

Moral Status

by

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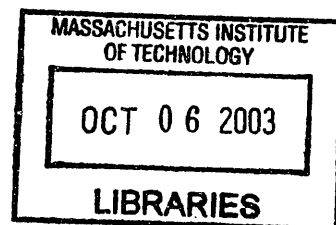
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Abstract

Chapters One through Three present the following view:

- (i) I explain moral status as follows: something has moral status just in case we have reasons not to cause harms to it simply in virtue of the badness of the harms *for it*.
- (ii) Moral status is not a matter of degree.
- (iii) A living thing has moral status just in case it is ever conscious.
- (iv) If something has moral status, then the strength of a moral reason not to harm it is proportional to the severity of the harm.

In this view, all humans and animals that are ever conscious have moral status. Future consciousness is sufficient for present moral status. An embryo of any species that will actually be conscious in the future, presently has moral status. Living humans who were conscious but are not and never will be again do have moral status. Any being that dies before it is ever conscious lacks moral status, regardless of its potential. Mere potentiality to be a person is not sufficient for moral status. However, a being's potential future affects the severity of certain harms. There are stronger reasons to avoid causing the deaths of humans than to avoid causing the deaths of cats, because humans lose more in death than cats do.

Chapters One through Three present the above view. I argue that this view can resolve certain apparent tensions within two different attractive combinations of views, and on this basis I argue that the above view should be adopted.

Chapter Four, "Can We Harm and Benefit in Creating?" proposes a solution to the puzzle of actions that appear to be wrong in virtue of harming a particular individual, but where the individual would not have existed if the action had not been performed, so the individual is not made worse off by the action.

Chapter Five, "Ethics Without Ethical Theory," defends part of the methodology of Chapters One through Four by defending the view that we can justifiably reach important substantive ethical conclusions without commitment to a particular ethical theory, or to a particular meta-ethical view.

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This dissertation is dedicated to Olivia, the next Harman.





## Introduction

### 1. Overview

Chapters One and Two present my view of moral status. This is the view:

- (i) I explain moral status as follows: Something has moral status just in case there is a reason against any action that harms it, merely in virtue of the badness of the harm *for it*.<sup>1</sup> (I call these reasons "moral-status-based reasons.")
- (ii) Something has moral status at *t* just in case it is not dead at *t* and there is a time at which it is conscious.
- (iii) Moral status is not a matter of degree.
- (iv) The strength of the moral-status-based reason against an action that harms is proportional to the severity of the harm.

My view is presented with two goals in mind. First, to resolve two apparent tensions within two attractive combinations of views (discussed separately in Chapters One and Two); second, to argue for my view. Each of the apparent tensions arises from incompatibilities in the claims about moral status that it seems must underlie certain attractive views; my view of moral status is shown to be able to underlie both the attractive views that make up each combination, resolving the apparent tension. The argument for my view follows

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<sup>1</sup> This explanation holds only for things that are ever harmed. See section 2 for further elaboration.

from these discussions: it appears that one cannot hold the attractive combinations of views without my view. The compellingness of the argument for my view thus relies on the attractiveness of the combinations of view.

Chapter One is concerned to resolve an apparent tension between what I call "the very liberal view of abortion"--the view that abortion of early fetuses requires no moral justification whatsoever--and several other attractive views: that some early fetuses are the appropriate objects of love, that we are prohibited from harming some early fetuses in virtue of the kinds of things they are, that it is reasonable to be very upset by an early miscarriage, that the decision whether to abort is one of unique uncertainty, and that it is reasonable to regret an abortion. The very liberal view of abortion appears to be committed to the view that all early fetuses lack moral status; some of the other attractive views appear to be committed to the view that all early fetuses have moral status. However, the following view could be adopted instead:

The Actual Future Principle (Consciousness Version): Early fetuses that will die without ever being conscious lack moral status. Early fetuses that will become conscious have moral status.

This view can underlie both the very liberal view and the other attractive views.

Chapter One also goes on to endorse:

- (ii) Something has moral status at  $t$  just in case it is not dead at  $t$  and there is a time at which it is conscious.

This claim is endorsed for the following reasons: it seems wrong to say that future consciousness is sufficient for present moral status while denying that past

consciousness is sufficient for present moral status, and yet it seems that dead bodies (though they were conscious in the past) cannot have moral status.

Chapter Two is concerned to resolve an apparent tension between two views. First, both human babies and cats have moral status, but harms to babies matter more, morally, than similar harms to cats. Second, early human embryos that die lack moral status. It appears that the first claim can only be true if human babies have more moral status than cats. Among the properties that determine moral status, human babies have no properties other than their potentiality that could explain their having more moral status than cats. So human babies' potentiality to become adult persons must explain their having more moral status than cats. But then potentiality must raise moral status generally. So early human embryos must have some moral status. It appears that the view that must underlie the first claim implies that the second claim is false. I advocate a solution to the problem that reconciles these two claims by explaining how potentiality has a particular significance that affects the way that human babies matter morally, but does not affect the way that early human embryos matter morally. On this view, the following is true:

- (iii) Moral status is not a matter of degree.

Furthermore, potentiality is irrelevant to whether something has moral status. Rather, the following claim is true:

- (ii) Something has moral status at  $t$  just in case it is not dead at  $t$  and there is a time at which it is conscious.

So, human babies and cats have moral status, while early human embryos that die lack moral status. Nevertheless, potentiality does impact the strength of reasons against harming, because the following two claims are true:

- (iv) The strength of the moral-status-based reason against an action that harms is proportional to the severity of the harm.

Potentiality Increases Harmfulness: The potentiality to become a person increases the harmfulness of many harms.

Thus, babies' potentiality strengthens the reasons against many harms to them, as compared to the reasons against similar harms to cats. Their potentiality also increases the harmfulness of harms to embryos that die; there are no reasons against causing these harms, however, because the embryos lack moral status.

Chapters One and Two have similar structures, but they do importantly differ. I think that the apparent tension discussed in Chapter One is widely seen as a tension, and I am concerned to argue against a common move: the rejection of the very liberal view of abortion on the grounds that the other attractive views are true. I am concerned to argue *for* the attractive combination of views discussed in Chapter One, as well as arguing for the view of moral status that can underlie them.

By contrast, I think that the apparent tension discussed in Chapter Two is generally unrecognized. The attractive combination of views is commonly held without any tension being recognized. In Chapter Two, I am concerned to argue that the apparent tension should be taken seriously, and thus that we need a view of moral status that will resolve it. My primary goal is not to argue for the

attractive combination of views, but rather for the view of moral status that can underlie them.

Chapter Three discusses an important objection to the move in Chapter Two from the Actual Future Principle to the more general claim (ii). On my view, given in (ii), a human who once was a fully-functioning person and is now living but brain-dead has moral status. This might appear to imply that it would be wrong to kill such a person, or even to allow her to die. But surely it is permissible to allow her to die. I respond to this worry by arguing that in some such cases we are actually required to allow such a person to die for her own sake, and only a view on which she still has moral status can properly make sense of this fact. I develop a view according to which death is actually not a harm in such a case, but may be a benefit.

Chapter Four discusses the non-identity problem, which concerns actions that appear to be wrong in virtue of harming particular individuals, but the individuals would not have existed if the actions had not occurred. The problem arises from the plausible view that an action cannot harm someone without making her worse off than she would otherwise have been; if that is correct, these actions do not harm, so we cannot appeal to harm to explain why they are wrong. This chapter has four goals: to vindicate the presence and explanatory value of moral-status-based reasons in these cases (were they absent here, moral-status-based reasons might be *in general* less morally significant than they initially appear); to develop a view about reasons to benefit (the prior chapters having focussed on reasons against harm); and to vindicate a good method of finding moral-status-based reasons, contrasting it with a plausible but ultimately bad

method: this good method is needed to make sense of the view of moral status developed in Chapter Two and it gains independent plausibility here.

Chapter Five defends part of the methodology of the prior chapters. Chapters One through Three have a primary goal of demonstrating that a particular view of moral status can make sense of certain attractive combinations of views, and defending that view in the face of some objections. The methodology involved in meeting that primary goal is, I believe, uncontroversial. But the methodology involved in meeting the secondary goal of those chapters, and in reaching many of Chapter Four's conclusions, is more controversial. The secondary goal of Chapters One through Three is to argue for my view of moral status. Some important conclusions in Chapter Four are claims about what explains the wrongness of actions in non-identity cases, and claims about what reasons we have to benefit others. These conclusions are substantive moral claims. They are argued for from other substantive moral claims. The arguments I present neither rely on, nor at any point involve specific commitment to, any particular general ethical theory or any particular meta-ethical view. The idea that substantive moral conclusions can be reached before it is settled what the true ethical theory is and what the true meta-ethical view is, is deeply controversial. In Chapter Five, I consider a number of challenges to the claim that moral conclusions can be justifiably reached in this way. I argue that each of these challenges fails.

This dissertation is part of an ongoing project, on which I anticipate doing substantial further work. Many important questions are addressed only briefly, or not at all. I have indicated throughout what further questions I think are raised by

my discussions, and I have sometimes also explained how I would go about pursuing answers to these questions.

## 2. The Notion of Moral Status

I explain “moral status” as follows:

If something is ever harmed, then it has moral status just in case we have reasons not to cause harms to it simply in virtue of the badness of the harms *for it*.

I stipulate that this is the notion of moral status with which I am concerned in the dissertation.

The antecedent “if something is ever harmed” in the explanation is necessary because if something is not ever harmed, then it vacuously satisfies the consequent: it is true that *all harms* to it have the right kind of reasons against them, because there are no such harms. For things that are never harmed, I advocate settling whether they have moral status by developing a substantive view of which things that are harmed have moral status. For example, in this dissertation I advocate the claim that something has moral status just in case it is ever conscious. We can endorse this general claim on the basis of first endorsing its restriction to things that are ever harmed.

In some respects, my notion of moral status is close to the intuitive meaning of “moral status.” I think the intuitive meaning might be glossed in one of the following ways:

Something has moral status just in case:

- (a) it matters morally in itself
- (b) it counts morally
- (c) its interests count morally
- (d) its interests provide reasons for and against actions

And so we might be tempted to the following revision of my definition:

If something is ever harmed or benefited, then it has moral status just in case we have reasons not to cause harms to it simply in virtue of the badness of the harms *for it*, and we have reasons to cause benefits for it simply in virtue of the goodness of the benefits *for it*.

I don't endorse the revision for two reasons. First, I want my notion of moral status to leave it open whether we always have reasons to cause benefits to things that have moral status. For example, it should be uncontroversial that all persons have moral status. But many people think we have reasons to cause some benefits, while lacking reasons to cause other benefits. Many people would deny that you and I have any reason to cause any benefits for Bill Gates, for example, since he already has so much. (In fact, I do endorse the view that we always have reasons to benefit things with moral status; see Chapter Four's discussion of benefit. But I want the definition of "moral status", which is employed in other chapters as well, to be neutral on this point.) Second, my notion of moral status gets at something very important, and very particular. It gets at the question:



*which things do we need to be careful of?* By focussing in particular on harm, I am focussing on which things are the sources of a particular kind of strong and serious moral reason: reasons against harm. While reasons in favor of benefit are important, morally, they are neither as strong nor as serious as reasons against harm.

However, it might be objected that my notion of moral status is not too narrow (as the above objector maintains), but that it is too broad. Persons are supposed to be clear cases of things with moral status; but, the objector maintains, we sometimes have no reason at all not to cause harm to someone. For example, consider the following case. Tom and Alice are two strangers who have both applied for a particular job; this is a good job in a field with few opportunities. Tom is offered the job; if he turns it down, it will be offered to Alice. Tom knows that there is someone in Alice's position, someone who will get the job if he declines it. He knows that by accepting the job he would be depriving someone of it, in that he would be causing her not to get it. In such a competitive job market, being deprived of this job would certainly harm Alice. However, the objector maintains, the badness for Alice of not getting the job provides Tom *no reason at all* not to take the job: he has a right to take it, and the effect on Alice is simply not morally relevant. I have two responses to this objection. First, it does not seem clear to me that the effect on Alice is irrelevant. If Tom has an equally good job offer, and he has no preference at all between the two jobs (an unlikely but not impossible scenario), then it does seem that effects on others would become morally important. But even if I'm wrong about this, or if we stipulate

that the case is not like this, I think the objector is still mistaken. I think the bad effect on Alice is morally relevant, but that the reason it provides against taking the job is *trumped* by the fact that Tom has a right to the job. This doesn't mean the reason provided by Alice is *nonexistent*; it is simply overruled by another moral factor.

### 3. The Significance of Consciousness

The view of moral status that I develop in Chapters One and Two involves this claim:

- (ii) Something has moral status at  $t$  just in case it is not dead at  $t$  and there is a time at which it is conscious.

According to this claim, being conscious is the crucial property in virtue of which things have moral status. As I explained above, I develop my view in order to provide a view of moral status that can underlie certain attractive views, and I recommend my view on the basis of my claims that it can underlie these views. Thus my goal is not to argue for my view independently of its capacity to underlie these views. For this reason, I won't provide an independent argument for the significance of consciousness. Taking consciousness to have the kind of significance I claim it does, both enables us to have a view that underlies the attractive views and also settles some outstanding questions that would otherwise arise (see section three of chapter one).

**Chapter One:**  
**Early Fetuses, Early Abortion, and Creation**

**1. Creation Ethics:**

**The Moral Status of Early Fetuses and the Ethics of Abortion**

There has been considerable discussion of the moral status of early fetuses and the ethics of the choice whether to abort a pregnancy. But one tenable view about the moral status of early fetuses has been regularly ignored. As a consequence, a very liberal view about the ethics of abortion is more attractive than has previously been thought.

Let us use the term "early fetus" as follows:

- (1) "early fetus": a fetus before it has any intrinsic properties that themselves confer moral status on the fetus

I assume that there is a nonnegligible period of time in which fetuses are early fetuses in my sense; it may be as short as a few weeks or as long as several months, depending on which intrinsic properties can themselves confer moral status. One plausible view says that an early fetus is a fetus before it has any

conscious experience and before it can properly be described as the subject of experience.<sup>1</sup>

Consider a woman, Katherine, who is wrestling with the question whether early fetuses have moral status. Katherine contemplates the early fetuses that die in early abortions. She has the intuition that these early fetuses have no moral status; their deaths simply do not matter morally. She thinks that nothing morally significant happens in an early abortion, and that no moral justification whatsoever is required for an early abortion. However, then Katherine goes on to contemplate the early fetuses that are carried to term and that become persons. She thinks of a couple who wants to have a baby. A woman in the couple becomes pregnant, and the couple decides that they will carry the pregnancy to term. The couple starts to care about and to love the fetus very quickly, while it is still an early fetus. Katherine believes that such an early fetus is the appropriate object of love. This very thing, the early fetus, is the beginning stage of the child of this couple. Because it is itself the beginning of their child, their love for it seems appropriate. Because this early fetus is the kind of thing it is appropriate to love, it seems to Katherine that it has some moral status.

Katherine appears torn by two conflicting views of the moral status of early fetuses. She has the intuition that early fetuses that die in early abortions lack moral status; she generalizes to the view that all early fetuses lack moral

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<sup>1</sup> Someone might believe that up until the moment of birth, or for some time after, an individual has no intrinsic properties that themselves confer moral status on it. While the arguments I make about early fetuses might be put forward about fetuses at any stage of development or about young babies, they are not written with such applications in mind.

status. She has the intuition that early fetuses that will become persons have some moral status; she generalizes to the view that all early fetuses have some moral status. It seems that Katherine must give up one of her intuitions. The situation seems this way because we all make the following assumption:

- (2) For any two early fetuses at the same stage of development and in the same health, either both have some moral status or neither does.

This assumption is left unquestioned not only by all philosophers who write about abortion, but by everyone who discusses abortion.

Claim (2) can be denied. Katherine can keep both of her intuitions while denying the corresponding generalizations. She can take the following view of the moral status of early fetuses:

- (3) The Actual Future Principle: An early fetus that will become a person has some moral status. An early fetus that will die while it is still an early fetus has no moral status.

