk, but still decides to drive home, knowing he is not safe to drive. He drives badly, and mounts the pavement a number of times. Had

there been anyone there, he would have mowed them down. And in fact, there was someone there, and he did mow them down and kill them.

As it turns out, most people's intuition is that Ben did something worse than Bill, and deserves a harsher punishment. So, given the support that moral luck gets from this literature, at least in terms of common sense intuition, I think it is probably true that my intuition regarding case [8.7] coheres with common sense. And so, given that I adopt the method of reflective equilibrium, and so take intuitions seriously, I should endorse this intuition, unless there is some theoretical reason not to. But, there is not. All it means is that I should endorse the view that it is moral action, and not character, that has the most influence on MMP. So, this is what I do. Even if I am wrong about this, nothing of great consequence in the end turns upon it, for it would be a relatively simple matter to endorse the opposing view instead.

Next, then, I turn to the question of the temporal character of my view. People commit different moral actions at different points in their lives. Someone might have a turbulent youth, but mellow with age. Someone else might get worse with age, descending slowly into criminality. Another might be good most of the time, but have a life that is punctuated by sporadic bad actions. And so on. In addition to this people often commit bad actions, but then do things to try to make amends. They issue apologies, undertake other good work, and buy chocolates and flowers. And, furthermore, there are some people who in some aspects of their lives are good, but in other aspects bad. Someone might be a morally good father and husband, but a morally bad boss. Such a person may well exhibit morally good and bad behaviour in good measure, without intending the one to make up for the other.

Clearly there is a good deal of complexity lurking in the above kinds of cases. As such, to fully work out quite how all of these differences matter goes beyond the scope of what I can

achieve in this thesis. And so I rest content with giving a tentative sketch of how I think the view should be developed, sticking to a level of generality that avoids some of the complexity.

I think a human being's moral status should be considered to be constantly fluctuating as they go through their daily lives. If they do something slightly bad, it goes down a little, but if they do something good, it goes up a little. If people apologise, and mean it, and do things to make amends, at least with regard to most normal matters, this largely, if not completely, wipes out the effect of the bad action. The kinds of everyday moral situations that people encounter don't move them up or down very much, and so most people remain on a pretty much even keel. Indeed, I think that most people are generally speaking good overall, due to the fact that most people do not get involved in major criminal incidents and bad actions, but instead engage in caring relationships with their families, and go about their general lives in a mostly cooperative and friendly manner. And so, I think that typical human beings have a moral status that is somewhat above the base level, and I also think this is the general view that others hold.

Incidentally, in this regard, I suspect that this is why, when we are given a straight choice between a human being and non-human animal, we tend to favour the human being. For consider once again a simple burning building case like the ones we considered at the start of this thesis:

8.9. In room A: A typical human being.
In room B: A dog.

The intention behind using the word 'typical' was to indicate that I was not referring to human beings with severe cognitive disabilities (who are, statistically, not typical human beings). But

I think it also invokes the idea of a generally good human being as well, which explains to some degree why we are not apt to question the case by asking whether the human being in room A is a morally good or a morally bad one before passing judgment.

At any rate, to continue with my tentative sketch, although the moral status of a typical human being fluctuates somewhat in the course of their everyday lives, it tends not to go up or down all that much. In addition, I think that we allow a good deal of leeway in our judgments here. Consider:

8.10. In room A: A person who has committed a mixture of good and bad acts, but is good overall.

In room B: A person who has committed a mixture of good and bad acts, and a slight bit better overall than the person in room A.

In this kind of case I think the common sense intuition is that the slight degree of difference doesn't matter. This may well be for epistemic reasons, because practically speaking it is extremely hard, if not impossible, for us to make confident judgements, even comparative ones, regarding how good or bad a person is. Even with close acquaintances, we can't always be sure about exactly what they get up to (e.g., how they treat their family behind closed doors). So, it is best, for this reason, to give a good deal of leeway. But, I think that even if we discount these epistemic reasons, it still seems that small differences in a person's character do not have large practical effects.

The same is not true, however, for very bad actions. I think very bad actions should be considered to have a serious negative effect on a person's moral status, and they can find themselves with a moral status lower than that of a non-human animal with a much lower base moral status. The effects of the worst kinds of moral action, I think, should be thought to persist

over time, having an ongoing negative effect on the human's moral status. In certain cases it may well be hard, if not impossible, to make amends, even if the human spends the rest of their lives trying to do so. But I think it is also plausible that the effect can diminish over time, so long as the person does not commit any further bad actions, and does at least try to make amends. Here I think intuition favours an asymmetry between bad behaviour and good behaviour. I think there are also very morally good actions that can have a large ongoing positive effect on a human's moral status. But, in this case, I think it is easier for the performance of a bad action to wipe out its effect.

