THE STATUS OF MORAL STATUS

BY

BENJAMIN SACHS

Abstract: This paper investigates whether moral status talk gets us anywhere in our search for answers to questions in the ethics of marginal cases. I consider the usefulness of moral status talk first on the assumption that an individual’s possession of moral status is not a further fact about that individual, and then on the assumption that it is. Finally, I offer an expressivistic interpretation of moral status talk. In each case, I argue that such talk conveys nothing that cannot be conveyed more clearly in other words. My conclusion is that we should stop using moral status and its cognates.

1. Introduction

Several years ago James Rachels made the following observation about the connection between an individual’s characteristics and the facts about how we morally ought to treat them:

There is no characteristic, or reasonably small set of characteristics, that sets some creatures apart from others as meriting respectful treatment. That is the wrong way to think about the relation between an individual’s characteristics and how he or she may be treated. Instead we have an array of characteristics and an array of treatments, with each characteristic relevant to justifying some types of treatment but not others. If an individual possesses a particular characteristic (such as the ability to feel pain), then we may have a direct duty to treat it in a certain way (not to torture it), even if that same individual does not possess other characteristics (such as autonomy) that would mandate other sorts of treatment (refraining from coercion).

This substantive moral claim asserted by Rachels has, I believe, the following methodological corollary: to find answers regarding how we morally ought to treat animals, we should determine which characteristics the various animals possess and then reason about the moral upshot of having those characteristics.
For a different take on moral methodology, consider the famous article, ‘Why Abortion is Immoral,’ by Don Marquis. Marquis is concerned with the moral permissibility of abortion. On that issue he begins by theorizing about wrongness of killing in general . . .

The loss of one’s life is one of the greatest losses one can suffer. The loss of one’s life deprives one of all the experiences, activities, projects, and enjoyments that would otherwise have constituted one’s future. . . . Therefore, when I die, I am deprived of all of the value of my future. Inflicting this loss on me is ultimately what makes killing me wrong.

. . . and then proceeds to infer from that theory a conclusion about the permissibility of abortion:

The claim that the primary wrong-making feature of a killing is the loss to the victim of the value of its future has obvious consequences for the ethics of abortion. The future of a standard fetus includes a set of experiences, projects, activities, and such which are identical with the futures of adult human beings and are identical with the futures of young children. Since the reason that is sufficient to explain why it is wrong to kill human beings after the time of birth is a reason that also applies to fetuses, it follows that abortion is prima facie seriously morally wrong.

Marquis’s methodology is significantly different from Rachels’s. Marquis does not begin by thinking about the apparent moral salience of various characteristics; rather he starts from the other end. He begins by thinking about why a certain kind of wrongdoing (killing) is wrong, and then draws conclusions about which characteristics an entity must possess (a future full of experiences, activities, projects and enjoyments) in order to be wronged in that way.

There is, however, one important commonality. It seems as though if we adopt Rachels’s methodology, then, as Rachels himself notes, we can figure out everything we need to know about how we ought to treat animals without ever thinking about moral standing. Similarly, Marquis submits that we can discover the truth about abortion while abstaining from all talk of personhood, potential personhood, and moral personhood. I believe that these claims Rachels and Marquis make about animals and fetuses, respectively, hold true of the ethics of marginal cases generally. By ‘the ethics of marginal cases,’ I mean all ethical questions regarding our treatment of individuals that are significantly less psychologically sophisticated than typical adult humans. If we can figure out which characteristics make marginal beings susceptible to which kinds of wrongdoing – and Rachels and Marquis have shown us two ways of determining this – then we can acquire the moral knowledge we need in order to avoid wronging them.

But the thesis I aim to defend here is not just that we can discover the truths about the ethics of marginal cases without ever engaging in talk of
moral standing, (moral/potential) personhood and other cognate terms such as moral status, moral considerability and membership in the moral community, but that we ought to. My view is that such talk (hereafter ‘moral status talk’), in general, afflicts the debates about the ethics of marginal cases with imprecision and confusion, and that therefore we ought to abstain from such talk.7

2. Nailing down the target

One might have thought that an even stronger conclusion could be drawn from the claims made by Rachels and Marquis. If we don’t have to talk of moral status when deliberating about the ethics of marginal cases, then perhaps there is no such thing as moral status. Rather, there are facts about which characteristics a beings possesses (sentience, autonomy, rationality) and facts about what it is and is not permissible to do to that being (torture it, kill it, for example), and that is it. But there is no further unifying or all-thing-considered fact about that individual’s place in the moral universe – the kind of fact that we seem to assert when we say that X has (or lacks) moral status (to a certain degree).