The Actual Future Principle says that an early fetus's actual future determines whether it has moral status. The Principle says that there are two significantly different kinds of early fetuses.<sup>2</sup> Early fetuses that die while they are still early fetuses go through their entire existence without any intrinsic properties that

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<sup>2</sup> For simplicity, I will sometimes talk as if all early fetuses fall into these two categories. But there is a class of early fetuses not addressed by the Actual Future Principle: those early fetuses that will die after they have developed some intrinsic properties that themselves confer moral status but before they have become persons. I leave open to further discussion what a proponent of the Actual Future Principle should say about the moral status of these early fetuses.

themselves confer moral status. But an early fetus that will become a person is a very different kind of thing: it will one day have the full moral status of a person, and that is a good reason to think it has some moral status now.<sup>3</sup>

I make the following assumption; I do not have the space to argue for it:

- (4) If early abortion requires any moral justification whatsoever, then this is so because the early fetus that dies in the abortion has some moral status.<sup>4</sup>

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<sup>3</sup> Warren Quinn ("Abortion: Identity, and Loss," *Philosophy and Public Affairs* 13, no. 1 [Winter 1984]: 24-54) makes the point that it is numerically one and the same individual which is a fetus and then later a person. However, Quinn neglects to recognize that this fact only applies to some fetuses. He claims that the fact that the person is "already present" (p. 40) in the fetus is reason to think that all early fetuses have some moral status. But this fact gives us no reason to think that fetuses that will not become persons have some moral status. The person is not "already present" in one of these fetuses; there is and will be no person to be so present. The Actual Future Principle recognizes the moral status of early fetuses that will become persons; it is precisely these early fetuses in which persons can be said to be already present.

Eric T. Olson ("Was I Ever a Fetus?" *Philosophy and Phenomenological Research* 57 [1997]: 95-110) points out that contemporary philosophers commonly accept two inconsistent views: that the criterion of identity for persons is psychological, and that we persons were once fetuses. It is clear that we do not bear the appropriate psychological relations to the fetuses that we commonly believe became us, so one of the views must give. I agree with Olson that it is the criterion of identity that must give. What we are is biological living organisms, with the same criteria of identity we would apply to other animals. Questions as to which future contingencies are as good as my own survival, and which future lives I should anticipate as my own, do turn on the appropriate psychological relations; but this is a distinct matter from the question what is identical with me. (See Derek Parfit, *Reasons and Persons* [Oxford: Clarendon Press, 1984].) A related point is this: it is a mistake to claim that I am essentially a person. I was once a fetus, and that fetus might never have become a person. Therefore, I am something that might never have been a person. I am something that is a person now, but I was not always a person--and I may well not always be a person in the future (i.e., if I end up in a vegetative state before dying).

<sup>4</sup> It might be claimed that early abortion is wrong (or requires some moral justification) because the abortion deprives the fetus of its future. Peter K. McInerney ("Does a Fetus Have a Future-Like-Ours?" *The Journal of Philosophy* 87 [1990]: 264-68) defends against this claim by appealing to the fact that fetuses lack "mental life" and cannot plan or "control" their futures, unlike persons (p. 266). McInerney claims that fetuses bear a different relation to their futures from persons, such that a person "already has" (p. 265) a future, though a fetus does not; therefore, a fetus is not deprived of its future by an abortion. Contra McInerney, I think we must accept that abortion deprives fetuses of possible futures that would be good. In this sense, abortion can be

*Footnotes continue on next page*

Given (4), the Actual Future Principle implies the following view:

- (5) The very liberal view on the ethics of abortion: Early abortion requires no moral justification whatsoever.<sup>5</sup>

Note that what I am calling "the very liberal view on the ethics of abortion" ("the very liberal view" for short) is much stronger than the common liberal view that early abortion is permissible but requires at least some justification, however minimal.

In this section, I am concerned to establish four conclusions.

*Conclusion 1:* The Actual Future Principle is a tenable view of the moral status of early fetuses.

*Conclusion 2:* The very liberal view on the ethics of abortion is compatible with several attractive views with which it has seemed incompatible. Therefore, the very

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seen as a loss from the fetus--as bad for the fetus. However, this badness need not matter morally, because the fetuses in question lack moral status. (Interestingly, the reasons McInerney gives in support of his argument are reasons to think fetuses lack intrinsic properties that themselves confer moral status.) By contrast, smoking during a pregnancy that will be carried to term is bad for the fetus and *therefore* matters morally, because the fetus has some moral status.

It might be claimed that early abortion requires some moral justification not because the early fetus that dies in the abortion has some moral status, but because the early fetus's life has intrinsic value. I take the following attitude toward this view: I don't think we should make a claim like "life has intrinsic value" unless we are forced to, unless we have good positive reasons to make such a claim or we find such a claim necessary to explain everything we want to explain. Ronald Dworkin (*Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom* [New York: Vintage, 1994]) claims that an advocate of a liberal view on abortion needs to posit that life has intrinsic value in order to explain why it is reasonable to regret an abortion; my argument for claim (13) below rejects Dworkin's argument.

<sup>5</sup> It is consistent with the very liberal view on the ethics of abortion that some early abortions may require moral justification, when they have particular aspects that not every early abortion need have. The very liberal view merely claims that an action will never require moral justification simply in virtue of being an early abortion.

liberal view on the ethics of abortion is more attractive than has been thought.

These first two conclusions matter to everyone who cares about the moral status of early fetuses and the ethics of abortion. To the proponent of the very liberal view on abortion, Conclusion 2 is particularly welcome. But Conclusion 2 is also significant to those who think early abortion requires justification or cannot be justified, because Conclusion 2 says that their opponent's view is more attractive than they might have thought. My third conclusion is of more limited interest, in that my arguments can only be taken to argue from some views to this conclusion:

*Conclusion 3:*           The Actual Future Principle is the correct view of the moral status of early fetuses.

I provide arguments to bring someone from a moderate liberal view on abortion (held for particular reasons) to Conclusion 3. No argument is provided to bring someone from a conservative view about abortion to Conclusion 3. I state my fourth conclusion at the end of this section.

I take myself to have prima facie established Conclusion 1 by stating the Actual Future Principle. Below, I consider some objections to Conclusion 1. My argument for Conclusion 2 relies on Conclusion 1. The very liberal view has seemed incompatible with several attractive views precisely because it has seemed that a proponent of the very liberal view must hold that all early fetuses lack moral status. The tenability of the Actual Future Principle shows us that a proponent of the very liberal view need not say this. Conclusion 2 is established by my arguments for claims (6) through (9) and (13) below.



First:

- (6) The very liberal view is compatible with the view that some early fetuses are the appropriate objects of caring attitudes such as love.

My discussion of Katherine's intuitions demonstrated that (6) is true. It is possible to have the view that early abortion requires no moral justification whatsoever because the early fetuses that die in early abortions have no moral status, while also having the view that some early fetuses have moral status and are the appropriate objects of caring attitudes.<sup>6</sup> This is so because we can see that, as the Actual Future Principle holds, there are two significantly different kinds of early fetuses: those that die while they are still early fetuses, and those that will become persons.

Second:

- (7) It is possible to give a good account of how the very liberal view is compatible with prohibitions on harming early fetuses that will become persons.

It might seem that the very liberal view is incompatible with our intuitions about our obligations not to harm some early fetuses. There is an existing account that

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<sup>6</sup> It might be objected that we cannot really *love* something, such as an early fetus, that we know so little about. I do claim that we can love early fetuses; I claim that this is very common. While our love for early fetuses cannot reach the depth and complexity of our love for persons, it is real love directed at a particular individual. The couple knows that there is a living being in the womb of the pregnant woman, and they have attitudes toward that being. They are not merely anticipating loving their future child. The fact that the fetus is itself the beginning of their child is reason to love it now. Furthermore, the couple does know some things about the fetus: depending on how long into pregnancy fetuses are early fetuses in my sense (a point I have left open), the couple may be able to hear the fetus's heartbeat, see ultrasound pictures of it, and even feel it move.

responds to this worry without relying on the tenability of the Actual Future Principle; but it is a bad account. According to the existing account, we are prohibited from harming those early fetuses that will be carried to term not because of anything constitutive of the harming itself. It is not that these things, these early fetuses, are the kind of things we shouldn't harm. It is merely that there is a bad further consequence of harming these fetuses: in the future, a baby is born who suffers from fetal alcohol syndrome or some other bad effect of the earlier harming. This bad account may fail to address the worry expressed by those who challenge the liberal view. The worry may not simply be that the liberal view is incompatible with prohibitions on harming early fetuses. Rather, it may be that the liberal view is incompatible with it being the case that some early fetuses are the kind of things we are prohibited from harming. The worry is that the liberal view cannot appeal to the nature and status of these early fetuses themselves in explaining why we are prohibited from harming them. The tenability of the Actual Future Principle allows us to satisfy the worry. The Actual Future Principle says precisely that some early fetuses have some moral status, thus they are the kind of things we are prohibited from harming. We are able to give a good account of the compatibility of the very liberal view and our intuitions about prohibitions on harming some early fetuses.

Third:

- (8) The very liberal view is compatible with a reasonable view about miscarriages of early fetuses: a couple may be understandably

upset about such a miscarriage, but it is inappropriate to mourn the death of the fetus.

It may seem that the very liberal view is incompatible with any reasonable view that takes seriously the badness of early miscarriages. Suppose that a woman in a couple becomes pregnant, and they decide to continue the pregnancy to term and raise the child. This couple starts to love the fetus while it is still an early fetus. Then the woman suffers an early miscarriage; the fetus dies. The couple's natural response is to mourn the death, treating it as the same kind of thing as the death of person, something that is bad because it is bad for the subject who died. It seems that the very liberal view must say that this couple is being silly and irrational: because the deaths of early fetuses in early abortions lack moral significance, this death must lack moral significance as well.<sup>7</sup>

In fact, a proponent of the very liberal view can say the following. The couple is understandably upset by the death of the fetus; this is clear. They loved a living being and then that being died; that is a traumatic event. While the fetus lived, the couple was rational to love the fetus, according to the Actual Future Principle, because they had a false belief. They thought that the fetus was the beginning stage of their child. They thought that the very living being in the woman's womb was identical with their child. If this had been true, then the fetus

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<sup>7</sup> Rosalind Hursthouse ("Virtue Theory and Abortion," *Philosophy and Public Affairs* 20, no. 3 [Summer 1991]: 223-46) argues that "proponents of the view that deliberate abortion is just like an appendectomy" run into inconsistency when faced with miscarriage: "to react to people's grief over miscarriage by saying, or even thinking, 'What a fuss about nothing!' would be callous and light-minded" (p. 238). My argument for claim (8) shows that proponents of the very liberal view need not react this way.

would have been the kind of thing that is the appropriate object of love: an attitude of love toward the fetus would have been warranted by (and appropriate given) the nature of the fetus. But as it turns out, the fetus was not the beginning of their child; its entire existence lacked any moment of consciousness or experience. It turns out that the fetus did not have any moral status. The couple rightly recognizes the miscarriage as a terrible thing that has happened to them; not only is it traumatic, but now they must start again in their attempt to have a child. However, they should also recognize that the death of the fetus should not be mourned--it should not be treated as the death of a morally significant being--because it turns out that the fetus lacked moral status.

Fourth:

- (9) The very liberal view is compatible with an explanation of the unique position of a woman genuinely unsure whether she will abort her pregnancy.

A pregnant woman who is genuinely unsure whether she will abort her pregnancy is in a unique position; it is importantly unlike other cases of difficult choice between two alternatives. Any good account of the moral features of the choice whether to abort a pregnancy should account for the unique uncertainty of such a woman's situation; the very liberal view in combination with the Actual Future Principle does so. In other cases of difficult decision, it is natural to approach the decision by first recognizing what attitudes one ought to take toward the relevant elements of the situation and then deciding on the basis of these attitudes what to do. The pregnant woman cannot do this. She cannot first determine what attitude

she ought to take toward the fetus and then decide whether to abort the pregnancy. The decision she makes will determine what attitude she ought to take. If she chooses abortion, then it turns out that the fetus is morally insignificant. If she chooses to continue the pregnancy, then the fetus is the beginning of her child, and she owes it her love. This circle may look like a defect of the Actual Future Principle. But in fact, I think it is the true situation of women genuinely unsure whether they will abort their pregnancies. Their choice is unique, because it determines a feature of their present situation. Most choices simply determine the future, but the choice whether to abort determines the present moral status of a living being.

I take my arguments for claims (6) through (9) above to have established Conclusion 2: the very liberal view on abortion is compatible with several attractive views with which it has seemed incompatible. These arguments have relied on Conclusion 1, which says that the Actual Future Principle is tenable. I will now consider three objections to Conclusion 1. I am not concerned here to defend the stronger claim that the Actual Future Principle is the correct view. But the Actual Future Principle may appear to be incoherent or to be plainly wrong on its face. I will consider three versions of this objection.

- (10) First Objection: "Facts about a fetus's actual future can't determine its moral status, because something's moral status is determined by its 'nature'."

The objector points out that one could bring up all sorts of facts to differentiate fetuses into categories and then assign different moral status to the various

categories. For instance, we could stipulate that all early fetuses in North Carolina have some moral status, while those in South Carolina have none. This stipulation would be absurd because the facts appealed to don't play a role in what kind of thing each fetus is. The objector may propose the following claim: a thing's present nature is solely determined by the intrinsic properties it now has. It does seem that a thing's present intrinsic properties are relevant to the kind of thing it is now; but other properties may be relevant as well. I propose: a thing's present nature is solely determined by the intrinsic properties it ever has. On this view of a thing's nature, the Actual Future Principle does appeal to facts about a fetus's nature in determining whether it has moral status. My proposal rules out many stipulations of fetuses' moral statuses (such as the Carolinas stipulation above), demonstrating that the Actual Future Principle is at least less arbitrary than these other stipulations.

Compare the Actual Future Principle to a possible revision of it: the Mother's Intention Principle states that an early fetus has some moral status if and only if the woman pregnant with it is planning to carry it to term. This view preserves not only the liberal view on abortion and the rationality of caring attitudes towards early fetuses, but also the rationality of mourning the deaths of early fetuses in miscarriages. Despite some initial appeal, the Mother's Intention Principle must be rejected. Consider the case of a woman who is firmly decided on one day that she will abort her early pregnancy, but the next day is convinced by a friend's argument to carry her pregnancy to term; she firmly holds that intention for a week, then has a discussion with another friend and the next day

has an abortion. According to the Mother's Intention Principle, the early fetus in question has no moral status on the first day, then has some moral status for a week, then for a day has no moral status again before it dies in the abortion. This is metaphysically absurd; these fluctuations in moral status do not correspond to any fluctuations in anything we might call the fetus's nature. The intentions of the woman who carries a fetus are weak, relational properties of that fetus; they are not among the facts that can determine what kind of thing it is. The Actual Future Principle does not require us to accept any similar metaphysical absurdity. Throughout each fetus's existence as an early fetus, the question whether it has moral status yields a single answer. It does not depend on the day of the week.

- (11) Second Objection: "If the Actual Future Principle is true, then inaccessible facts determine a fetus's moral status. We can't ever know how to treat an early fetus, because we can't be sure of its moral status."

This objection neglects the fact that we often do know a fetus's overwhelmingly likely future. Whenever a woman is sure that she is going to abort her early pregnancy, and the means to have an abortion are within her reach, we can be confident that the early fetus lacks moral status. Whenever a woman has decided to continue her pregnancy, we can be confident that the early fetus has moral status. If future events occur as expected, we will have treated each of these fetuses as was appropriate and we will have had attitudes towards them appropriate to their moral statuses. But sometimes unexpected events occur. A woman who planned to continue her pregnancy may suffer a miscarriage; I

discussed this case in arguing for (8) above. A woman who expected to be able to have an abortion may find herself unable to obtain one. In this case, it turns out that something we thought lacked moral status in fact had moral status. We have failed to love or care for this being, but more importantly we may have harmed it. The pregnant woman may have smoked while knowing she was pregnant, because she was planning to abort. Her choice to smoke was morally blameless in that, given the facts as she knew them, her action should not have harmed any other being with moral status. When she becomes unable to obtain an abortion, she will be upset by the fact that she has harmed a being with moral status, but she should not blame herself. The Actual Future Principle does not hold us to standards we cannot meet. Like all moral principles which give moral relevance to facts we may sometimes not know, the Principle merely implies that there may be situations in which it turns out that we caused bad events without realizing we were doing so.<sup>8</sup>

Note that the case of the woman who smokes while she is planning to have an abortion is distinct from the case where we genuinely aren't sure what the early fetus's future will be. If a pregnant woman is considering having an abortion, but

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<sup>8</sup> Suppose a woman, Julie, smokes during pregnancy, intending to abort and reasonably believing that she will be able to obtain an abortion. Then things occur such that Julie would have to go to extraordinary means to obtain an abortion. It might seem that Julie is obligated to go to those extraordinary means *because otherwise she will have done something wrong*: i.e., harmed the early fetus by smoking. I deny this. What Julie ought to do in this situation is no different from what she ought to do if the fetus had been similarly harmed by some accidental process (I am not here taking any stand on whether we have any obligations to abort damaged fetuses). The worry seems to presuppose the following principle: our present actions are constrained by the condition that we make it such that none of our earlier actions in fact caused morally relevant harm. I am not convinced of this principle.



knows she may not choose to do so, it is morally impermissible for her to smoke. In any case where we are genuinely unsure of the facts of our situation, we should do the morally cautious thing.