For each of the above points I think it is possible to give a burning building thought experiment that would support it. For example, in support of the point regarding the effect of a bad action diminishing over time consider:

8.11. In room A: A fifty-year old who committed a very bad action when he was twenty-five, but who has since been largely good (in the same way that typical humans are).

In room B: A twenty-five year old who committed a very bad action last week.

Here, despite the fact that we might assume the twenty-five year old has more life to live than the fifty-year old, I think that common sense intuition favours saving the fifty year old, which indicates that the impact on their moral status of their past action has diminished over time.

So, that gives a brief general sketch of the way I think (tentatively) that my view should be developed. There are, however, further cases and further questions to be answered, that I will not attempt to resolve here. Consider, for example, the following interesting case, that I am unsure what to make of:

> In room A: A fifty-year old who committed a very bad action when he was twenty-five, but who has since been largely good (in the same way that typical humans are).
>
> In room B: A fifty-year old who committed a very good action when he was twenty-five, but who has since been largely bad (in a low level way, equivalent to the way in which typical humans are largely good).

Here I am conflicted. I am not sure which person should be saved. And I am not sure what the common sense intuition would be either. In addition, I am not quite sure what significance a judgment either way has. Nonetheless, I am reasonably confident in the general remarks that I have made above about how my view should be developed.

V. Possible Objections and Answers

I turn now to an objection. The objection is not really an objection to my view, as such, but rather an objection to my calling it a version of 'moral individualism', and so presses me on how closely my theory really is to standard moral individualism. The core idea behind moral individualism is that it is only a being's intrinsic properties that can determine its intrinsic moral status, and I have endorsed this idea. Yet, can I really do so? Are a human being's past actions an intrinsic property of them? The case against them being an intrinsic property of a human being goes as follows:

> "An intrinsic property of a being has been defined in the literature as a property that supervenes upon that being's microphysical structure. Moral individualists can account for this because a being's mental capacities supervene upon its brain states. So what morally relevant mental states a being has at a time supervenes upon its microphysical structure.

But what actions a being committed in the past does not. They might not even exist at a time in a being's memory, for the being might have forgotten that it ever committed the action. As such, you are denying that only intrinsic properties can determine a being's moral status, and so denying moral individualism."

If I thought this objection was right, then I would give up the name but keep the theory. I would, that is, admit that I am not after all a pure moral individualist. But, I don't think the objection is right. Certainly, facts about a human being's past actions are facts about them and not about anything else, and so even if the properties are not strictly speaking intrinsic because they do not supervene upon a being's current microphysical structure, they are certainly intrinsic in some extended sense that is in the spirit of moral individualism. But, moreover, if one adopts a perdurantist metaphysical position, according to which persisting beings like humans and non-human animals are composed of different temporal parts at different times, then it is plausible that what past actions a being has performed does supervene upon the microphysical structure of its entire temporal extent. And so, this objection does not worry me.

There is another objection that I want to consider that I think is entirely wrongheaded. I consider it because it helps me to make it absolutely clear what kind of view I am defending. The objection goes as follows:

"As you have noted, we are never in a position to judge a person on the basis of what moral actions a person has performed. Suppose, for example, we are faced with a burning building situation with a human being in room A and another inside room B. We are not Gods, and so have no way of knowing whether the human in A has performed more morally bad or good actions than the human in B. This is even more problematic if it does turn out that MMP is to be cashed out in terms of character or intention, because in principle we cannot

see inside another's mind and judge their true character or know what intentions they have. But a similar point applies even if you are right about it being moral actions that matter. Consider that on your account you may falsely believe that the human in A has performed a significantly bad action when in fact he is a moral saint, and be unaware that the human in B has actually performed a whole range of significantly bad actions and no good ones. As a consequence, if this theory were to be put into practice, we could end up saving a morally bad person over a morally good one."