But this claim cannot be defended. It’s just not clear that facts about moral status are supposed to be further facts. The theorists who talk of moral status and its cognates typically do not tell us, ‘Moral status is [. . .].’ Instead most of them employ the locution, ‘To have moral status is to [. . .]’ or one very similar to it.8 Typically, what appears in the [. . .] is some moral property(ies), such as having a right, being the direct object of a duty, being such that one’s interests count morally, or being a source of reasons.9 Unfortunately, such locutions are ambiguous. To see why, consider the following claim:

To have a child is to experience one of the greatest joys life has to offer.

This claim fails to tell us what having a child is and merely tells us something about what (usually) happens when one has a child. Yet people frequently make such claims without raising any eyebrows. It is acceptable to use locutions of the form, ‘To [. . .] is to [. . .],’ to identify entailments. So when a theorist says, ‘To have moral status is to [. . .],’ she does not thereby tell us whether the possession of moral status just is the possession of moral properties or the possession of moral status is sufficient for the possession of moral properties.

So there are two possibilities here. Suppose first that the no-further-fact view is accurate. If an individual’s possession of moral status is just its possession of whichever moral properties it possesses, one might wonder what reason we have to ascribe moral status to various beings. Why not
just ascribe being such that one’s interests must be considered from a moral point of view or having a right not to be killed? Whether we should indeed do this is a matter I take up in Section 3.

Perhaps, however, this is not quite the correct understanding of the no-further-fact view. Suppose James has moral properties X, Y and Z. I have been assuming that under the no-further-fact view of moral status, the fact that James has moral status just is the fact that James has X, Y, and Z. But there is another possibility. Mary Ann Warren, for instance, claims that to have moral status ‘is to be an entity toward which moral agents have, or can have, moral obligations.’ All Warren means to claim, I take it, is that any entity that has moral status has some moral property(ies); specifically, that it is the object of some obligation(s). In other words, the fact that James has moral status isn’t the fact that James has X, Y and Z; rather it is the fact that James has a non-empty set of moral properties. Again, however, there is a question as to whether anything is accomplished here. Why might it be helpful to know that a being has some moral property(ies), full stop? I tackle this question in Section 4.

The alternative is the further-fact view: the possession of moral status isn’t the possession of moral properties; rather, it is the possession of something that is sufficient for the possession of moral properties. If this were the case, then again the question arises whether we have a reason to ascribe moral status. What can we learn from ascriptions of something we-know-not-what the possession of which is supposedly sufficient for the possession of some moral property(ies)? This is the topic of Section 5.

A final possibility suggested by some writings on moral status is that moral status talk is not descriptive, but rather expressive. In Section 6 I make a proposal about what moral status talk might convey in this case and then discuss whether this makes moral status talk useful.

For each of the four interpretations of moral status talk I am going to argue that such talk does not serve a useful purpose in our effort to discover the truths about the ethics of marginal cases. (Moral status talk appears almost exclusively in writings on the ethics of marginal cases.) I will also argue that moral status talk actually hinders this effort, though my argument will not be contained in a single section of this essay. Rather, as I review the various ways in which moral status has been used, I will from time to time point out why, if we use moral status that way, we are liable to muddle our reasoning about the ethics of marginal cases. Of course this, on its own, is insufficient to establish that we should stop talking about moral status, period; it merely shows that we should stop using moral status in those pernicious ways. But there is a second case to be made for stopping: what might be labeled an ‘emergent’ case: the very fact that moral status talk appears to be employed in four different ways is itself a problem. Given that until now these four uses of moral status talk have not been disambiguated in the literature, we can reasonably assume
that most of those theorists who engage in such talk – not to mention most of the people who read their writings – have not considered the multiplicity of inferential (or non-inferential) roles that moral status ascriptions might play. So it is practically guaranteed to be the case that arguments that contain this jargon are being misunderstood with alarming frequency. (I would present evidence of this but for the fact that, of course, I can never be confident that I understand these arguments.) Therefore, even the uses of moral status that are harmless on their own contribute to a higher-level harm – the harm of saddling the debate over the ethics of marginal cases with a vernacular that impedes, rather than facilitates, the search for answers. My view is that we should stop talking of moral status and its cognates when we are reasoning about the ethics of marginal cases. This is a long way from arguing that moral status doesn’t exist, but the unsettled state of moral status discourse makes moral status something of a moving target, and so I think it is the strongest charge that can be levied against the concept.

Of course, all of the problems with moral status discourse could be ameliorated. The English language is ours to manipulate as we wish and so none of its problems can be considered permanent. Someone could come up with a way of using moral status that is effective in moving forward the debates surrounding the ethics of marginal cases. This use of moral status could emerge as dominant such that one would know, upon coming across a mention of moral status, exactly what the author meant to convey. In fact, since there are relatively few participants in moral status discourse, one might even think it realistic to hope that a dominant usage will emerge within a relatively brief time frame. I concede all this. My essay is about moral status discourse as we find it today. If it changes for the better instead of going away, that’s fine too. In fact, one might understand this essay as endeavoring to put in place some constraints on moral status talk so as to ensure that future uses of the term and its cognates avoid the mistakes that have beset that dialogue thus far.