The third objection says that the Actual Future Principle "plays a trick" in allowing our actions to determine whether these very actions are permissible:

- (12) Third Objection: "According to the Actual Future Principle, you just can't lose! If you abort, then it turns out that the fetus you aborted was the kind of thing it's okay to abort. If you don't abort, then it turns out that the fetus was the kind of thing it's not okay to abort."

I have two responses to this objection. First, the objector is right that "you just can't lose" if you have an abortion. As I have argued, the Actual Future Principle implies the very liberal view on abortion. Therefore, according to the Actual Future Principle, no moral justification is required for an early abortion. Second, the objector's final claim is wrong. It is not the case that if you don't abort, then it turns out that the fetus was the kind of thing it's not okay to abort. It is true that the Actual Future Principle divides early fetuses into two different kinds of things and that it says that fetuses of one of these kinds have moral status while fetuses of the other kind do not. This does look awfully like the claim that fetuses of the first kind are the kind of thing it's not okay to kill, while fetuses of the second kind are the kind of thing it is okay to kill. That interpretation would be correct if the Actual Future Principle said that it is a necessary truth about each fetus whether it has moral status. But the Actual Future Principle does not say that.

The Actual Future Principle does not say that a fetus that lacks moral status could not have had moral status, nor does it say that a fetus that has moral status could not have lacked moral status; clearly these are both possibilities. Rather, it says that each fetus has its status in virtue of facts about that fetus's actual life; these facts might have been different. If we do not abort an early fetus (and the fetus does not die in an early miscarriage), then it turns out that the fetus is the kind of thing that has moral status, according to the Actual Future Principle. It is not the case that this fetus is the kind of thing it would have been wrong (or at all morally problematic) to abort. If this fetus had been aborted, it would have turned out to be a different kind of thing, a kind of thing with no moral status.

According to the Actual Future Principle, early fetuses have their moral statuses contingently. Therefore, in morally evaluating events, one must be careful to evaluate actual events with respect to the actual moral statuses of the early fetuses involved; and one must evaluate *counterfactual* events with respect to the *counterfactual* moral statuses of the fetuses involved--the moral status the early fetuses would have had in that counterfactual situation. The objector's first claim evaluates an actual event with respect to the early fetus's actual moral status; that is right. But the objector's second claim evaluates a counterfactual event with respect to the fetus's actual moral status, which it would not have had in that counterfactual event--that is where the objector goes wrong.<sup>9</sup>

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<sup>9</sup> Some may worry that the Actual Future Principle attributes implausible "godlike" powers to us, in that we can determine the moral status of other beings. However, there is nothing godlike about our ability to determine the future, so the worry must be that the future should not be relevant to something's moral status. I respond to this worry in discussing claim (10), but two further points are relevant. It may seem that *all beings* have their moral statuses simply in virtue of their present

*Footnotes continue on next page*

I turn now to an independent consideration in support of Conclusion 2; this argument does not rely on the tenability of the Actual Future Principle. I will argue that:

- (13) The liberal view on abortion is compatible with the rationality of two common experiences of women who have abortions: finding having an abortion very difficult (though the choice to abort is settled) and regretting an abortion (though one does not regret the choice to abort).

It is commonly thought that the very liberal view on abortion is incompatible with the rationality of women's finding having an abortion very difficult when the choice to abort is settled, and with women's regretting an abortion when they do not regret the choice to abort. I take it to be clear that such experiences are quite common. There is something upsetting and saddening about having an abortion, for many women, which is independent of uncertainty about the choice itself. It has seemed that the only way to explain these experiences is by saying that these women are recognizing their moral responsibility for a morally significant bad event, the death of the fetus. The very liberal view blocks this explanation. It

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intrinsic properties. However, human beings at the end of their lives may plausibly be said to have their moral statuses in virtue of their pasts as well as their present states. Furthermore, some early fetuses (those that will become persons) are *unusual* in that their present intrinsic properties are much less morally significant than the intrinsic properties they will come to have; this is not true of persons, and it can explain why the moral statuses of early fetuses and persons would be determined differently.

seems that a proponent of the very liberal view must say that women who regret their abortions are silly or irrational.<sup>10</sup> I will offer another explanation.

I explained the unique position of a woman genuinely unsure whether she would abort her pregnancy by the difference her choice makes to the fetus; I will explain the reasonableness of regret by the difference the woman's choice makes to the woman's own life. When a woman becomes pregnant, she sees vividly two very different possible futures. In one possibility, the woman's life continues largely as it has been: she aborts her pregnancy and there need be no disruption of her life. In the other possibility, the woman carries the pregnancy to term; she becomes a mother. It is likely that she raises the child, in which case she will come to love a living being that she has created, and most likely her child will love her back in a way she may be loved by no one else in her life. Becoming a mother changes a woman's life, and fundamentally changes who she is as a person. Pregnancy forces into a woman's mind the consciousness of what her life would become were she to continue the pregnancy--and that consciousness is vivid even if she is certain that she will not continue the pregnancy. A woman may regret an abortion because she regrets a lost possibility for her own life: the chance to become the woman she would have become if she had had a child at that time.

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<sup>10</sup> Ronald Dworkin (in *Life's Dominion*) makes the very argument I have described (and will now reject). He poses the following rhetorical questions as challenges to the claim that nothing bad happens in an abortion: "Why should abortion raise any moral issue at all . . . Why is abortion then not like a tonsillectomy? Why should a woman feel any regret after an abortion? Why should she feel more regret than after sex with contraception?" (p. 34).

Claims (6) through (9) together with claim (13) establish Conclusion 2. It has seemed that the very liberal view is incompatible with the following attractive views: that some early fetuses are the appropriate objects of caring attitudes, that some early fetuses are the kind of things we are prohibited from harming, that it is understandable to be upset by an early miscarriage, that the position of a woman genuinely unsure whether she will abort her pregnancy is unique, and that it is reasonable to regret an abortion when one does not regret the choice to abort. I have argued that the very liberal view is in fact compatible with these attractive views. I take it that many people who are attracted to the very liberal view on abortion adopt a moderate view instead, because they want to hold some of these attractive views. My arguments should convince these people to adopt the very liberal view and the Actual Future Principle in place of a moderate view; these are the people to whom my Conclusion 3 is addressed.

I will now argue for a fourth conclusion. I claim that virtually everyone who discusses pregnancy and abortion gets things fundamentally backwards. Most people believe that the choice whether to abort a pregnancy is a morally significant choice; I agree with this. But most people think that the choice between aborting and failing to abort is significant because the choice to abort would be morally significant. They think that one ought to deliberate seriously and recognize one's moral responsibility before aborting. I deny that this is true. Because I hold the very liberal view on abortion, I believe that nothing morally significant happens in an early abortion.

However, the choice whether to abort a pregnancy is very morally significant. This is so because failing to abort a pregnancy is morally significant. Creating a person always involves occurrences of great moral weight.<sup>11</sup> Not only does the pregnant woman's own life change, but her moral responsibility to others changes as well. She is committed to a lifetime of responsibility to the child; even if she makes an adoption plan for the child, she has a unique responsibility and relation to that person. Because it is so morally significant, *and because there is a morally insignificant alternative*, the creation of a person should not be undertaken lightly.<sup>12</sup> I claim:

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<sup>11</sup> Sarah Stroud ("Dworkin and Casey on Abortion," *Philosophy and Public Affairs* 25, no. 2 [Spring 1996]: 140-70) criticizes Dworkin's claim (in *Life's Dominion*) that the state has an interest in fostering moral deliberation and a recognition of moral responsibility for morally weighty actions such as having an abortion. Dworkin thinks this implies that the state can require women to think about alternatives to abortion, by imposing waiting periods and required distribution of information about such alternatives. Stroud points out that the same rationale could justify the state's legally mandating parental or spousal consent of the continuation of a pregnancy or requiring that pregnant women read about the arguments for abortion. My claims go further than Stroud's. She merely points out that the moral weight some people stress about abortion also exists in the failure to abort; I deny that this moral weight is present in abortion.

<sup>12</sup> Hugh LaFollette ("Licensing Parents," in *Morality and Moral Controversies*, ed. John Arthur [Upper Saddle River, NJ: Prentice Hall, 1997], pp. 442-49) suggests that "the state should require all parents to be licensed" (p. 442). He argues that we presently regulate "any activity that is potentially harmful to others and requires certain demonstrated competence for its safe performance" (p. 443) such as driving a car or being a surgeon, and that parenting meets this criterion. LaFollette never comments on a central assumption of his suggestion: that creating a child is something that is always chosen, that can be avoided, and that is thereby a candidate for regulation. His suggestion presupposes exactly what I here claim: that creation is something we choose, for which we are morally responsible.

**Conclusion 4:** If the very liberal view on abortion is true, then:

It is false that one ought to both deliberate seriously and recognize one's moral responsibility before aborting.<sup>13</sup>

Furthermore, one ought to both deliberate seriously and recognize one's moral responsibility before failing to abort.

While there is nothing wrong with having an abortion on a whim, there is a something gravely wrong with allowing a pregnancy to continue without moral deliberation.

## 2. Response to an Objection:

Is there a reason against aborting an early fetus that has moral status?

I now want to consider a particular objection to the Actual Future Principle. The objector sees the Actual Future Principle as implying the following view:

The Attributed View: Early fetuses that will die while they are still early fetuses are such that the harm to them

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<sup>13</sup> I here deny the following claim: whenever someone has an early abortion, she ought to both deliberate seriously and recognize her moral responsibility for aborting. I am not myself making the stronger claim that it is never the case that one ought to deliberate seriously or recognize one's moral responsibility for a particular early abortion. This may be true of an abortion that has some features that not every early abortion need have. (See footnote 5.)

of their deaths provide no reason against killing them. Early fetuses that will become persons are such that the harm to them of their deaths do provide a reason against killing them.

The objector then goes on to argue that the Attributed View is unattractive. I agree that the Attributed View is unattractive, for reasons I explain below. I will argue that the Actual Future Principle does not imply the Attributed View.

(I discuss a similar objection briefly in part one; I call it the "Third Objection." My explanation below spells out the brief remarks in part one.)

In part one, I do not define "moral status." I do say that the deaths of things without moral status are in themselves morally insignificant. And I say that only things with moral status are the appropriate objects of love. So, it is a substantive assumption of my argument that if something dies and its death is morally insignificant, then it is not an appropriate object of love. I furthermore say that harms to things with moral status provide reasons against actions.

These statements might seem to imply the following:

**Actual Moral Status Provides Reasons:** If something has moral status, then there is a reason against any action (or course of action) that would harm it. If something lacks moral status, then it is morally insignificant that an action would harm it.



**If Actual Moral Status Provides Reasons is true, then the Actual Future Principle does imply the Attributed View. But I do not endorse Actual Moral Status Provides Reasons. Rather, I endorse:**

**Counterfactual Moral Status Provides Reasons: If an action (or course of action) would be a harming of something with moral status, then there is a reason against the action. If an action would be a harming of something without moral status, this is morally insignificant.**

**In order to see why I endorse the Counterfactual Moral Status claim rather than the Actual Moral Status claim, I will consider what a proponent of the Actual Future Principle would say about certain actual and counterfactual actions, depending on whether she relies on the Actual Moral Status claim or the Counterfactual Moral Status claim.**

**The Actual Moral Status and Counterfactual Moral Status claims agree about actual harms. Consider these two examples of actions:**

**Actual Abortion: An early fetus is aborted.**

**Actual Smoking: A mother smokes during a pregnancy she is planning to continue; the early fetus will become a person.**

**Actual Abortion harms something without moral status; so the Actual Moral Status claim implies that the harm provides no reason against it. The action is not a harming of something with moral status, so the Counterfactual**

**Moral Status claim agrees that the harm does not provide a reason against Actual Abortion.**

**Actual Smoking harms something with moral status, so the Actual Moral Status claim implies that the harm does provide a reason against the action. The action is a harming of something with moral status, so the Counterfactual Moral Status claim implies that the harm does provide a reason against the action.**

**Furthermore, if anything is such that it has moral status essentially, then the Actual Moral Status and Counterfactual Moral Status claims agree about counterfactual harms to that thing.**

**But the Actual Moral Status and Counterfactual Moral Status claims disagree about counterfactual harms to things that have or lack moral status contingently. According to the Actual Future Principle, early fetuses have or lack moral status contingently. Consider the following two early fetuses:**

**Early fetus E will become a person. Therefore, E has moral status.**

**Early fetus F is aborted while an early fetus. Therefore, F lacks moral status.**

**Consider the following two counterfactual courses of action:**

**Counterfactual Abortion: Its mother aborts early fetus E.**

**Counterfactual Smoking: Its mother continues the pregnancy of early fetus F, and smokes during the pregnancy; fetus F becomes a person.**

Let's consider first what the Actual Moral Status Provides Reasons claim would say about these two counterfactual courses of action. Early fetus E has moral status, and Counterfactual Abortion would harm it by killing it. So, the Actual Moral Status claim implies that there is a reason against Counterfactual Abortion. Early fetus F lacks moral status. Counterfactual Smoking would harm it; but F lacks moral status, so the Actual Moral Status claim does not imply that there is a reason against Counterfactual Smoking.

We can now see why the Actual Moral Status claim and the Attributed View are unattractive. They imply that two actions may differ morally merely because one action is actual and the other is counterfactual. A reasonable moral theory should hold that Actual Abortion and Counterfactual Abortion are morally on a par, and that Actual Smoking and Counterfactual Smoking are morally on a par. But the Actual Moral Status Provides Reasons claim holds that there is a reason against Counterfactual Abortion, while there is no corresponding reason against Actual Abortion; and that there is a reason against Actual Smoking, while there is no corresponding reason against Counterfactual Smoking.

Fortunately, a proponent of the Actual Future Principle need not endorse the Actual Moral Status Provides Reasons claim. Instead, I endorse the Counterfactual Moral Status Provides Reasons claim. Let's see what this claim says about the two counterfactual actions.

Consider Counterfactual Abortion. If the mother had had an early abortion of fetus E, then E would not have had moral status, because E would not have had a future as a person. The abortion would have harmed E, but because E

would have lacked moral status, the abortion would not have been a harming of something with moral status. So the Counterfactual Moral Status claim implies that the harm provides no reason against Counterfactual Abortion. Thus, the Counterfactual Reasons claim sees Actual Abortion and Counterfactual Abortion as morally on a par.

Now consider Counterfactual Smoking. If the mother had continued the pregnancy and smoked, she would have harmed fetus F. Furthermore, fetus F would have had moral status, because it would have had a future as a person. So, her course of action would have been a harming of something with moral status. So the harm to the fetus does provide a reason against the course of action. So, the Counterfactual Reasons claim sees Actual Smoking and Counterfactual Smoking as morally on a par.

We have now seen that the Actual Future Principle does not imply the Attributed View. Early fetuses that die while they are early fetuses actually lack moral status. Their deaths are deaths of things without moral status, so they do not matter morally. Early fetuses that will become persons actually have moral status. Their deaths, which are counterfactual, would be the deaths of early fetuses that lack futures as persons: they would be deaths of things without moral status, so they would not matter morally. Thus the Actual Future Principle says the same thing about the counterfactual and actual abortions of early fetuses that have and lack moral status. But the Principle says that lots of ways of treating early fetuses differ morally depending on whether the early fetus has or lacks moral status. It is appropriate to love an early fetus that has moral status, but not

one that lacks moral status. There is a reason against harming an early fetus that has moral status by smoking, but no reason against harming an early fetus that lacks moral status by smoking.