The mistake that this objection makes is to think that I am presenting a moral theory that is supposed to be action-guiding, in some sense. Then our knowledge of a human being's past actions would certainly matter. But I am offering no such theory. My theory is one about what constitutes moral status. It is perfectly compatible with my position that there are human beings with extremely low or high moral status, but who have covered up their good or bad actions so well that nobody will ever, or could ever, find out. Nonetheless, I maintain, they do in fact have that moral status. So, as far as my theory goes, it is irrelevant how much we in fact know about what good and bad actions a human being has performed, and what moral status they have. Of course, this is not to say that I deny that we are *generally speaking* reasonably good at making correct judgements, in this regard. But, I can readily admit, the possibility of saving a morally bad human being over a good one does indeed exist.

I finish with two final brief points. First, it is worth noting that the fluctuating view of moral status falls, in agreement with McMahan and in disagreement with Singer, very firmly into the Unequal Consideration Model of Degrees of Moral Status. This is because beings can vary in moral status, on account of having performed different moral actions, even if they have the very same interests.

Second, I want to emphasise that everything that I have said about how the fluctuating view of moral status should be developed concerns intrinsic moral status. As such, it is still open to me, just as it was to Singer and McMahan, to appeal to relational moral status in certain instances. So, for example, even though I maintain that non-human animals and severely cognitively disabled humans have a base intrinsic moral status that is lower than that of typical human beings, I can still maintain that we are perfectly justified in treating severely cognitively disabled humans in a better manner than we treat non-human animals on the basis of the fact that we bear morally relevant relations towards them. As such, although I do think that non-human animals deserve better treatment than we currently afford them, I do not think that we are obliged to treat them as we currently treat severely cognitively disabled human beings.

This, then, completes my defence of the fluctuating view of moral status. To summarise, I have now answered all of the key questions I raised in chapter seven, as follows:

1. Should the account be developed in such a way that vicious human beings can have a lower moral status than non-human animals?

   Answer: Yes.

2. How do the two factors of a being's psychological development and their moral actions/characters interrelate to determine their intrinsic moral status?

   Answer: Psychological development determines a being's base intrinsic moral status, and its moral actions function to modify that base moral status.

3. Do the two factors apply to all beings, or just human beings?

Answer: They do not apply to all beings, but they apply to anything that is capable of moral behaviour. I think that typical humans and many humans with cognitive disabilities are capable of this, but so are some non-human animals.

4. Is it a being's moral actions, their moral character, or both, that matter, and to what degree?

   Answer: A person's moral character may have some effect, but it is predominantly a being's moral actions that matter.

5. How should a being's varying actions and/or character over time be taken into account?

   Answer: Good acts raise a being's moral status, and bad acts lower it. The worse or better the deed, the more effect it has. All beings capable of moral behaviour have a moral status that fluctuate from day to day. Usually it does not fluctuate much, but very bad acts and very good acts can have large effects.

6. Are a being's moral actions/character an intrinsic property of that being?

   Answer: I think so, yes. Even if they do not fit with the strict definition of an intrinsic property, they are intrinsic in an extended sense that is in the spirit of moral individualism.

VI. Conclusion

I conclude this chapter with a brief summary of what I have achieved in this thesis.

I have argued for a new version of moral individualism. I have argued against egalitarianism, and endorsed the basic moral individualist position, that a being's intrinsic moral status depends upon its possession of morally relevant intrinsic properties, is correct. I also agree with the extant versions of the view that a being's psychological development is a key determinant of moral status. But I disagree that it is the only determinant. I think that what a being deserves also matters, and that as such a being's moral status can fluctuate up and down depending on the moral actions they perform. In short, I have defended the following thesis:

> If the reflective equilibrium methodology is correct, then a being's moral status is determined by the following two principles:
>
> 1. The Psychological Property Principle (PPP): A being's base intrinsic moral status is proportional to its psychological capacities (i.e., higher level psychological properties entail a higher base intrinsic moral status).
>
> 2. The Moral Modification Principle (MMP): Depending upon the moral actions that a being performs/the moral character that being possesses, with good actions/character raising a being's moral status, and bad actions/character lowering it.

My view is that extant versions of moral individualism have failed to take into account our common sense intuitions regarding desert, and thus err in thinking that the PPP principle alone determines moral status. I have argued that they should take such intuitions into account because they rely upon the method of reflective equilibrium which requires them to do so unless there is some objectionable theoretical reason against doing so. But, as my account demonstrates, there is no objectionable theoretical reason against doing so. The intuitions can be accommodated in a perfectly coherent manner. However, this is not to say that the accommodation does not change the nature of the theory in significant ways. In the final chapter I have outlined the significant changes that are necessary, and offered a sketch of how I think the theory should be further developed. There is much more that could be said in developing the theory further, but I am content to have made a start in this thesis.

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