3. The no-further-fact view, Part I

If possession of moral status just is possession of some identified moral property(ies), then talk of moral status is in principle eliminable. The question, then, is whether talk of moral status, while redundant, would nevertheless be harmless. 11

Arguments about the ethics of marginal cases generally begin with claims about what morally relevant non-moral properties a certain being possesses (sentience, rationality, being dependent on humans, etc.) and then move to conclusions about what moral properties that being has (a right to not be killed, a right to not be coerced, etc.). Call those moral
properties $M$. If the individual’s moral status reduces to $M$, then the conclusions of these arguments can be expressed in terms of moral status or in terms of $M$ without any change in truth value. My claim, however, is that such arguments will be per se easier to assess for soundness when expressed in terms of $M$ as opposed to moral status. To assess any such argument for soundness, we will want to know whether the inference from the claim about the individual’s possession of some non-moral property to the conclusion is valid. If the conclusion is expressed in terms of $M$, it will be more likely that we will know what to look for. For instance, we would be able to recognize, if presented with one, an explanation of how possessing the property of rationality is sufficient for possessing an autonomy right. By contrast, there are no criteria for what counts as explanation of how rationality is sufficient for moral status. Therefore, expressing one’s arguments about the ethics of marginal cases in terms of moral status imposes an inconvenience; such arguments must be translated back into moral status-free language in order to be assessed for soundness.

Why is it that there are criteria in the one case but not the other? To see why, consider the fact that the moral properties that $M$ might be, such as being such that one’s interests count morally or being such that one may not be used as a mere means to an end, are commonly discussed in other areas of ethics besides the ethics of marginal cases. Ethicists discuss these properties in their arguments about capital punishment, just war theory, and other issues. Consequently, we can use arguments about the ethics of non-marginal cases as a precedent or a standard by which to evaluate the validity of the inferences found in arguments about the ethics of marginal cases. What we say about the grounds of a moral property in the ethics of non-marginal cases should match up with what we say about the grounds of that same moral property in the ethics of marginal cases. By contrast, we make little use of the concept of moral status in the ethics of non-marginal cases, leaving us very few tools with which to distinguish the legitimate moves from the illegitimate moves in uses of moral status in the ethics of marginal cases.

4. The no-further-fact view, Part II

It is often claimed that to say that some beings have moral status is to say that they are ‘within the moral domain,’ or can ‘be an object of moral concern,’ or ‘count from a moral point of view.’ I’ve suggested that we can understand such claims as asserting that the possession of moral status is the possession of some moral property(ies), in which case ascriptions of moral status would be ascriptions of some moral property(ies) or other. But would such ascriptions serve a useful purpose?
That depends on what exactly what we mean by 'having some moral properties.' I assumed earlier we mean having at least one – that is, being the direct object of at least one duty, having at least one right, being such that one’s interests count morally, etc. (I return to this assumption later in this section.) But if possessing moral status is just possessing at least one moral property, then I cannot see why one would ever need to know which entities possess moral status. The difference between having zero moral properties and having at least one moral property is no more important than the difference between having 120 moral properties and having at least 121 moral properties.

Crucially, the claim that an entity has at least one moral property cannot be employed as a premise in an argument about how it is permissible to treat that entity. Therefore, it is difficult to see what role ascriptions of moral status would have in debates over the ethics of marginal cases if that’s all that possessing moral status amounts to.

One might concede all this yet still insist that the claim that an entity has no moral properties – and thus no moral status – can indeed be used as a premise in an argument about how we ought to treat that entity.13 Such an argument would proceed this way:

\[
\begin{align*}
X & \text{ has no moral properties.} \\
M & \text{ is a moral property.} \\
\therefore & \text{ X lacks M.}
\end{align*}
\]

Unfortunately such an argument, despite its innocent appearance, would be question-begging. This is because one could be justified in believing that the first premise was true only if one were already justified in believing that the conclusion was true. There is no way to be justified in believing that an individual has no moral properties without, a) thinking about all that individual’s characteristics and whether they make possible any kinds of wrongdoing, or b) thinking about all the various kinds of wrongdoing, reasoning about which characteristics underwrite the possibility of being wronged that way, and then finding out whether the individual possesses any of those characteristics. In other words, there is no way of figuring out that it is impossible to wrong an individual without engaging in either the Rachels or Marquis method of moral reasoning with respect to that individual. This is true even if the 'individual' in question is a mere object, such as a chair.14 And so one must know that a chair lacks M in order to know that it entirely lacks moral properties.