### 3. Expanding on the Actual Future Principle

In part one, I endorsed:

The Actual Future Principle: Early fetuses that will die while they are still early fetuses have no moral status. Early fetuses that will become persons have some moral status.

This view of moral status leaves a number of questions unsettled. In this section, I will explain how I think the view of moral status should be expanded. I won't provide a full argument for any part of the expansion, but I will explain why I think each is correct.

First, I think the claim should be generalized. It seems that if future personhood is sufficient for present moral status, then past personhood should also be sufficient for present moral status. In particular, certain points I stressed in part 1 apply just as well to past personhood. I pointed out that early fetuses that will become persons are unusual in that their present properties are so much less morally significant than properties they have at other times, and that the properties they have at other times crucially inform what kinds of things they are. That is also true of things that are not persons but once were persons, such as

brain-dead but living humans who were once fully-functioning persons. Despite this point, while dead human bodies were once persons, it seems clear that they lack moral status. Thus, I endorse:

Future personhood is sufficient for moral status. Past personhood, in combination with present life, is sufficient for moral status.

The Actual Future Principle and my discussion in part I define an “early fetus” as a fetus before it has any intrinsic properties that themselves confer moral status. I would like to fill out my view by endorsing a suggestion I made in that section, that early fetuses are pre-conscious fetuses. My reasoning goes as follows. A human fetus that dies before it is ever conscious has two real claims to moral status: first, it has the potentiality to be a person; second, it is a living organism. One of the central goals of my project—developing a view of moral status that can underlie and make attractive the very liberal view of abortion—rules out taking potentiality as sufficient for moral status. Being a living organism cannot be sufficient for moral status either, because plants are also living organisms but they clearly lack moral status. Thus, a human fetus that dies before it is ever conscious lacks moral status. Is consciousness sufficient for moral status? I think that it is. At least some types of consciousness are clearly sufficient for moral status: feeling pain and having desires. We have reasons not to cause pain to any being that feels pain, and I think we do have reasons—sometimes strong, sometimes quite weak—not to frustrate the desires of

anything that has desires.<sup>14</sup> It is a further step to say that all types of consciousness are sufficient for moral status; I think further inquiry would show this step to be attractive.

I endorse:

Something has moral status at *t* just in case it is not dead at *t* and there is a time at which it is conscious.<sup>15</sup>

#### 4. Non-Early Abortions

On my view, there is a moral reason against any abortion of a non-early fetus, that is, a fetus that has been, or is now, conscious. Because the abortion severely

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<sup>14</sup> Much more needs to be said here, on at least two distinct issues. First, I claim that if we have *any* reasons not harm something simply in virtue of the badness of the harm for the thing, then we have such reasons against *all* harms to that thing. That claim is required to move from the claim that we have reasons not to cause pain to things that feel pain, to the claim that these things have moral status. I would argue for the claim by arguing that the claim must be true to make sense of certain common moral arguments we make. Second, the relationship between having desires and being conscious is contentious.

<sup>15</sup> It might appear to follow from my view that there are no moral-status-based reasons against harming persons after they die. This would be a bad result; surely our reasons not to break promises made to persons who are now dead, and not to frustrate the projects begun by persons who are now dead, are at least in part reasons not to harm them. After someone dies, the thing that was her no longer has moral status, on my view, so we have no reasons not to harm it. But while we have no moral-status-based reasons against harming dead bodies that once had moral status, we do have moral-status-based reasons not to harm the stage of the dead body that had moral status—the living person—even after that thing has come to lack moral status. The object of harm, when we harm a dead person, is not the current stage, the dead body which lacks moral status, but the former stage, the person which had moral status.

The insight that a present action can harm a stage of a person that exists at another time might suggest a way of avoiding the Actual Future Principle and yet still holding that we have moral-status-based reasons against smoking and drinking during pregnancies that will be carried to term: the present action harms a future stage of the thing that is now a fetus. This is the “bad account” I discussed in arguing for claim (7) in Part 1 of this chapter; it fails to accommodate the view that this early fetus itself—this stage of this thing—has a status that provides reasons against harm.

harms the fetus—it kills it, and in particular it deprives it of the chance to live life as a person—it seems that this reason must be very strong. (Indeed, my arguments in Chapter Two imply that this reason is very strong.) Does this mean that, on my view, early abortions are morally insignificant while non-early abortions are morally prohibited? It does not.

Judith Jarvis Thomson has famously argued that even if fetuses have the moral status enjoyed by persons, abortion is still permissible.<sup>16</sup> I wholeheartedly endorse her argument. I think that abortion remains permissible after fetuses become conscious. What changes is the reason that abortion is permissible, and the morally relevant factors that go into determining that it is permissible.

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<sup>16</sup> Judith Jarvis Thomson, "A Defense of Abortion," *The Rights and Wrongs of Abortion*, Marshall Cohen, Thomas Nagel, and Thomas Scanlon, eds., Princeton, NJ: Princeton University Press, 1974.



## Chapter Two:

### The Potentiality Problem

Many people face a problem about potentiality: their moral beliefs appear to dictate inconsistent views about the significance of the potentiality to become a healthy adult. Briefly, the problem arises as follows. Consider the following two claims. First, both human babies and cats have moral status, but harms to babies matter more, morally, than similar harms to cats. Second, early human embryos lack moral status. It appears that the first claim can only be true if human babies have more moral status than cats. Among the properties that determine moral status, human babies have no properties other than their potentiality that could explain their having more moral status than cats. So human babies' potentiality to become adult persons must explain their having more moral status than cats. But then potentiality must raise moral status generally. So early human embryos must have some moral status. It appears that the view that must underlie the first claim implies that the second claim is false.

I will advocate a solution to the problem that reconciles these two claims by explaining how potentiality has a particular significance that affects the way that human babies matter morally, but does not affect the way that early human embryos matter morally.

## 1. The Two Claims

The two claims are:

### **BABIES PROVIDE STRONGER REASONS:**

- (a) Human babies and cats both have moral status.
- (b) Harms to human babies matter more, morally, than similar harms to cats. For example, a baby's death matters more, morally, (provides stronger reasons against action) than a cat's death; and testing a shampoo made for adults by dripping it into babies' eyes is more morally serious than testing a shampoo made for adults by dripping it into cats' eyes.

**EMBRYOS LACK MORAL STATUS:** Early human embryos, one week old or less, that die due to the use of some forms of contraception, have no moral status.<sup>1</sup>

Throughout this paper, I'll use the terms "matters morally", "moral status" and "matters more, morally" as follows. A harm to a being "matters morally" just in case there is a reason not to perform any action that would cause the harm and the reason exists simply in virtue of its being a harm to that thing, and simply in virtue of the badness of the harm for that thing. A thing has moral status just in case harms to it matter morally. One harm "matters more, morally" than another

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<sup>1</sup> I use the one week cut-off here merely because it ensures that the embryos we are discussing are very early indeed. Many forms of birth control can cause the deaths of such early embryos.

just in case there is a stronger reason *of the above kind* against causing the first harm than there is against causing the second harm. Some examples will help to illustrate this terminology. There are reasons not to harm both Alice and her car; but only Alice has moral status. Harms to Alice provide reasons against action simply in virtue of being harms to her. But harms to Alice's car provide reasons against action only in virtue of being harms to Alice; so these harms do not *matter morally* because the reason against action does not exist simply in virtue of the harm's being to that thing. Alice's getting her arm broken provides a stronger reason against action than Billy's getting a scraped knee; so Alice's getting her arm broken *matters more, morally*, than Billy's getting a scraped knee.

BABIES PROVIDE STRONGER REASONS says that the mere fact that an action would harm a baby or a cat provides a reason against the action; and that such reasons against harms to babies are stronger than such reasons against similar harms to cats. It does not say that among all the reasons there are, there are stronger reasons provided by harms to human babies than provided by similar harms to cats. Rather, BABIES PROVIDE STRONGER REASONS considers only the reasons against harming these beings that exist simply in virtue of the badness of the harms *for these beings*; and it says that these reasons are stronger for human babies than for cats. We can think of these as the *subject-generated* reasons: they are the reasons generated by the subject of the harm. So, for example, BABIES PROVIDE STRONGER REASONS says nothing about the strength of reasons provided by harms to babies in virtue of their being harmful to the babies' parents; and it

says nothing about the strength of reasons provided by harms to cats in virtue of some of them being harmful to cats' human owners.

Many people believe **BABIES PROVIDE STRONGER REASONS**. They believe that considering the subjects simply in themselves, harms to babies generate stronger reasons against action than similar harms to cats.<sup>2</sup> **EMBRYOS LACK MORAL STATUS** is more controversial, but many of the people who believe **BABIES PROVIDE STRONGER REASONS** believe **EMBRYOS LACK MORAL STATUS** as well. For example, someone may believe **EMBRYOS LACK MORAL STATUS** because she believes that not even minimal moral justification is necessary to engage in a contraceptive practice that may cause the deaths of some early embryos.

## 2. Argument that there is a Potentiality Problem

If **BABIES PROVIDE STRONGER REASONS** is true, then there must be something that explains why harms to human babies matter more than similar harms to cats. If a baby's death matters more, morally, than a cat's death, it seems that something must explain this difference. If nothing explains the difference between a baby's death and a cat's death, then it would seem arbitrary to claim that more reason is generated by one harm than by the other.

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<sup>2</sup> In section 9, I will defend the claim that many people believe **BABIES PROVIDE STRONGER REASONS**, in the face of the objection that people believe only the different claim that there are stronger reasons, *including* non-subject-generated reasons, against harming babies than against harming cats. I will argue that many people attribute a significance to babies that is properly expressed in **BABIES PROVIDE STRONGER REASONS** and misunderstood in any rejection of that claim.

Because the harms in question are similar harms—they are both deaths—it seems that there must be a difference in the beings that suffer the harms that explains why one harm matters more, morally, than the other. It seems that the following two claims must be true:

**DEGREES OF MORAL STATUS:** If a being has more moral status than another being, then a harm to the first being matters more, morally, than a similar harm to the second being.

**BABIES HAVE MORE MORAL STATUS:** Human babies have more moral status than cats.

**BABIES HAVE MORE MORAL STATUS** says that babies are more morally significant than cats; this would explain why babies' deaths matter more, morally, than cats' deaths. Someone committed to **BABIES PROVIDE STRONGER REASONS** appears to be committed to **BABIES HAVE MORE MORAL STATUS** as well.

**BABIES HAVE MORE MORAL STATUS**, in turn, must be explained by some facts about babies and cats. It might seem difficult to explain how **BABIES HAVE MORE MORAL STATUS** could be true, because the following claim seems to be true:

Human babies do not have any properties—other than potentiality properties—that could explain their having more moral status than cats.

(A “potentiality property” is a property of having a potentiality.) If we look only at human babies' and cats' non-potentiality properties, then it appears that cats have a claim to moral status that is equal to or better than the claim babies have.

Cats are equally or better able to perceive the world around them, get around in the world, experience pain and pleasure, and form emotional bonds with others, than babies are.<sup>3</sup> Note that **BABIES HAVE MORE MORAL STATUS** is harder to explain than:

**PERSONS HAVE MORE MORAL STATUS:** Normal healthy adult persons have more moral status than cats.

There are many morally significant non-potentiality properties that adult persons have but cats lack, such as self-consciousness and the capacity to form life plans.

If we want to explain **BABIES HAVE MORE MORAL STATUS** in the face of the comparability of babies' and cats' non-potentiality properties, it seems that we must appeal to this claim:

Human babies have more moral status than cats in virtue of their potentiality to become normal healthy adult persons.<sup>4</sup>

This claim would indeed explain how **BABIES HAVE MORE MORAL STATUS** is true.

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<sup>3</sup> Here it is important to distinguish two kinds of dispositions: potentialities and capacities. Capacities are dispositions to have certain manifestations right now; a capacity could be manifested at any moment. Potentialities are dispositions to manifest change in a certain way, over a considerable period of time. Potentialities cannot be manifested right away. I don't claim that this is a sharp distinction. But there are clear cases of capacities, such as those I mention, and clear cases of potentialities, such as the potential to become a human adult.

<sup>4</sup> One might object that some babies have more moral status than cats, yet lack the potentiality to become normal healthy adult persons. I discuss this objection in section 8.

The claim that babies' potentiality increases their moral status, itself requires explanation. It seems that it could only be true if the following more general claim is true:

Having the potential to become a normal healthy adult person increases a being's moral status.

But the early human embryos discussed in EMBRYOS LACK MORAL STATUS—those one week old or less, that die due to the use of some forms of contraception—have the potential to become normal healthy adult persons. If potentiality increases any being's moral status, then these early human embryos have some moral status, contrary to EMBRYOS LACK MORAL STATUS. So, because someone committed to BABIES PROVIDE STRONGER REASONS appears to be committed to the claim that potentiality does increase any being's moral status, someone committed to BABIES PROVIDE STRONGER REASONS appears to be committed to the denial of EMBRYOS LACK MORAL STATUS.

Let's review briefly. Suppose that both human babies and cats have some moral status, but that harms to babies matter more, morally, than similar harms to cats. It appears that this can only be true if human babies have more moral status than cats. Among the properties that determine moral status, human babies have no non-potentiality properties that could explain their having more moral status than cats. So human babies' potentiality to become normal healthy adult persons must explain their having more moral status than cats. But then potentiality must raise moral status generally. So early human embryos must have some moral status. In this way, it appears that the only reasonable view that could underlie

**BABIES PROVIDE STRONGER REASONS** implies that **EMBRYOS LACK MORAL STATUS** is false.

### 3. First Solution

The above argument assumes a picture of how the moral status of beings gets determined; call it “the bad picture”. It is a natural picture, but it is misleading. The first solution challenges one aspect of the bad picture; the second solution challenges another aspect.

According to the argument, if potentiality to be an adult person raises the moral status of babies, then it must raise the moral status of any thing that has it. According to the bad picture, properties fall into two categories: morally significant and morally insignificant. Properties that are morally significant raise moral status whenever they are present; properties that are morally insignificant never raise moral status. This picture is natural, but it carries an unwarranted assumption. It rules out the possibility of *combination effects*. A property might raise the moral status of one being but not another, because it might raise moral status only when combined with certain other properties.<sup>5</sup> More specifically, the following might be true:

The potentiality to become a normal healthy adult person raises the moral status of any being that has moral status independently of its potentiality.

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<sup>5</sup> Shelly Kagan makes the point that a feature may have a certain moral significance in combination with other features, but not alone. (“The Additive Fallacy,” *Ethics* 1988, 99: 5-31.)



This claim allows that bare potentiality might be morally insignificant, while saying that potentiality in the presence of other morally significant properties raises moral status.<sup>6</sup>

This way to solve the potentiality problem rejects the step from the claim that babies' potentiality raises their moral status to the claim that anything's potentiality raises its moral status. It adopts the claim that there is a combination effect as an explanation of the claim that babies' potentiality increases their moral status. Babies have many non-potentiality properties that are sufficient for them to have moral status; for example, they experience pain. Furthermore, that there is a combination effect does not imply that the human embryos mentioned in EMBRYOS LACK MORAL STATUS have any moral status. These embryos have no non-potentiality properties that are sufficient for moral status.

The first solution leaves a significant question unanswered: why does the combination effect it posits hold? For this reason, it is merely a sketch of a solution. I will not pursue the question of how the first solution might be elaborated.<sup>7</sup> Rather, I will argue in section 7 that the first solution must be rejected, because it relies on an aspect of the bad picture which is mistaken and must be abandoned.

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<sup>6</sup> Bonnie Steinbock holds the view that potentiality is not sufficient for moral status, but can raise the moral status of a being that independently has moral status. Her view appears to be motivated by a direct intuition that potentiality is significant, not by a problem that forces recognition of the significance of potentiality. (*Life Before Birth: The Moral and Legal Status of Embryos and Fetuses*, New York: Oxford University Press, 1992.)

<sup>7</sup> In footnote 17, I explain how the second solution *might* be understood as an elaboration of the first solution.

#### 4. Second Solution

According to the bad picture, there are degrees of moral status. Some things have no moral status at all, such as rocks and chairs; other things have some moral status, such as cats; and other things have yet more moral status, such as human babies and adult persons. There may be a wide spectrum of degrees of moral status. Harms to beings with greater moral status matter more, morally, than similar harms to beings with less moral status.

It seemed necessary to take recourse to a picture on which there are degrees of moral status, in order to explain part (b) of **BABIES PROVIDE STRONGER REASONS**:

- (b) Harms to human babies matter more, morally, than similar harms to cats.

Let's look more closely at that step in the argument, the move from (b) to these two claims:

**DEGREES OF MORAL STATUS:** If a being has more moral status than another being, then a harm to the first being matters more, morally, than a similar harm to the second being .

**BABIES HAVE MORE MORAL STATUS:** Human babies have more moral status than cats.

(b) appears to imply these two claims according to the following reasoning. Consider a harm to a baby and a similar harm to a cat: suffering a

particular significant amount of pain. Why should the baby's suffering this pain matter more, morally, than the cat's suffering the same amount of pain? It seems that this can only be explained by the baby itself being more morally significant than the cat. The baby must have more moral status than the cat.

Similar reasoning underlies a parallel move from PERSONS PROVIDE STRONGER REASONS to PERSONS HAVE MORE MORAL STATUS:

PERSONS PROVIDE STRONGER REASONS: Harms to healthy adult persons matter more, morally, than similar harms to cats.

PERSONS HAVE MORE MORAL STATUS: Persons have more moral status than cats.

If a harm to an adult person matters more, morally, than a similar harm to a cat, it appears that nothing could explain this other than the person's mattering more, morally, than the cat.

But the reasoning behind these steps treats *similar harms as equal harms*. Similar harms are harms that might be described the same way, that might naively appear to be equal harms: a baby's death and a cat's death; a baby's suffering pain and a cat's suffering the same amount of pain; a healthy adult person's sudden painless death in the prime of life and a cat's sudden painless death in the prime of life. However, if we examine these harms more closely, we can see that they are not equal harms at all. Consider a healthy adult person's sudden painless death in the prime of life and a cat's sudden painless death in the prime of life. Both of these deaths deprive their subjects of future happiness. But the person's

death harms the person in many ways that the cat's death does not harm the cat. The person's future plans and desires about the future are thwarted. The shape of the person's life is very different from the way he would want it to be. The person is deprived of the opportunity to come to terms with his own death and to say goodbye to his loved ones. None of these harms are suffered by the cat. Therefore, the person is more harmed by his death than the cat is harmed by its death. We can explain why the person's death matters more, morally, than the cat's simply by pointing out that the person's death is worse for him than the cat's death is bad for it. We need not appeal to degrees of moral status. So, PERSONS PROVIDE STRONGER REASONS can be explained without appeal to PERSONS HAVE MORE MORAL STATUS and DEGREES OF MORAL STATUS.<sup>8</sup>

Similarly, part (b) of BABIES PROVIDE STRONGER REASONS can be explained without recourse to BABIES HAVE MORE MORAL STATUS and DEGREES OF MORAL STATUS. Consider the death of a baby and the death of a cat. Both of these deaths deprive their subjects of future happiness. But the baby's death harms it in other ways. The baby has the potentiality to become a healthy adult person; its death deprives it of the chance to live life as an adult person. The cat is not similarly harmed by its death. The cat loses the chance to live life as a cat; this is a less severe loss. Therefore, the baby's death is worse for it than the cat's death is bad for it, and this explains why the baby's death matters more, morally,

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<sup>8</sup> The insight that similar harms are not equal harms, and that therefore the lesser significance of some harms to animals need not be explained by animals themselves mattering less than persons, is due to Peter Singer (p. 58-59 of "Chapter 3: Equality for Animals" in *Practical Ethics*, Second Edition, Cambridge: Cambridge University Press, 1993). I do not think he would endorse my extension of this point regarding babies below.

than the cat's death. Consider a typical case of a baby's suffering a certain amount of pain and a cat's suffering the same amount of pain. Because this is a typical case, the baby is likely to grow into a healthy adult person. Pain suffered as a baby typically has some chance of having some lasting psychological repercussions in the developing adult. So the baby's pain harms it by creating the possibility of psychological trauma; the cat's pain does not harm it in this way.<sup>9</sup> This explains how the baby's pain is worse for it than the cat's pain is bad for it, and thus why the baby's pain matters more, morally, than the cat's pain. The following claim is true:

POTENTIALITY CAN INCREASE HARMFULNESS: Babies' potentiality to become healthy adult persons makes many harms to babies *more harmful* than similar harms to cats.

Any harm that causes a baby's death deprives the baby of the chance to live life as an adult person; many harms that don't cause the baby's death create the possibility that the baby will grow into a person traumatized or otherwise limited by that harm.<sup>10</sup>

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<sup>9</sup> Cats are susceptible to something that might be called psychological trauma; but human psychological trauma has features that cats' experiences cannot have.

<sup>10</sup> There may be another way in which, in typical cases, harms to babies are bad for them. Babies typically have actual futures as adult humans. Adult humans are in a position to consent or not consent to being treated in certain ways. Even when an adult is not in a position to give or refuse consent, it is bad for her to be treated in a way to which she *would not* consent, or of which she would not approve. When a baby is harmed, the baby is typically treated in a way of which her later self would not approve. This may be another way in which harms to babies harm them; harms to cats do not harm them in this way.

We can reject the argument that one cannot consistently defend both **BABIES PROVIDE STRONGER REASONS** and **EMBRYOS LACK MORAL STATUS** by rejecting the step from **BABIES PROVIDE STRONGER REASONS** to **DEGREES OF MORAL STATUS** and **BABIES HAVE MORE MORAL STATUS**. To explain part (b) of **BABIES PROVIDE STRONGER REASONS**, we can endorse the following claim instead:

**MATTERS MORE IFF MORE HARMFUL:** If two harms matter morally, then the first harm matters more, morally, than the second harm just in case the first harm is worse for the being that suffers it than the second harm is bad for the being that suffers it.

This claim says that, for two harms that matter morally, just considering the subject-generated reasons, the reasons against causing one harm are greater than the reasons against causing another harm, just in case the first harm is more harmful than the second harm. I gave one example of this at the beginning of this paper when I pointed out that Alice's getting her arm broken matters more, morally, than Billy's getting a scraped knee. Part (b) of **BABIES PROVIDE STRONGER REASONS** is explained by the claims **POTENTIALITY CAN INCREASE HARMFULNESS** and **MATTERS MORE IFF MORE HARMFUL**. Harms to babies are often more harmful than similar harms to cats, and this makes those harms matter more, morally.<sup>11</sup>

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<sup>11</sup> It might be objected that harms to babies and harms to cats simply cannot be compared. Similarly, it might be argued that harms to two different persons cannot be compared. I think both claims are wrong for the same reason: facts about comparisons of harms are clearly morally explanatory of other moral facts that we know to be true. It is impermissible for me to prevent one  
*Footnotes continue on the next page.*

Note that for some similar harms, the harm to a cat is actually more harmful than the harm to a baby. For an obvious example, consider a baby's being deprived of cat's milk and a newborn cat's being deprived of cat's milk. The newborn cat needs its mother's milk to grow and be healthy; the deprivation of this milk is a serious harm. The baby does not need this milk; the deprivation of this milk may not be a harm at all. If the baby wants the milk, then the deprivation may be a harm of some sort, but it is not nearly so serious a harm. These considerations show that the second solution vindicates part (b) of BABIES PROVIDE STRONGER REASONS on one reading, but not on another. There are strong and weak readings of (b):

(b)—ALL: All harms to human babies matter more, morally, than similar harms to cats.

(b)—MANY: Many harms to human babies matter more, morally, than similar harms to cats.

The second solution vindicates only the weak reading, (b)—MANY.

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stranger from getting a paper cut rather than prevent another stranger from losing his life; part of the explanation is that dying would be much worse for the second stranger than getting a paper cut would be bad for the first stranger. It is impermissible for someone to deprive his cat of food for a week, even though venturing out to get cat food would involve enduring a somewhat biting wind on his face; part of the explanation is that being deprived of food would be much worse for the cat than suffering the cold wind would be bad for the person. This is true even though other factors are also explanatory, such as the fact that the person has taken responsibility for the cat.

## 5. Completing the Second Solution

While the second solution has clearly provided a way to reject the argument that one cannot consistently defend both BABIES PROVIDE STRONGER REASONS and EMBRYOS LACK MORAL STATUS, it leaves an important question unanswered. Part (b) of BABIES PROVIDE STRONGER REASONS has been explained. But EMBRYOS LACK MORAL STATUS and part (a) of BABIES PROVIDE STRONGER REASONS remain unexplained: we need a new picture of how moral status gets determined that explains why cats and human babies *have* moral status, but early human embryos that die *lack* moral status; incorporating MATTERS MORE IFF MORE HARMFUL into this new picture will provide the second solution.

We have seen that the bad picture posited that there are degrees of moral status, and that this was used to explain part (b) of BABIES PROVIDE STRONGER REASONS. The bad picture endorses the notion of degrees of moral status given by:

DEGREES OF MORAL STATUS—*"similar" version*: If a being has more moral status than another being, then a harm to the first being matters more, morally, than a *similar* harm to the second being .

But note that, because the bad picture does not distinguish similar and equal harms, the bad picture also endorses:

DEGREES OF MORAL STATUS—*"equal" version*: If a being has more moral status than another being, then a harm to the first being matters more, morally, than an *equal* harm to the second being .



Indeed, it is only the “equal” version of the claim that deploys a notion of degrees of moral status *with explanatory significance*; these are the degrees of moral status that can explain a difference in strength of reasons that is left unexplained by the lack of a difference between the harms themselves. On the new picture I am developing, the notion of degrees of moral status deployed by the “equal” version of the claim is misguided; there are no degrees of moral status that bear explanatory weight. We have no reason to posit such degrees of moral status, so we can conclude that moral status is not a matter of degree, but is rather on/off: a being either has moral status or lacks it.

(Note that the new picture can take or leave the notion of degrees of moral status deployed by the “similar” version above. It is true that *many* harms to babies matter more, morally, than similar harms to cats. We could then conclude, using the notion<sup>12</sup> defined by the “similar” version of the DEGREES OF MORAL STATUS claim, that babies have *more moral status* than cats. But this claim is explanatorily inert; we do not need it.<sup>13</sup>)

So far, we have two pieces of a new picture of moral status in place:

**MATTERS MORE IFF MORE HARMFUL:** If two harms matter morally, then the first harm matters more, morally, than the second harm just in

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<sup>12</sup> Or a closely related notion, according to which babies have more moral status than cats because babies are susceptible to a range of serious harms and extraordinary benefits more significant than anything to which cats are susceptible; so, babies can be the source of stronger reasons than cats can be, and often are.

<sup>13</sup> See footnote 17 for an explanation of how, if the second solution *does* endorse the “similar” version’s notion of degrees of moral status, then the second solution may be seen as an elaboration of the first solution.

case the first harm is worse for the being that suffers it than the second harm is bad for the being that suffers it.

**MORAL STATUS IS ON/OFF:** Moral status is not a matter of degree. It is on/off.

The important question left open is this: why do babies and cats have moral status, yet human embryos that die due to the use of contraception lack moral status?

In order to develop a picture that will answer this question, I want to first note that many things are capable of undergoing harms. The deprivation of light harms a weed. Having its wing torn off harms a fly. Having her arm broken harms a person. Yet not all of these things have moral status. A weed does not have any moral status at all. The mere fact that I would deprive a weed of light gives me no reason not to place a breakfast table in my backyard. So, the following claim is true:

The fact that something is capable of undergoing harm is insufficient to ensure that it has moral status.

While this claim might appear to be obvious, it is often useful to make this point explicit. It blocks a very bad argument for the claim that early embryos that die do have moral status:

- (i) Early embryos that die are deprived of lives as adult humans.
- (ii) Therefore, these early embryos are harmed by their deaths.
- (iii) Therefore, these early embryos have moral status.

For some reason, some philosophers find it natural to assume that harms can only occur to things with moral status. This is clearly a mistake, as the weed example demonstrates.<sup>14</sup>

We need some principle that will distinguish, among all the things that can be harmed, those that have moral status. I propose the following:

CONSCIOUS: A being has moral status at  $t$  just in case it is ever conscious and it is not dead at  $t$ .

I will not offer any independent argument for CONSCIOUS.<sup>15</sup> My aim is to elaborate a view that solves the potentiality problem, the problem of how to

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<sup>14</sup> Several philosophers do assume that something has moral status if and only if it can be harmed. Peter K. McInerney ("Does a Fetus Already have a Future-Like-Ours" *The Journal of Philosophy* 1990, 87: 264-68) appears to assume this view, and argues that early embryos are not harmed by their deaths in order to argue for the permissibility of abortion; I think this is a hopeless way to reach that conclusion. Bonnie Steinbock (*Life Before Birth: The Moral and Legal Status of Embryos and Fetuses*, New York: Oxford University Press, 1992) holds the view that something has moral status just in case it has interests, following Joel Feinberg. Steinbock's arguments that plants and early fetuses cannot be harmed strike me as providing very bad reasons to say these things cannot be harmed, but very good reasons to say these things lack moral status. My disagreement with those who say that things have moral status just in case they can be harmed may be terminological, but it is important. I think that arguments about whether certain harms matter morally are made more perspicuous when it is clear that the question at stake is whether the thing that is harmed has moral status, not whether the purported harm is really a harm

<sup>15</sup> Something is conscious just in case it is having experiences. (Or, if unconscious experience is possible, something is conscious just in case it is having conscious experiences.) Equivalently, something is conscious just in case there is something it is like to be that thing.

CONSCIOUS implies that *actual future* consciousness is sufficient for *present* moral status. (So it is important that the embryos discussed in EMBRYOS LACK MORAL STATUS die as embryos and are never conscious.) I will not defend this implication of CONSCIOUS in this paper. I argue for and defend a weaker claim, that *actual future personhood* is sufficient for present moral status, in my "Creation Ethics: The Moral Status of Early Fetuses and the Ethics of Abortion," *Philosophy and Public Affairs* 1999, 28: 310-324. An alternative solution that would do the same work as my proposed solution to the potentiality problem, would replace CONSCIOUS with the following claim:

CONSCIOUS\*: Something has moral status at  $t$  just in case it is not dead at  $t$  and: it is conscious at  $t$ , or it has been conscious prior to  $t$ .

Footnotes continue on the next page.

reconcile BABIES PROVIDE STRONGER REASONS and EMBRYOS LACK MORAL STATUS. The new picture of moral status provided by MATTERS MORE IFF MORE HARMFUL, MORAL STATUS IS ON/OFF, and CONSCIOUS together, does solve it.<sup>16</sup> From CONSCIOUS, we get the conclusion that early embryos that die before becoming conscious lack moral status, while cats and human babies have moral status, so EMBRYOS LACK MORAL STATUS and part (a) of BABIES PROVIDE STRONGER REASONS are true. From MATTERS MORE IFF MORE HARMFUL and our observation that POTENTIALITY CAN INCREASE HARMFULNESS is true, we get the conclusion that many harms to babies matter more morally than similar harms to cats: part (b) of BABIES PROVIDE STRONGER REASONS is true. Note that we can grant that early embryos are harmed by their deaths—that they are severely harmed—and yet deny these harms matter morally. The embryos lack moral status, so harms to them simply don't matter morally.

## 6. The Second Solution in a Nutshell

The second solution solves the potentiality problem through the following observation: that potentiality may affect the strength of reasons not to harm

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This claim implies that comatose individuals have moral status, but pre-conscious humans that will become conscious lack moral status (and dead human bodies lack moral status). This claim has the unattractive feature that it treats past and future consciousness differently, in a way that may be hard to justify.

<sup>16</sup> It might be objected that consciousness is not on/off but a matter of degree (and/or sometimes indeterminate), so it cannot be that both something has moral status just in case it is ever conscious *and* moral status is on/off. However, no problem is raised by degrees of consciousness among the conscious things, so long as *the question whether something is conscious* is never either a matter of degree or indeterminate. I argue in "Vagueness and the Moral Status of Fetuses" that the question whether something is conscious is never either a matter of degree or indeterminate.

babies by affecting *how harmful* those harms are, but without at all affecting *whether* harms to embryos matter morally. The second solution claims that potentiality makes harms to babies worse, but does not at all affect how much moral status babies have. If potentiality does not affect *how much* moral status babies have, then it need not affect *whether* embryos have moral status. Potentiality does make many harms worse for embryos, but it does not contribute at all to make those harms matter morally.