At this point I wish to withdraw the assumption that some entity’s being ‘within the moral domain’ is just her possession of at least one moral property, for there is another way to interpret this locution and others like it. Consider Warren’s claim, quoted earlier, that to have moral status is ‘to be an entity towards which moral agents have, or can have, moral obliga-
tions,’ or Kamm’s contention, also quoted earlier in a footnote, that ‘an entity has moral status when, in its own right and for its own sake, it can give us reason to do things such as not destroy it or help it.’ It is reasonable to interpret Warren and Kamm as saying that to have moral status is to be *eligible* to have moral properties. I take ‘eligibility’ in this case to be a modal notion; it is about what is possible. So having moral status, then, would amount to possibly having at least one moral property.

If this is what moral status is, then, again, ascriptions of moral status will serve no purpose. There is just nothing one can do with the information that X possibly has at least one moral property. The problem here is the same as the problem just discussed.

‘On the contrary!’, one might object, ‘If I know that either X has at least one moral property or X possibly has at least one moral property, then I know that I should take X into account when deliberating about what to do.’ This objection is invited by a reading of Tom Regan, who contends that ‘X has moral standing if and only if X is a being such that we morally ought to determine how X will be affected in the course of determining whether we ought to perform a given act or adopt a given policy.’

The objection could be substantiated if there were such thing as (what I will call) *deliberative obligations* – obligations to take certain individuals into account in deciding what one ought to do. One might think, on the contrary, that we are really only answerable for our intentions and actions; that we are morally innocent so long as we do the right thing, regardless of how we arrived at the conclusion that that was the right thing to do.

Nevertheless, there is some intuitive pull to the idea of deliberative obligations. Unfortunately, no one has ever offered a theory of the scope and basis of such obligations. This is troublesome, as there are numerous questions that arise immediately when considering the idea of deliberative obligations. If the suggestion is that one is *always* obligated to take into account, when determining what one ought to do, every individual that has or might have moral properties, the requirement is much too demanding. My sixth grade teacher has moral properties, obviously, but I need not take her into consideration when deciding whether I ought to have a sandwich for lunch. If, on the other hand, the suggestion is that one is obligated to take into account just those individuals whose interests might be affected by what one does, other problems arise. First, an epistemic one: How can I identify all the people whose interests could be affected by my contemplated courses of action, given how easy it is for someone to have an interest in something? (One can have an interest in something merely in virtue of caring deeply about it and thus possibly being happy or sad about how it turns out.) Second, even if those cases in which I have all the relevant information, some problems remain:
• Evil interests. If it would make X happy if I burned a cross on an African-American’s lawn, should I take that interest into account?
• Exclusionary reasons. We sometimes have moral reasons not to take other reasons into account (which, when those reasons are grounded in interests, means not taking all interests into account).21
• One thought too many. In some cases it might be disrespectful, or display bad character, to engage in full deliberation about some possible course of action.22

The bottom line is that, on the assumption that moral status is an individual’s possession or possible possession of at least one moral property, the knowledge that someone has moral status does not on its own tell us about whether one should take that person into account when deciding what one ought to do.

So it is simply not true that when we deliberate about what we ought to do we are required to take into account all beings that have moral status. The actual deliberative obligation, if there is one, must be much more lenient. And so deliberating in a morally permissible way does not require knowing which individuals have moral status.

In this section we have found that if ascriptions of moral status merely tell us that the being in question has some moral property(ies) or other, or possibly has some moral property(ies) or other, then such ascriptions tell us nothing useful. This should not come as a surprise. What is important is what particular moral properties various beings actually have. My argument here has not relied on any general claim to the effect that any predicate is useless when there is a more informative predicate available. Rather, I have argued that, given what we actually need to accomplish in our moral deliberation, knowing which individuals have moral status cannot possibly help us.23

5. The further-fact view

As I mentioned in the Introduction, locutions of the form ‘To have moral status is to [. . .],’ are interpretable as asserting that the possession of moral status is sufficient for the possession of some moral property(ies) – namely, whatever is mentioned in the [. . .]. This being the case, such locutions do not tell us what moral status is. Moral status is just something. Furthermore, those who seem to hold the further-fact view never go on to say anything about what moral status is. Our question, then, is what can be accomplished by asserting that the possession of something we-know-not-what is sufficient for the possession of some moral property(ies).
To get at an answer to this question, it is important to remember what the ultimate goal is of those who make use of the concept of moral status. That concept is used almost exclusively in discussions of the ethics of marginal cases, where we are trying to determine how we are morally permitted to treat beings that are significantly less psychologically sophisticated than typical adult humans. Another way to put this is that we are trying to determine what moral properties – such as being the bearer of a right, being the direct object of a duty, being such that one’s interests count morally – are possessed by such beings. But no mere set of claims about which beings possess which moral properties would count as a theory of the ethics of marginal cases. A theory would have to offer an explanation of why the various less-sophisticated individuals possess the moral properties they do. And that explanation, of course, would have to proceed by way of non-moral properties. In other words, what we are looking for is a theory about which non-moral properties ground which moral properties. Once we have such a theory, we are then able to make direct inferences from non-moral states of affairs to moral states of affairs.