Three charts can illustrate the difference between the bad picture and the new picture. Let us pretend—what is clearly false—that the badness of a harm, the amount of moral status something has, and the strength of a reason, can all be numerically measured. The following chart represents the facts as they initially appear, before the problem has been raised:

Chart #1:

	Harmfulness of Death (similar harms)	Moral Status	Strength of Reason
Babies	5	?	10
Cats	5	?	5
Embryos	5	0	0

That is, it initially appears that three equally bad harms—deaths—generate different strengths of reasons against actions that would cause them. There is no reason not to harm the embryo by causing its death; that is because it lacks moral status. But we must explain why there is a greater reason against causing the baby’s death than against causing the cat’s death. It seems we must fill the chart

in like this (taking the strength of reason to be a function of harmfulness multiplied by moral status):

Chart #2:

	Harmfulness of Death (a similar harm)	Moral Status	Strength of Reason
Babies	5	<u>2</u> <i>because of potentiality</i>	10
Cats	5	1	5
Embryos	5	0	0

Now we have our problem. Babies' moral status is higher than the moral status of cats because of babies' potentiality. But if potentiality raises moral status, then embryos cannot lack moral status.

The new picture avoids this problem by questioning the initial statement of the facts: Chart #1 is wrong. The death of a baby is not equally harmful as the death of a cat. The new picture endorses the following chart:

Chart #3:

	Harmfulness of Death (a similar harm)	Moral Status	Strength of Reason
Babies	<u>10</u> <i>because of potentiality</i>	<u>1</u> <i>because conscious</i>	<b>10</b>
Cats	<u>5</u>	<u>1</u> <i>because conscious</i>	<b>5</b>
Embryos	<u>10</u> <i>because of potentiality</i>	<b>0</b> <i>because not conscious</i>	<b>0</b>

The key insight of the second solution is to move the significance of potentiality from *whether something has moral status* (whether harms to it matter morally) to *how harmful individual harms are*. Then, the question of whether something has moral status can be answered in a different way, without reference to potentiality.

### 7. Why the First Solution Must Be Rejected

The first solution must be rejected because it was motivated by a confusion, the conflation of similar harms with equal harms. The first solution posits degrees of moral status that bear explanatory weight, that can make a difference to the strengths of reasons against two harms, even when these are equal harms. Once we recognize that the similar harms that motivated the potentiality problem are not equal harms, we no longer have any reason to endorse the existence of degrees of moral status. We have no reason to deny that there is only one type of moral status—being such that harms to one matter morally—and that differences

in strength of reasons against harms are wholly explained by differences in the harms themselves. The first solution (and the potentiality problem) were motivated by insufficient attention to the nature and complexity of individual harms.<sup>17</sup>

#### 8. Objection: Terminal Babies and Tooley's Kittens

It might be objected that MATTERS MORE IFF MORE HARMFUL and POTENTIALITY CAN INCREASE HARMFULNESS cannot explain part (b) of BABIES PROVIDE STRONGER REASONS. My explanation relies crucially on babies having the potentiality to become normal adult persons, and on cats lacking this potentiality. But, the objector maintains, some babies lack the potentiality to become normal healthy adult persons, and some cats could have this potentiality; yet part (b) of

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<sup>17</sup> There is a way in which the second solution can be seen as an elaboration of the first solution. I said that the second solution can take or leave the notion of degrees of moral status defined in terms of "similar" harms. A proponent of the second solution need not take this notion on board, but she can. She can accept it as true—though explanatorily inert—that babies have *more moral status* than cats, in the sense that babies are susceptible to a range of serious harms and extraordinary benefits more significant than anything that cats are susceptible to; so, babies can be the source of stronger reasons than cats can be, and often are. Understood in this way, the second solution holds that babies' moral status is *raised* by their potentiality (because potentiality explains the severity of some of these serious harms), while potentiality does not raise embryos' moral status, because embryos lack moral status independently (and though potentiality does increase the severity of harms to embryos, this is morally irrelevant because the embryos lack moral status). In this way, the second solution can seem to endorse the combination effect proposed by the first solution. Nevertheless, I think that the two solutions are best seen as independent, and that the first solution is best seen as simply wrong, once we endorse the second solution. The key point is that we have found something else, other than degrees of moral status—namely, difference in severity of the harms—to explain the difference in the strength of reasons against similar harms to babies and cats. We can tack on some facts about degrees of moral status after we've done this explanatory work, but we don't have to rely on the claim that there are degrees of moral status to do the explaining, contrary to the spirit of the first solution.



BABIES PROVIDE STRONGER REASONS is, and would be, true of these cats and babies.

The objector points out that some babies have diseases that will certainly kill them while they are babies; call them “terminal babies”. Terminal babies appear to lack potentiality. But, the objector claims, harms to terminal babies still provide stronger reasons than similar harms to cats.

The objector then asks us to imagine a case in which we have a serum that, when injected into kittens, causes them to develop in such a way that they become cats that are as mentally sophisticated as normal adult persons; they come to seem just like persons in cats’ bodies. The objector claims that a cat injected with such a serum, before the serum has begun to take effect, has the potentiality to come to have the moral status of an adult person; and even a cat that has not been injected with the serum has this potentiality, since it could be injected. The objector then claims that these cats are morally on a par with ordinary cats; harms to babies still provide stronger reasons than harms to these cats.<sup>18</sup>

The point of this objection is to challenge the significance the new picture accords to potentiality: the objector maintains that lack of potentiality does not diminish the strength of reasons against harms to babies; and the addition of potentiality does not increase the strength of reasons against harms to cats. I agree with the objector that the potentiality to come to have the mental

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<sup>18</sup> Michael Tooley imagines such a serum in “Abortion and Infanticide”, *The Rights and Wrongs of Abortion*, Marshall Cohen, Thomas Nagel, and Thomas Scanlon, eds., Princeton, NJ: Princeton University Press, 1974. He is concerned to argue that potentiality is morally insignificant.

sophistication of a normal adult person, while in a cat's body, is morally on a par with the potentiality to become a normal adult person. I disagree with the objector regarding his understanding of what it is to have either of these potentialities.

The most permissive understanding of potentiality would hold that something has the potentiality to become a normal adult person just in case there is some possible future in which it becomes a normal adult person. But then, anything would have this potentiality. We can imagine any material object gradually morphing into something with the moral attributes of a person, preserving enough spatio-temporal continuity such that identity across time is preserved. This is metaphysically possible, though it may not be physically possible. A narrow understanding of potentiality would hold that something has the potentiality to become a normal adult person just in case it will in fact become an adult person. But that understanding of potentiality would get wrong the case of a healthy human baby that is suddenly killed in a car crash; it had potentiality, but its potentiality was not realized.

My objector seems to be operating with the following understanding of potentiality: something has the potentiality to become a normal adult person just in case it is physically possible for it to become a normal adult person. I think this understanding is too permissive. Rather, it seems to me that a human baby differs dramatically, regarding potentiality, from a cat that has not been injected with the serum. Both *could* become normal adult persons, but one of them already has, encoded within it, the plans to become a person. I claim that human babies have

potentiality, while cats not injected with the serum lack potentiality. Now consider cats in which the serum has been injected, but in which the serum has not yet affected the cats at all. It has not yet started to interact with the cats' cells. Here it is reasonable to maintain that the cat does not yet have potentiality; once the serum has sufficiently interacted with the cat's own cells and tissues, then it comes to have potentiality. The important point is that the cat, as an entity, can be seen to exist wholly distinctly from the serum; the serum is within the space in which the cat is located, but it is not intrinsically part of the cat. Babies are not similarly separable from their DNA. Babies have the plans to become a person *intrinsically within them*; cats recently injected with the serum do not.

Terminal babies also have the plans to become a person *intrinsically within them*; but they also have within them, something that interferes with these plans. I claim that these babies have the potentiality to become persons.

My response to the objector is to disagree that the examples he gives involves babies that lack potentiality, and to split the cases of the cats he considers into two categories: some of these cats lack potentiality, and some of them have potentiality. In granting that some of these cats have potentiality, and thus acknowledging that what I say about potentiality applies to them, I may appear to be biting a bullet (though it is a smaller bullet than if I had acknowledged that all the cats have potentiality). But acknowledging that serum-altered cats are morally on a par with babies, in the extent to which harms to them provide reasons, is right. These cats are indeed just like human babies, in their morally relevant features. What could justify treating them morally differently?

They are, like human babies, on their way to becoming sophisticated mental creatures just like human adults.

The objector might rephrase the first half of her objection. She can grant my claim that there is a sense in which terminal babies have potentiality. But she maintains that POTENTIALITY CAN INCREASE HARMFULNESS does not apply to these babies. These babies are certain not to become persons, so, for example, their deaths do not deprive them of lives as persons, and causing them to suffer pain does not create the chance that they will suffer future trauma.

There are two points to make in response to this further objection. First, something can be harmed by being caused to have an increased chance of a bad result, even if the bad result does not occur. So terminal babies can be harmed by being caused to have an increased chance of bad adult lives, even if they end up not having adult lives. (They do not in fact lack any chance of becoming adults with good lives; this chance is simply very low.) Similarly for perfectly healthy babies that are in fact killed while they are babies. Second, terminal babies might be seen to be *worse off* than healthy babies in virtue of their likelihood not to fulfill their potentiality. On some views, if we compare two apparently equal harms to two beings, the fact that one being is worse off makes it worse for that being to suffer the harm. So it may be worse for terminal babies to suffer certain harms in virtue of how badly off they already are.

## 9. Objection: Does Anyone Really Believe

### BABIES PROVIDE STRONGER REASONS?

It might be objected that the potentiality problem is not important or interesting, because not many people believe **BABIES PROVIDE STRONGER REASONS** at all. Many people believe that the reasons against causing harms to babies are greater than the reasons against causing harms to cats, but they don't have the further belief that this difference is due to a difference in the subject-generated reasons. The difference might be explained by any of the following: that harming babies also harms the babies' parents; that harming babies is similar to harming healthy adult persons so such harm might encourage the harming of adults; and that human babies are created by adults and therefore adults have a special obligation to babies. I acknowledge that these considerations may generate genuine reasons against harming babies. But they cannot adequately account for the common belief that harms to babies are more morally serious than harms to cats.

We can see this by seeing that all of the following claims are true, and are believed by many people:

- Even if a baby has no family, there is still a stronger reason against killing it than against killing any cat.
- Even if no people cared at all about babies—if people switched on their interest in babies once babies started to speak—then there would still be stronger reasons against causing many harms to babies than against causing similar harms to cats.

- Even if harming babies did not develop a callous attitude towards human adults, there would still be stronger reasons against causing many harms to babies than against causing similar harms to cats.
- Even if babies were spontaneously created by plant spores, there would still be stronger reasons against causing many harms to babies than against causing similar harms to cats.<sup>19</sup>
- Even if no people cared at all about babies, harming babies did not develop a callous attitude towards human adults, *and* babies were created by plant spores, there would still be stronger reasons against causing many harms to babies than against causing similar harms to cats.

The truth of these claims shows that the suggested explanations, while they may be morally significant, do not adequately explain the stronger reasons generated by harms to babies, as compared to similar harms to cats.

This also provides an answer to a related objection. An objector might argue that we can retain the bad picture and yet vindicate belief in **BABIES PROVIDE STRONGER REASONS** and **EMBRYOS LACK MORAL STATUS**. On this view, babies have more moral status than cats because babies have certain *relational* properties that cats lack. For example, babies are such that: adult humans care deeply about them; adult humans are hurt when they are hurt; and

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<sup>19</sup> Judith Jarvis Thomson ("A Defense of Abortion," *The Rights and Wrongs of Abortion*, Marshall Cohen, Thomas Nagel, and Thomas Scanlon, eds., Princeton, NJ: Princeton University Press, 1974) considers the counterfactual possibility in which fetuses come from plant spores, for a somewhat different purpose than my own here.

adult humans are responsible for their existence. My discussion in section 2 only considered intrinsic properties of cats and babies in comparing their claim to moral status.<sup>20</sup> This objector asserts that BABIES HAVE MORE MORAL STATUS can be explained without recourse to BABIES' POTENTIALITY because babies have many relational properties that cats lack.

Several considerations show that moral status is intrinsic.<sup>21</sup> Some relational properties are ruled out by the definition: the fact that harms to babies are also harms to adult humans who care about them does not contribute to the subject-generated reasons against harming babies. Other relational properties cannot account for the extent of babies' moral status, as the conditional claims above demonstrate. Still other relational properties are such that babies have those properties because they have moral status, not vice versa: we care about babies because they are the kinds of things that matter morally; they do not matter morally because we care about them.

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<sup>20</sup> A thing's intrinsic properties are properties that would be shared by any possible duplicate of that thing. This definition is illuminating to those unfamiliar with the term "intrinsic", but it is not a reductive definition that could be used to determine whether a property is intrinsic (because the best definition of "duplicates" appears to be: things that share intrinsic properties). Several definitions of "intrinsic" have been proposed and criticized. We can engage in such criticism because we have a good intuitive grasp of which properties are intrinsic. A promising definition is given in Langton and Lewis, "Defining 'Intrinsic'" *Philosophy and Phenomenological Research* 1998, 58: 333-345.

<sup>21</sup> On my view, the intrinsic properties something *ever* has determine its moral status.

## 10. Objection: Need Anyone Really Believe

### EMBRYOS LACK MORAL STATUS?

Similarly, it might be objected that the potentiality problem is not important because no one need be committed to believing EMBRYOS LACK MORAL STATUS rather than:

**EMBRYOS HAVE LOW MORAL STATUS:** Early human embryos, one week old or less, that die during the use of some forms of contraception, have low moral status.

If we want to retain the permissibility of certain forms of contraception in the face of EMBRYOS HAVE LOW MORAL STATUS, we need only show that there are serious moral considerations in favor of the use of contraception, which can outweigh the deaths of beings with low moral status. According to this objection, we need not reject the argument that one cannot consistently defend both BABIES PROVIDE STRONGER REASONS and EMBRYOS LACK MORAL STATUS. We can accept the claim that potentiality raises the moral status of any being, allowing that both babies' and embryos' moral status is raised by their potentiality. We can furthermore retain the bad picture of moral status, according to which there are degrees of moral status. Human embryos are harmed by their deaths; this harm does matter morally because the embryos have moral status, but this harm does not matter very much, because the embryos are not very morally significant.

There are two significant problems with the objector's proposal. The first problem is as follows. Potentiality needs to have a *very significant* impact on the



moral status of babies in order to give them greater moral status than cats. This is so for two reasons. First, potentiality does not play the role of a tie-breaker between two things that otherwise have equal claim to moral status. Rather, ignoring potentiality, cats arguably have greater claim to moral status than babies. So potentiality has to lift the moral status of babies above that of beings that otherwise have greater claim to moral status. Second, potentiality does not merely have to raise the moral status of babies *slightly* above that of cats. Rather, we take harms to babies to matter *significantly more*, morally, than similar harms to cats. These two reasons together show that potentiality must significantly raise the moral status of babies. Therefore, taking potentiality to raise babies' moral status well above the moral status of cats commits us to attributing substantial moral status to embryos. This makes the question whether to use certain forms of contraception a substantive moral question with significant moral considerations against it, which is contrary to the common view underlying EMBRYOS LACK MORAL STATUS.

Moreover, even on the bad picture, grievous harms to beings with lower moral status can matter more, morally, than minor harms to beings with higher moral status. So, for example, a cat's being tortured matters more, morally, than a human child's being deprived of amusement. And it would seem that, if early embryos have any moral status at all, an embryo's suffering the grievous harm of losing the chance to live life as an adult would matter more, morally, than many of the considerations that might be offered in favor of using a particular type of contraceptive. So accepting EMBRYOS HAVE LOW MORAL STATUS would imply

that many contraceptive practices that can cause embryos to die are impermissible.

I conclude that the objector's proposal is unsuccessful.

### 11. How I Learned to Stop Worrying and Love Potentiality

Consider the following two very liberal views:

**CONTRACEPTION NEEDS NO JUSTIFICATION:** The practice of a contraceptive procedure that may cause some early human embryos to die does not require even minimal moral justification, because these human embryos do not have moral status.