This method of reasoning about the ethics of marginal cases commits us to the existence of certain non-moral facts (facts about sentience, consciousness, etc.) and certain moral facts (facts about rights, duties, etc.). But why posit, in addition, the existence of some set of further facts – facts about moral status?

To see why, it would be helpful to point out how such facts are used in reasoning about the ethics of marginal cases. Typically, those who employ the notion of moral status make inferences from non-moral states of affairs to facts about moral status, and from facts about moral status to moral states of affairs. So, for instance, they infer from the fact that pigs are sentient that they have moral status, and from the fact that pigs have moral status to the fact that pigs have a claim to not be caused unnecessary pain. Thus, using moral status in this way allows theorists to avoid making direct inferences from non-moral states of affairs to moral states of affairs.

My hypothesis, then, is that for some theorists ascriptions of moral status are ways of avoiding any appearance of having committed the naturalistic fallacy. Insofar as one makes direct inferences from non-moral states of affairs to moral states of affairs, one is liable to being interpreted as believing that moral states of affairs logically follow from non-moral states of affairs. To avoid this appearance, one posits that there is a further fact mediating the inference from a non-moral to a moral state of affairs.

We began this section by wondering what purpose might be served by asserting that something we-know-not-what is sufficient for the possession of some moral property. One plausible answer – indeed, the only answer I can think of – should at this point be evident: such claims play
a part in a moral/metaphysical account that is intended to get us from
the non-moral domain to the moral domain without opening us up to
the charge of having committed the naturalistic fallacy and while
respecting the supervenience of the moral on the non-moral.

What are we to say about such uses of moral status? One thing we
might say is that it is admirable to be cautious about the naturalistic
fallacy. But of course it also bears pointing out that such uses of moral
status do not make the problem go away; they do not explain how the
instantiation of some non-moral state of affairs can be sufficient for the
instantiation of a moral one. So it is all well and good to acknowledge
that there must be an intermediate step in any inference from a non-
moral state of affairs, N, to a moral state of affairs, M. However, does
it do us any good to say that the individual’s possession of N is sufficient
for her possession of moral status and her moral status is sufficient for
her possession of M? Of course not. We don’t need to be told that there
is a further fact; if we take the naturalistic fallacy seriously then we
believe that already. We need to be told what the further fact is. Label-
ing the further fact ‘X’s possession of moral status’ serves only to give
the false impression that one knows what that fact is (remember, we are
not told what moral status is). And this is for the simple reason that
claims of the form ‘X has moral status’ sound nothing like mere place-
holders for some state of affairs we-know-not-which; rather, they sound
like ascriptions of properties.

The naturalistic fallacy might be a real problem, but the insertion of
moral status into an intermediate explanatory role seems to make it dis-
appear. This is an illusion, of course. The problem hasn’t gone away; it’s
been obscured by a verbal finesse. My own feeling about these matters is
that when we are theorizing about the ethics of marginal cases, we should
just go ahead and commit the naturalistic fallacy. There are theorists,
metaethicists, many of whom are trying to determine how the naturalistic
fallacy can be avoided, and there is no reason why we should all have to be
metaethicists. Our job is to construct the best theory of the ethics of
marginal cases that we can – the theory that is the most simple, elegant,
powerful, etc. Rachels and Marquis have shown us two ways of going
about doing this. The best theory, of course, cannot be considered fully
vindicating until we know whether and how we can avoid committing the
naturalistic fallacy. That is a shame, but obscuring the problem does
nothing to solve it.

In this section I have argued if claims about moral status are merely
claims to the effect that something we-know-not-what is sufficient for the
possession of some moral property(ies), then we do not have a reason to
talk of moral status in our discourse about the ethics of marginal cases.
In addition, I maintained, such talk can often be very misleading or
obfuscating.
6. An expressivist construal of moral status talk

Thus far we have been assuming that sentences of the form, ‘X has moral status’ serve to state some fact about X. But perhaps this is misguided. In this section, I offer an expressivist construal of such claims.

The expressivist interpretation is a way of making sense of the habit that many of those who talk of moral status have developed of sporadically speaking of moral status as if it were something that we can distribute. In the majority of writings about the ethics of marginal cases in which moral status is used, the author at some point says something about whether we should ‘grant,’ ‘give,’ ‘confer,’ ‘extend,’ ‘deny,’ ‘assign,’ or ‘accord’ moral status to some class of individuals or about whether some class of individuals ‘deserves’ moral status. Yet it is clear that none of the properties in the ballpark of what moral status might refer to are things that are under our control. We do not control, for instance, whether we have an obligation to be vegetarians.

What is under our control is how we reason about and treat marginal beings. For instance, we can accept it as a premise that some individual has a certain right or is the direct object of a certain duty, and we can treat an individual as if she has that right or is the direct object of that duty. So what I suggest is that sentences of the form, ‘X has moral status,’ and especially sentences of the form, ‘We should (not) grant/give/confer/extend/deny/assign/acord moral status to X’ are at least sometimes ways of communicating one’s intention to reason or behave in some way and encouraging one’s audience to do the same.

Such pronouncements might be a way of dealing with moral uncertainty. It is often difficult to be certain about the truth of moral claims for any number of reasons that will be familiar to any moral theorist, such as the vagueness of moral concepts and the ongoing uncertainty regarding what the correct normative ethical theory is. And moral uncertainty is an even larger problem for those who work on the ethics of marginal cases. This is because the truth of claims about how we may treat less-sophisticated beings hinge on which non-moral properties those beings possesses, and there is often drastic empirical uncertainty about which non-moral properties, especially which psychological properties, such beings possess. Our knowledge about the psychology of individuals whose brain physiology is radically different from ours and who cannot speak to us and tell us what is going on inside their heads is radically imperfect.

Thus, due to conceptual unclarities, substantive moral uncertainty and empirical uncertainties it is difficult to be certain about the truth of propositions ascribing moral properties to marginal beings. In times like these reason and argument have to give out at some point, and there
may be nothing left to do but announce an intention to proceed in a certain way and invite others to do so as well.32

Regrettably, the kind of thing we should demand of ourselves and of others as theorists trying to reach conclusions about the ethics of marginal cases is not the kind of thing one can achieve by announcing one’s intention to reason about or treat less-psychologically-sophisticated individuals a certain way and encouraging others to do the same. If because of moral uncertainty we do not know how we ought to reason about or treat a certain class of individuals who are significantly less psychologically sophisticated than normal adult humans, then what we should demand of ourselves and of others is a theory of how one ought to reason or behave under conditions of uncertainty. And if we want to find something to say, morally, in favor of treating less-psychologically-sophisticated individuals like we ought to treat normal adult humans but we don’t think that the non-moral properties of less-sophisticated individuals ground direct duties to them, then we should try to come up with a theory of indirect duties that underwrites a moral requirement to treat them in the specified way. Either way, purely expressive locutions about moral status have no place in theoretical reasoning about the ethics of marginal cases. Once we start engaging in such speech acts, we have given up on theory and taken up rhetoric.

7. Conclusion

Nearly everyone who writes on the ethics of marginal cases makes use of the term *moral status* or one of its cognate terms. Yet I am convinced that these terms contribute nothing to the debates and that we ought to stop using them. I have canvassed all the uses of the term of which I am aware and found that there is nothing to be gained from any of these uses. And often there is something, usually clarity, to be lost. Some ways of using *moral status* escape this criticism, but it should be clear by now that the sheer multiplicity of divergent uses of the term collectively constitute an enormous muddle right in the middle of discourse about the ethics of marginal cases. All uses of moral status, even the otherwise benign ones, contribute to this confusion. Granted, it is possible for any individual theorist to be quite clear about what she means by *moral status*. But even a situation in which all parties to the debates over the ethics of marginal cases achieve this level of clarity in their own writings will be unsatisfactory so long as these theorists continue to employ the language in divergent ways. And this is for the simple reason that, in general, definitional stipulations tend to get left out when one theorist references what some other theorist says about a commonly-employed concept. All things considered, it would be better if we stick to using terms, such as *capacity*,

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interest, direct duty and right, that refer to concepts whose content we have already worked out to a certain extent through work in normative ethics and the ethics of non-marginal cases.

It would be crazy, of course, to insist that so long as we abide by this injunction we will have no trouble coming up with the correct answers to the questions that concern us in the ethics of marginal cases. Correct answers will remain hard to come by because of the vagueness of some of our moral concepts, unresolved disputes in normative ethics, and empirical uncertainty about which individuals possess the crucial non-moral properties. Furthermore, we will continue to be haunted by the specter of the naturalistic fallacy and the corresponding injunction against directly inferring a moral state of affairs from a non-moral state of affairs. But we cannot plug these holes in our arguments by inventing a term, moral status, and then shoving it in wherever we see a leak.\(^3\)^3