**EARLY ABORTION NEEDS NO JUSTIFICATION:** The practice of early abortion does not require even minimal moral justification, because the pre-conscious early fetuses that die in these abortions do not have moral status.

The **CONTRACEPTION** claim is believed by more people than the **EARLY ABORTION** claim; but both are believed by many people. As someone who believes both claims, I used to be naively terrified of acknowledging any moral significance for potentiality. If potentiality raises the moral status of any being that has it, then both the **CONTRACEPTION** claim and the **EARLY ABORTION** claim are false. But the new picture of moral status given by the second solution demonstrates that we can acknowledge the moral significance of babies' potentiality without challenging either the **CONTRACEPTION** claim or the **EARLY ABORTION** claim at

all. Potentiality has a particular kind of significance: it is significant to how harmful a particular harm is, but not to whether that particular harm matters morally.



## Chapter Three:

### The Moral Status and Well-Being of Brain-Dead Former Persons

This chapter raises a puzzle and demonstrates that the view of moral status I articulated in Chapters One and Two can solve the puzzle. Furthermore, there is a way of understanding the puzzle such that it constitutes an objection to my view of moral status; my discussion explains and answers this objection.

#### 1. The Puzzle

The following argument appears very compelling:

The Harm Argument:

A brain-dead former person is a living thing. Causing the death of a living thing fundamentally harms it. We should not commit such a harm without compelling reasons to do so. The benefits to family members of being able to grieve, and the benefits to the family and/or the state of not having to pay for the medical systems that keep brain-dead former persons alive, are not the kind of considerations that could justify such a harm. Therefore, we should not kill a brain-dead former person, nor should we allow it to die.

But many people believe:

- (1) Euthanasia of brain-dead former persons is morally permissible.

It appears that we must either find a way to reject the apparently compelling Harm Argument, or deny (!).

## 2. First way to reject the Harm Argument

The Harm Argument makes the following assumption:

- (2) Any fundamental harm to a thing should be avoided, absent compelling reason to cause the harm.

But consider this notion:

moral status: A thing has *moral status* if and only if there is a reason against any action that harms the thing, due to the badness *for it* of being harmed.<sup>1</sup>

Given how I explain "moral status," the Harm Argument's assumption in claim (2) is the assumption that *everything* that can be harmed has moral status. But this is false. Persons and animals such as cats and rabbits clearly have moral status. Rocks, chairs, and the weed growing in my backyard clearly lack moral status. There is no reason against smashing the rock to smithereens due to the badness of this *for the rock*; similarly, there is no reason against breaking off one of the chair's legs due to the badness *for the chair*. But the weed provides by far the clearest case: the weed can be harmed, yet harms to it are morally insignificant. So the assumption in (2), that all things that can be harmed have moral status, is false. We can reject the Harm Argument by asserting that brain-dead former

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<sup>1</sup> This explanation of moral status applies only to things that are ever harmed.

persons lack moral status. We can grant that killing it harms a brain-dead former person, while denying that there is thereby a reason against killing it.

However, this way of rejecting the Harm Argument is unattractive. It doesn't vindicate the following claim, which is often believed alongside (1):

- (3) We are often morally obligated to cause the deaths of brain-dead former persons.

If brain-dead former persons lack moral status, then causing their deaths is like causing the deaths of plants; in itself, it is morally insignificant. So it seems that it could not be morally obligatory. Nevertheless, a proponent of the first way of rejecting the Harm Argument might claim that the moral obligation mentioned in (3) exists not because the death is itself morally significant, but because it has positive effects on the living relatives of the brain-dead-former-person: it enables them to begin to mourn and emotionally deal with their loved one's permanent loss of consciousness. However, the first way still faces a major problem: it doesn't vindicate *the reasons we believe (3)*, as I'll explain and argue below.

### 3. Better Way to Reject the Harm Argument

I endorse the reasoning behind the first rejection; (2) is indeed false because some things lack moral status. But I endorse:

- (4) Brain-dead former persons have moral status.

I endorse (4) because on my view:

(5) A living thing has moral status if and only if it is ever conscious.

Because my view requires me to endorse (4), the Harm Argument raises a particular objection to my view of moral status: the plausibility of the Harm Argument appears to show that my view of moral status cannot be reconciled with the view that it is morally permissible to cause the deaths of brain-dead former persons. There is therefore a burden on my view to find a second way to reject the Harm Argument, without rejecting (4).

In order to reject the Harm Argument, I claim:

(6) The death of a brain-dead former person need not harm it.

To say this, I need a story about what counts as a harm.

The following crucial claim in the Harm Argument appears compelling:

(7) The death of a living being harms it.

I will argue that there is a reading of (7) on which it is true; but there is also a reading of (7) on which it is false, and only the latter reading would support any moral conclusion.

The following claims are all true:

(8) Smashing a rock to smithereens is bad for it.<sup>2</sup>

(9) Losing one of its legs is bad for a chair.

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<sup>2</sup> Suppose, for example, I blow up a locked door to save Sally, who is trapped inside a burning building, and I steady the explosive in place by putting a rock on top of it. The explosion breaks the rock to bits. Someone might say, "It was good for Sally that you did that" and I could truly reply, "Yes, good for Sally, bad for the rock."



- (10) Lack of light is bad for a weed.
- (11) Breaking its leg is bad for a cat.
- (12) Having a duplicitously unfaithful spouse is bad for a person.

Claims (8) through (12) are specific implications of the following general claims:

- (13) Destruction is bad for a physical object.
- (14) Death or an event that threatens death is bad for a living thing.
- (15) Pain is bad for a conscious being.
- (16) Having her life go in a way she wouldn't want it to is bad for a person.

Claims (8) through (16) are true; but we must be careful in drawing implications from them. The following is also true:

- (17) We have some reason not to cause any event that is bad for a thing with moral status.

And the following follows from (14):

- (18) The death of a brain-dead former person is bad for it.

I claim that both (17) and (18) are true; and yet I deny that they together imply:

- (19) We have some reason not to cause the death of a brain-dead former person.

Events can *be bad for* things, or *harm* things, in more than one sense. An event can be bad for something as a thing of one kind, but good for that same thing as a thing of another kind. For example, suppose a painting by Monet hangs in a

museum, and someone burns it to ashes. The burning is bad for the painting *as a work of art* and it is bad for the painting *as a physical object*. But now consider a planned art event: the artist has created an elaborate sculpture which he plans to burn to ashes at the opening of his exhibit. The burning is bad for the sculpture *as a physical object*, but it is good for the sculpture *as a work of art*. While it is true that, usually, what is bad for a painting *as a physical object* is also bad for it *as a work of art*, that is not always true.

I claim that a similar phenomenon holds for persons. Usually, what is bad for us *as things of one type* is also bad for us *as things that are ever persons*. But these can come apart. Where they do come apart, the badness that matters morally is *only* badness for us *as things that are ever persons*.

Claim (17), while true, can be more fully stated as follows:

- (20) For any thing with moral status, we have some reason not to cause any event which is bad for it *as a thing of the type in virtue of which it has the moral status it does*.

I claim:

- (21) The death of a brain-dead former person need not be bad for it *as a former person*.

This is compatible with:

- (22) The death of a brain-dead former person is bad for it *as a living thing*.

Something which is ever a person has an interest in having a life with a good *shape*; a life with a long period of unconsciousness at the end of it is worse than a life that ends closer to the end of the meaningfulness of the life. (21) captures the fact that, for many of us, if we end of us brain-dead former persons, it would be morally obligatory for others to kill us *for our own sakes*. Not only is it true that:

- (3) We are often morally obligated to cause the deaths of brain-dead former persons.

But, equally importantly, many of us think (3) is true because sometimes it's morally required to cause the death of a brain-dead former person *for her own sake*. The story I've told vindicates the truth of (3) and also the fact in virtue of which (3) is true.

Note that, on my view, strictly speaking what we need is not:

- (21) The death of a brain-dead former person need not be bad for it *as a former person*.

but:

- (23) The death of a brain-dead former person need not be bad for it *as a thing that is ever conscious*.

and:

- (24) The death of a brain-dead former person may be good for it *as a thing that is ever conscious*.

Things that ever have the complex conscious lives of persons have an interest in not persisting as unconscious living bodies.<sup>3</sup>

#### 4. Conclusion

The Harm Argument seeks to establish that it is never permissible to cause the deaths of brain-dead former persons, contrary to a common belief. The Harm Argument also raises the worry that if we grant that brain-dead former persons have moral status, as my view implies, then we will not be able to hold that euthanasia of them is ever permissible. I have argued that not only is it unproblematic to claim that brain-dead former persons have moral status, it is *important* to say this. Otherwise we will not be able to explain why we are sometimes required to cause the deaths of brain-dead former persons *for their own sakes*.

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<sup>3</sup> More needs to be said about harm *simpliciter*. In particular, I must hold that something with moral status is harmed, *simpliciter*, just in case it is harmed *qua thing that is ever conscious*.

Chapter Four:  
Can We Harm and Benefit In Creating?

1: The Problem Sketched

Suppose that we decide to adopt a permissive Radioactive Waste Policy, in which we store radioactive waste unsafely, and as a result, many of the people who exist several generations from now suffer terrible effects from exposure to the radioactive waste. It is natural to say, about this scenario, that adopting the Policy is wrong, and it is wrong because it harms the future individuals. However, there is a compelling argument that, in an important case of this type, such claims could not be made.

Suppose further that adopting the Policy will have small effects on everyone's lives now, because the looser standards under the Policy affect how industries that create radioactive waste are run, at all levels. It will affect what plants are built where, who is hired where, what trucks are on which roads, etc. Indeed, the effects are so substantial that the people who will exist several generations into the future, after we adopt the Policy, are such that none of them would have existed if we had not adopted the Policy. Their parents would not have met, or would not have conceived a child at the time they did conceive, and the particular sperm and egg that joined together to become each future person would never have come together. This fact, the fact of *non-identity* of this future generation to the future generation that would have existed if we had not adopted the Policy, raises a serious problem for explaining the moral features of our

choice to adopt the Policy. The people who suffer from exposure to the nuclear waste would not have been *better off* if we had not adopted the Policy; rather, they would not have existed at all. Therefore, it seems that our adopting the Policy does not harm them. And, therefore, it seems that it is not wrong.

The problem raised by this case is the Non-Identity Problem<sup>1</sup>. This chapter will discuss the Non-Identity Problem and four related problems.

## 1.2: Overview

In this dissertation, I am concerned to discuss which things have moral status. In particular, I am concerned with the question which things are such that the mere fact that an action would *harm* one of those things provides a reason against the action. I call such reasons “moral-status-based reasons.”

My discussion of the Non-Identity Problem has four goals. First, I will use the notion of a moral-status-based reason to *solve* the Non-Identity Problem. A solution to the Non-Identity Problem is valuable in its own right. But for my purposes, this solution has an additional value. The cases that raise the Non-Identity Problem are cases in which it *intuitively* appears that reasons not to harm individuals, that is, moral-status-based reasons, *should* be present and explanatorily crucial; but there is a compelling argument that such reasons *cannot* be present. My second goal is to vindicate the presence, and explanatory value, of moral-status-based reasons in these cases. This will bolster the claim I made

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<sup>1</sup> This problem is extensively discussed in Part IV of Derek Parfit's *Reasons and Persons* (1984). I believe it was introduced in Gregory Kavka's "The Futurity Problem" (Richard Sikora and Brian Barry, eds. *Obligations to Future Generations* Philadelphia: Temple University Press, 1978), Kavka's "The Paradox of Future Individuals" (*Philosophy and Public Affairs* 11: 2: 93-112, 1982), and Parfit's "Future Generations: Further Problems" (*Philosophy and Public Affairs* 11: 2: 113-172, 1982).

earlier in Chapter One, that moral-status-based reasons play an important role in moral explanation: one area in which it has been argued that these reasons are absent in fact crucially contains these reasons. My third goal is to further spell out my picture of when there are moral-status-based reasons. I will advocate a good method of finding the moral-status-based reasons, and explain why an alternative method, which might appear attractive, is bad. Finally, my fourth goal is to develop a view of *reasons to benefit*, and to defend it in the face of a natural objection

The Non-Identity Problem and the four related problems have been seen to be important for two reasons. First, it has appeared to be genuinely difficult to offer any account of why we have the reasons we appear to have in the cases that generate the problems. Second, some have argued that these problems demonstrate that individualistic or nonconsequentialist considerations play no role in explaining the moral facts about the cases, and thus that such considerations have a narrower scope of relevance than we might have thought. Derek Parfit, for example, argues that these cases show that our ethical principles should be more impersonal. Gregory Kavka says the cases show “that individualistic principles of obligation . . . cannot be relied on to yield correct results when applied to cases involving the creation of persons.”<sup>2</sup> James Woodward, on the other hand, is concerned to argue that nonconsequentialist, individualistic considerations do play an important role in the cases.<sup>3</sup> In offering a solution to the problems, I will

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<sup>2</sup> Kavka 1982, 103.

<sup>3</sup> In James Woodward's “The Non-identity Problem” (*Ethics* 96: 4: 804-831, 1986) and “Reply to Parfit” (*Ethics* 97: 4: 800-816, 1987).

show that we *can* give an adequate account of the moral facts of these cases, and of why we have the reasons we have. I will argue that Parfit and others are mistaken that individualistic considerations play no role; if that were true, then moral-status-based reasons, which are individualistic, would play no role. I will argue that moral-status-based reasons *do* play an important role in explaining the cases. If my arguments are successful, they establish the desired conclusion of writers such as Woodward, who defend the presence of individualistic considerations; but the reverse is not true. Woodward's aim would be satisfied if it were shown that appeals to rights other than rights not to be harmed are explanatory in these cases; but reasons not to violate such rights are not moral-status-based reasons.<sup>4,5</sup>

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<sup>4</sup> In fact Woodward does appear to appeal to rights not to be harmed.

<sup>5</sup> There are four other commonly-discussed problems about future generations that I will not address. I mention them only to set them aside.

First, some think that there is a problem about saying I have a reason not to harm a person X if X does not now exist, though X will exist in the future. This problem is taken to arise even when my action does not affect whether X will exist. One way this problem will arise is if "there is" is read as tensed, not tenseless, so that the claim that there is someone who would be harmed by my action, is false. It appears to me that reading "there is" tenselessly avoids this problem, if Presentism is false. If Presentism is true, then this problem may be analogous to what I call the Third Problem; and an analogous solution to the one I propose for the Third Problem may solve this problem.

Second, a moral theory that relies on reciprocity may face a problem about future generations due to the fact that we can affect future people but they cannot affect us.

Third, there are difficult questions about how principles of distributive justice and egalitarian principles should be understood as applying across generations.

Fourth, there are difficult questions about what state of the earth and what natural resources future generations have a right to have preserved for them.



## 2: The Non-Identity Problem: Harmed but not Worse Off

I will now give a more detailed explication of the Non-Identity Problem. The problem arises from the following case:<sup>6</sup>

**Radiative Waste Policy:** We are trying to decide whether to adopt a permissive radioactive waste policy. This policy would be less inconvenient to us than our existing practices. If we endorse the newly-proposed policy, then we will cause there to be much radioactive pollution that will cause illness and suffering: some children will suffer acid burns from rain water, some adults will die young of cancer, some babies will be born deformed, etc. However, the policy will have such significant effects on public policy and industry functioning, that different people will exist in the future depending on whether we enact the policy (because different people will conceive children together, or people will conceive children at different times).<sup>7</sup> Thus, the people who will suffer as a result of the policy are not made worse off by the

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<sup>6</sup> This case is similar to one Parfit calls "Risky Policy." Because I think issues of uncertainty about the outcomes of our acts are orthogonal to the central use of this case, I have modified it.

<sup>7</sup> These significant effects include effects on what jobs are available, what public works projects are undertaken, and what government agencies are created. Therefore, they affect where people work and live, and consequently who they meet and how they spend their time.

It may be hard to imagine that we could know that *no one* who will be affected by the Radioactive Waste would not have existed if we had not adopted the Policy. I offer two responses to this worry. First, if we stipulate that our current policies (which will be abandoned if we adopt the Policy) intrude into everyone's lives, such as with requirements on household recycling, the supposition becomes more plausible. Second, though it is hard to imagine our having this knowledge, it still appears to be unacceptable to say that *if* we had this knowledge, then we would have no reasons against the Policy.

policy. They would not have been better off if the policy had not been enacted. Rather, they would not have existed.