Program in Environmental Studies and Center for Bioethics
New York University

NOTES


2 Thanks to Russ Shafer-Landau for reminding me of this article and its relevance to my topic here.


4 Ibid., p. 192.


6 Of course, we will also need to figure out facts about weight. For instance, it might be that both your dog and your grandmother have a claim against you that you not kill them, but those claims might be of unequal weight. So we need to know what facts determine how weighty various moral considerations are. Both the Rachels and Marquis methods provide a way to make this determination. Marquis, as we have seen, believes that killing an individual is wrong when that individual would otherwise have a valuable future. To make room for degrees of wrongness, he could add that killing an individual is wrong to the extent that that individual would otherwise have a valuable future. Rachels, on the other hand, believes that it is wrong to kill any individual that has a biographical life, and he explicitly endorses the claim that the wrongness of killing varies with the richness of the victim’s biographical life (Rachels, J. (1990). Created from Animals. Oxford: Oxford University Press, pp. 189, 208–9).

7 This conclusion is argued for in Samir, T. (2007). Ethics and the Beast: A Speciesist Argument for Animal Liberation. Princeton, NJ: Princeton University Press, chap. 2 – a book that, as a whole, is a nice example of the Rachels and Marquis methods of reasoning about the ethics of marginal cases. Samir’s argument against speaking of moral status, however, is different from mine. His worry is that moral status talk serves as a shelter for an obviously false view: the view that animals cannot be wronged. Since it is obvious that some animals

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share with humans some of the properties that make humans vulnerable to wrongdoing (sentience, for example), it is obvious that animals can be wronged. Only by claiming that there is some further fact that determines whether an individual can be wronged – a moral status fact – can this conclusion be avoided. But since the conclusion is clearly true, we should dispense with the kind of talk that makes it seem dubious (pp. 18, 24).


9 So, for instance, Bonnie Steinbock says, ‘To have moral status is to be the sort of being whose interests must be considered from the moral point of view’ (Steinbock, B. (1992). Life Before Birth: The Moral and Legal Status of Embryos and Fetuses. New York: Oxford University Press, p. 9). Frances Kamm, meanwhile, maintains that ‘...an entity has moral status when, in its own right and for its own sake, it can give us reason to do things such as not destroy it or help it’ (Kamm, F. (2007). Intricate Ethics. New York: Oxford University Press, p. 229).


11 This is David DeGrazia’s position on moral status (DeGrazia, ‘Moral Status as a Matter of Degree?’ pp. 184–5).


13 I thank Collin O’Neil for alerting me to this objection.

14 My suspicion is that all of us, philosophers and conscientious non-philosophers alike, have spent a good deal of time over the course of our lives engaging in the Marquis method, and that we are therefore justified in believing that it is impossible to wrong a chair.


16 I thank Lori Gruen for pushing me to consider this objection.


18 This objection could be made more defensible by substituting ‘when deciding what to do’ for ‘when deciding what one ought to do.’ Other individuals have reasons to care about my practical reasoning that they lack when it comes to my moral reasoning, since only the former kind of reasoning necessarily results in action (or at least intention). To avoid confusion, however, I will keep Regan’s wording. My later objections apply whatever the wording.

19 We would need a very expansive conception of ‘taking X into consideration’ in order to avoid this problem. In particular, the needed conception of ‘taking X into consideration’ will not require that I actually entertain the thought of X when I deliberate. We would have to say that there are some acts of deliberation we actually engage in that get us credit for acts of deliberation we don’t actually engage in. For instance, perhaps at one point I thought in general terms about what I may permissibly do with respect to my teacher, and perhaps this
means I get credit for thinking about her with respect to my sandwich-ordering before ordering my sandwich despite the fact that I don’t actually think of her before ordering my sandwich. And what would ‘getting credit’ amount to in this case? It could mean nothing other than that I am off the hook, morally speaking. But why would I be off the hook? Obviously, I am off the hook because there is no moral requirement to think of my teacher with respect to my sandwich-ordering before ordering my sandwich. And why would that be? Again, there is only one available answer. There is no requirement because it is not possible that this act of sandwich-ordering will wrong my teacher. Thus, if we have a duty to take everyone with moral status into consideration before making all of our decisions, there is no way to determine exactly what goes into discharging this obligation without first engaging in some first-order moral reasoning (e.g., reasoning about who might be wronged by my act of sandwich-ordering). In other words, we’d need to discharge our deliberative obligations in the course of figuring out what they are! This being the case, we might as well stop worrying about deliberative obligations.

20 For this suggestion, I thank an anonymous referee for Pacific Philosophical Quarterly.


23 Thanks to Dale Jamieson and Joe Millum for urging me to clarify this.


25 That is, on the assumption that there really is a distinction between non-moral and moral properties and that direct inferences from the former to the latter are invalid. These assumptions have been questioned, of course, but here I grant them to my opponent for the sake of argument.

26 I think the use of the term dignity is even more effective in making the naturalistic fallacy seem unproblematic. This is because there is no consensus on whether dignity is itself a moral or a non-moral property; in fact, it has a bit of a hybrid ring to it, as if it were part moral and part non-moral. On the one hand dignity theorists tend to say that a being’s dignity is something that that being retains necessarily or without exception, regardless of what changes they may go through (such as becoming severely mentally disabled or going into a coma). This suggests that dignity is a moral property, since high-level moral properties (being such that one’s interests count morally, e.g.) are often thought of as holding necessarily. On the other hand these same theorists often say that a being’s dignity is ‘threatened’ by a certain mode of treatment, or that certain modes of treatment ‘rob’ the individual of her dignity. This suggests that dignity is a natural property that, like most other natural properties ascribable to beings, can come and go. (For an example of this ambiguity, read the 2002 report by the President’s Council on Bioethics, Human Dignity and Human Cloning: An Ethical Inquiry (http://www.bioethics.gov/reports/cloningreport/pcbe_cloning_report.pdf; accessed 6 July 2009) and compare how dignity is construed on page 100 with how it is depicted elsewhere.) This ambiguity allows easy inference-drawing from non-moral facts to facts about dignity and from facts about dignity to moral facts without raising any alarms about the naturalistic fallacy. In any event, appeals to dignity are, as Macklin points out, useless insofar as we are concerned to figure out how we may treat others (Macklin, R. (2003). ‘Dignity is a Useless Concept,’ British Medical Journal 327(7429), pp. 1419–1420). If dignity is an essential property of certain beings (as the Universal Declaration of Human Rights seems to suggest – though see Article 23 for a possible inconsistency), then nothing we can do to those beings
threatens their dignity. On the other hand, if dignity is something that we can bestow on or withhold from certain beings (as suggested in the Council of Europe’s Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine), then we need to be told why it is morally important whether we bestow or withhold it. Presumably that explanation will proceed by way of familiar concepts such as sentience, rationality, obligation, right, etc. – in which case we should have skipped over dignity and straight to these other concepts. (Marquis expresses the same skepticism about the concept of personhood.)


28 By ‘under our control,’ I mean under our control qua theorists. As individuals going about our lives, there certainly are cases in which we may alter the moral landscape. For instance, if I adopt a child, then I thereby acquire novel obligations to that child. If a parent stunts the emotional growth of his child such that she never manages to develop empathy, this will affect the range of duties that she ends up having.

29 Or so I believe. One might suggest that the ethics of marginal cases, or at least some slice of it, is a part of morality that is determined by social convention. Were this the case, then it would be clear why so many philosophers elide the distinction between recognizing an individual’s moral status and conferring it: they reject the distinction. (Thanks to Bill Ruddick for pointing out this possibility.) It would be odd, however, if this area of morality were conventional. One would think that conventional morality would apply only to those entities that could have some say in the convention. But, of course, many marginal beings cannot. In any event, if the ethics of marginal cases is determined by social convention, this is no defense of using the moral status concept when reasoning about the ethics of marginal cases. On the contrary, it suggests that we need not reason about the ethics of marginal cases.

30 Though there are norms that govern our reasoning and behavior, it is up to us whether we abide by them.

31 This expressivistic construal of our moral status discourse was inspired by Allan Gibbard’s expressivistic construal of our moral discourse more generally. (Gibbard, A. (2003). Thinking How to Live. Cambridge, MA: Harvard University Press.)

32 Another reason, aside from moral uncertainty, that one might want to express an intention to treat certain marginal individuals in a particular way and invite others to do the same is simply that so expressing might bring about some good in the world. Three examples: Mary Anne Warren in various places in chapter 6 of her book, Moral Status, unabashedly proposes attributing moral status to certain entities for no other reason than that good things
would happen (or bad things would be prevented) if we treated those things as if we had moral obligations to them. For instance, she proposes that we not ‘deny full moral status’ to individuals who have not yet achieved the capacity for moral agency, since, ‘If we want there to be human beings in the world in the future, and if we want them to have the chance to lead good lives, then we must at least value the lives and well-being of infants and young children’ (pp. 164–5). (This expressivistic interpretation of Warren is further warranted by her passing endorsement of sentimentalism – a version of expressivism (p. 12).) Similarly, Scanlon says that the fact that human babies are the kind of individuals that we have ‘good reasons to want to treat . . . ‘as human’ despite their limited capacities’ is a good reason for ‘according’ them the same moral status as other humans (What We Owe to Each Other, p. 185). Finally, DeGrazia maintains that although conceptually there is no objection to claiming that humans have higher moral status than non-humans, we should not say this, because such an assertion might be misconstrued as licensing the exploitation of animals (Taking Animals Seriously, pp. 256–7).

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