Suppose that we do adopt the Policy. It is natural to respond to this case by saying:

- (1) It is wrong to adopt the Policy because of the harm to the future individuals who will suffer.

In order to hold (1), we would have to hold the following:

- (2) There are reasons against the Policy in virtue of the harm to future individuals.

The Non-Identity Problem arises because there is an apparently compelling argument that (2) is false. The Non-Identity Problem is how to explain the truth of (2) in light of this argument.

The argument that (2) is false is very simple. First, it seems that the following claim is true:

- Worse-Off: An action harms a person only if it makes the person worse off.

However, the future individuals affected by the Radioactive Waste Policy are not made worse off than they otherwise would have been by the Policy. They would not have existed if the Policy had not been adopted.

So, if Worse-Off is true, then there is no harm to the future individuals affected by the Policy, and thus there is no reason against the Policy in virtue of harm to them. Worse-Off appears to be true; and if Worse-Off is true, then (2) is false.

Some people find Worse-Off to be intuitively obvious. But arguments have been given in support of Worse-Off. I know of two arguments that support the truth of Worse-Off. I think the most compelling of these arguments is the following. Consider this case:

Surgery: A doctor is considering cutting a hole in my abdomen in order to remove my swollen appendix. Cutting open my abdomen will cause me pain (as I recover); but if the operation is not performed, I will suffer worse pain and die very soon.

In Surgery, the operation is permissible: it is not wrong. Furthermore, it seems that the operation does *not* harm me: rather, it helps me. It seems that the operation does not harm me, because it leaves me better off than I would otherwise be. Consideration of Surgery naturally leads us to embrace Worse-Off. We appear to need an account of why what the surgeon does to me is not harm; Worse-Off seems to give the right account.<sup>8</sup>

While it might appear to be an intuitively obvious feature of the Surgery case that the doctor does not harm me, what is really intuitively obvious is that what the doctor does is *permissible*. Saying the doctor does not harm me is one way of establishing the permissibility of his action; but it is not the only way. Suppose that instead we say, as I think we should, that the doctor does harm me. He harms me because he causes significant damage to my body. Then there is a reason against performing the surgery in virtue of the harm to me. But consider

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<sup>8</sup> Parfit 1984 mentions the surgery case; Parfit's "A Reply to Sterba" (*Philosophy and Public Affairs* 16: 2: 193-194, 1987), in response to Woodward 1986, stresses the importance of the surgery case.

what reasons there are against *not performing* the surgery: there is a reason against not performing the surgery in virtue of the fact that I would suffer more severely and die if the surgery is not performed. In this case, we can say that the reasons against each course of action are of the right type to be weighed against each other. The reasons against *not performing* the surgery are stronger than the reasons against performing the surgery; and so performing the surgery is permissible.<sup>9</sup>

This discussion of the Surgery case suggests a way of handling the Radioactive Waste Policy case. I will now present my solution to the Non-Identity Problem, and then discuss the other argument for the Worse-Off claim as an objection to my solution.

Just as the surgeon causes significant bodily damage to the patient, and for this reason harms the patient, adopting the Policy causes significant bodily damage to future individuals. Adopting the Policy causes some children to suffer acid burns from rain water, some adults to die young from cancer, and some babies to be born deformed. I claim that *causing* such early death, bodily damage, and deformation is harming. We do not need a complete analysis of what it is to harm, in order to reach this conclusion; we can hold that these are clear cases of harm. We can then say that, for each of these individuals, the fact that adopting the Policy would harm her is a reason against adopting the Policy. So, we can endorse:

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<sup>9</sup> Woodward 1987 (807) rightly stresses the importance of consent to the permissibility of performing surgery, where consent is possible. But the surgery case raises a problem even if we assume that consent is granted. The existence of consent is not a sufficient justification for harming someone; it is merely a necessary part of any justification.

- (2) There are reasons against the Policy in virtue of the harm to future individuals.

There is more than one way to argue from (2) to:

- (1) It is wrong to adopt the Policy because of the harm to the future individuals who will suffer.

We have said that adopting the Policy harms the future individuals who are affected by the nuclear waste. But adopting the Policy also might seem to benefit all the future individuals: if the Policy had not been adopted, they would not have enjoyed any of the good aspects of their lives, because they would not have existed. Whether the Policy does benefit these individuals, and whether there are reasons to adopt the Policy in virtue of the fact that it would benefit them, is controversial. I will argue that it does benefit them, and that there are such reasons, in Section 9. But for now, I will remain neutral on this question, and argue that (2) can support (1), regardless which side of the controversy over benefit is right.

Suppose that we deny there are any reasons in favor of adopting the Policy in virtue of the benefits to the future individuals of the good elements of their lives. Then there are reasons *against* adopting the Policy in virtue of the harms to future individuals, and the only reason *in favor of* adopting the Policy is the reason *against not adopting* the Policy provided by the inconvenience to us of adopting the Policy. The reasons against harming are of the right type, and sufficient strength, to outweigh the reason against inconveniencing us. So, the balance of the reasons tells against adopting the Policy: the Policy is impermissible; (1) is true.

Suppose, on the other hand, that we say there *are* reasons in favor of adopting the Policy, in virtue of the benefits to the future individuals of the good elements of their lives. This supposition might appear to make it impossible to argue that adopting the Policy is wrong because the benefits to the future individuals are greater than the harms to the future individuals; but it does not. There are reasons against adopting the Policy in virtue of the harms to the future individuals; and there are reasons in favor of adopting the Policy in virtue of the benefits to the future individuals. To see whether adopting the Policy is permissible, we need to see what moral reasons there are in favor of, and against, the alternative: *not adopting* the Policy. There are reasons in favor of *not adopting* the Policy in virtue of the benefits to future individuals of the happy lives they would leave; these people will only exist, and so will only enjoy these benefits, if we do not adopt the Policy. The only reason against not adopting the Policy is the inconvenience to us of our current policies. Here again, the balance of reasons comes out in favor of *not adopting* the Policy. Both courses of action have strong reasons in favor of them, given by the happiness of future individuals. But adopting the Policy has a strong reason against it; while not adopting the Policy has only a much weaker reason against it. So, even if we grant that adopting the Policy benefits as well as harms the future individuals, we can still hold that adopting the Policy is wrong; we can endorse (1).<sup>10</sup>

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<sup>10</sup> My discussion throughout this paper does not address an important issue, embodied in the following two questions: What makes the difference between a course of action that is impermissible and a course of action that it would be supererogatory not to perform? and What makes the difference between a course of action that is morally obligatory and a course of action that it would be supererogatory to perform? For the first question, in both cases the balance of the moral reasons is against performing the action. For the second question, in both cases the balance of the moral reasons is in favor of performing the action. I do not address these questions, because

I have now presented my solution to the Non-Identity Problem. The crucial move in my solution is to say:

- (3) An action harms a person if the action causes early death, bodily damage, or deformity to her, even if she would not have existed if the action had not been performed.

Other writers have also argued that the Non-Identity Problem can be solved by denying what I call the Worse-Off claim and asserting that the future individuals are harmed by the Policy; I will briefly explain why (3) is preferable to their accounts.

Hanser 1990 says about a similar case that the affected individuals suffer harms as a result of the presence of the nuclear waste; and that because we are responsible for the presence of the waste, we are responsible for these harms. Hanser's notion of responsibility is a morally loaded notion and for this reason it is problematic. My own discussion of harm uses the notion of causation, which is not a morally loaded notion.<sup>11</sup> Furthermore, I will argue below that his view fails when faced with other cases that raise the Non-Identity Problem.

Woodward 1986 says about a similar case that the affected people "have rights that others should not knowingly pursue policies that will kill, injure, or poison them . . . at least when there is no weighty justification for such policies and alternative policies which involve no such risks are available" (812). His

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I think that the Non-Identity Problem does not depend on either distinction. The problems are more basic: an action appears to be wrong and there appear to be *no* moral status-based reasons against it; or, as we will see below, an action appears to be permissible and there appear to be *compelling* reasons against it.

<sup>11</sup> I here disagree with Sarah McGrath (2002 MIT dissertation), who has argued that normativity plays a role in determining the causal facts.

explanation appears to be complicated by a desiderata of showing, through the violation of the right alone, not just that there is a reason against the Policy, but that this reason is not outweighed; so Woodward builds a consideration about the existence of alternatives into the right he posits. I think this is unnecessarily complex. More importantly, Woodward's account is open to the objection that it is ad hoc, or that it fails to be explanatory. Woodward 1987 (a defense of his 1986) says that surgery, if consented to, does not violate any rights. Because he only considers reasons stemming from rights, he denies my claim that there is any reason against surgery to be outweighed. He makes a number of claims about the presence and absence of rights that do get the correct permissibility results, but he does not do any further explanatory work to explain why the rights exist or do not exist in the particular cases (see 808). For example, he says that there is no right not to have one's arm amputated if this is necessary to save one's life. It's not clear why persons would lack that right but have a right not to be poisoned by nuclear waste, even though they could not exist without this harm.

In the next two sections, I will discuss several objections to my solution. In Section 3, I will discuss the second and third arguments for the Worse-Off claim; if successful, these would show (3) to be false. In Section 4, I will discuss the objection that an action cannot harm someone if the person does not, and should not, wish that the action had not occurred.



### 3: The Second Argument for the Worse-Off Claim

I begin my discussion of objections by considering the second argument for:

**Worse-Off:** An action harms a person only if it makes the person worse off.

The second argument proceeds as follows. Suppose we grant that to harm someone is to do something bad for her. However, the notions of something's being good or bad for someone are derivative from the notions of something's being better or worse for someone. The objector maintains that there is no non-relative goodness or badness for someone. So, an action's being bad for person P must consist in it's being worse for P that the action be performed than that it not be performed. And so, Worse-Off must be true.

I will not here address the difficult question of whether the notions of something's being good or bad for someone are derivative from the notions of something's being better or worse for someone. Even if they are, Worse-Off can still be true. Suppose the objector is right that an action is bad for a person just in case the action makes the person worse off than some point of comparison. The objector is mistaken to assume that the only available point of comparison is what things would have been like if an action had not been performed. I propose that for persons, there is a point of comparison that involves a healthy bodily state.<sup>12,13</sup>

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<sup>12</sup> I do not claim that the point of comparison only involves a healthy bodily state; I will claim below that it also involves a healthy mental state.

<sup>13</sup> Woodward 1986 explains that his claim that harm occurs to the future individuals in a case like the Radioactive Waste Policy, appeals to a comparison with an "unattainable" situation in which these people exist and are not harmed in the way they are actually harmed (817). Similarly, Matthew Hanser (in "Harming Future People," *Philosophy and Public Affairs* 19: 1: 47-70, 1990), in footnote 6, says that we can call an action bad for someone if it would have harmed them--by which he appears to mean, if it would have made the person worse off--if the situation had been similar except that we were not affecting who exists. These accounts offer an alternative idea of

At least, an action harms someone if it causes the person to be in a state, or to endure an event, that is worse than life with a healthy bodily state. A healthy bodily state involves no *damage*: no cuts or burns or diseases. But, I claim, it also involves no *deformity*: it is the normal healthy state of an organism of the species in question. So, I claim, even a baby that is genetically determined to be deformed is harmed by its deformity.<sup>14</sup> Furthermore, life with a healthy bodily state involves a normal human lifespan; so it does not involve *early death*. I am leaving it vague what counts as a healthy bodily state, but that is okay. The important point is that the kinds of early death, bodily damage, and deformity described in the radioactive case are clear cases of states and events that are worse than life with a healthy bodily state. Therefore, on the view I have proposed, they are harms.

#### 4: The No Regret Argument and Why the Worse-Off Claim is Misguided

I turn now to a final objection to my solution to the Non-Identity Problem. The objector makes what I call the No Regret Argument. He claims that it is mistaken to say that the Policy harms the future individuals, because they will not later wish--nor should they later wish--that the Policy had not been adopted. They do

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what the point of comparison might be. The accounts might be open to the complaint that they beg the question against those who think that Non-Identity Problem cases are importantly different from similar cases in which our actions do not affect who exists.

<sup>14</sup> Hanser 1990 (65) puts a similar point as follows. He considers a case in which our negligent policies cause someone to be born with a genetic predisposition to die young. He says that having a genetic predisposition to die young is bad for someone. If we are responsible for the cause of the genetic predisposition, then we are responsible for the badness to the person. His claim that having such a genetic disposition is bad for someone requires either a notion of non-relative badness or a baseline of a healthy life for comparison.

not, and should not, regret that the Policy was adopted. They are glad that they exist, and they do not wish they had not existed. The objector goes on to say that the lack of reasonableness of regret indicates that any complaint about the adoption of the Policy would also be unreasonable. And if these individuals could not reasonably complain about the Policy, how can we say that there is a reason against the Policy in virtue of the harm to them?<sup>15</sup>

I will respond to this objection by describing two cases. These cases will illustrate the following three points:

- (i) An individual can be harmed by an action, and can have grounds for legitimate complaint about the action based on this harm, although she does not and should not wish that the action had not occurred.
- (ii) An individual can be harmed by an action, and can have grounds for legitimate complaint about the action based on this harm, although the action makes her better off than she would otherwise be.
- (iii) An action can *impermissibly* harm an individual, although the action makes her better off than she would otherwise be.

The first point shows that the No Regret argument fails. The second and third points will show that the Worse-Off claim is fundamentally misguided.

The first case is unusual, and unlikely; but it is possible. Suppose a woman is raped, becomes pregnant, and ends up raising the child. Suppose that

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<sup>15</sup> Parfit 1984 (373) offers this argument.

the woman is remarkably able to separate the trauma of the rape from her attitude to the child, and they have a normal and healthy parent-child relationship. Suppose furthermore that the woman's life is better, due to the value to her of the relationship with her child, than it would have been if she had not been raped, even taking into account the trauma of the rape.

This woman loves her child. She does not wish that she had not been raped, because if she had not been raped, then her child would not exist. It would also be wrong to say that she should wish she had not been raped. But it does not follow that she has no grounds for legitimate complaint against the rapist. It does not follow that the rapist did not harm her. So, claim (i) is illustrated by this case. Furthermore, from the fact that the woman is better off than she would otherwise be, it does not follow that she is not harmed by the rape, nor does it follow that she has no grounds for legitimate complaint. So, claim (ii) is illustrated by this case. Finally, the rape was impermissible even though the woman does not wish it had not occurred, and even though it made her better off than she would otherwise have been. So, claim (iii) is illustrated by this case.

The second case also involves an extreme harm. It is a case discussed by James Woodward.<sup>16</sup> Viktor Frankl was imprisoned in a Nazi concentration camp, where he suffered many harms. But Frankl has suggested, according to Woodward, that his experience in the camp enriched his character and deepened his understanding of life, such that overall his life was better than it would have been had he not been imprisoned in the camp. Let's suppose further than Frankl

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<sup>16</sup> Woodward 1986 (809); he describes this case in criticizing a version of the Worse-Off claim; he does not mention its relevance to the No Regret argument.

does not wish that the Nazis had not imprisoned him, because he so values what he gained from this experience.<sup>17</sup>

Frankl does not wish, nor is it clear that he should wish, that the Nazis had not imprisoned him. Nevertheless, the Nazis harmed him, and he has grounds for legitimate complaint against them. (Indeed, the benefits to him no doubt are due in part to his understanding of the experience of having been harmed, and of having been *impermissibly* harmed.) So, this case illustrates claim (i). Frankl is better off than he would have been if the Nazis had not imprisoned him. Nevertheless, he is harmed; and he has a legitimate complaint. So, this case illustrates claim (ii). Furthermore, the Nazi treatment of Frankl was impermissible. So, claim (iii) is also illustrated.<sup>18</sup>

These two cases establish claim (i), the claim that even if a victim does not regret that an action was performed, the action may still have objectionably harmed the victim. So these cases demonstrate what is wrong with the No Regret

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<sup>17</sup> This is consistent with Frankl wishing that the Nazis had not imprisoned anyone.

<sup>18</sup> Woodward 1986 makes two points about the No Regret argument that are worth discussing. First, Woodward says that those harmed could *regret* an action in virtue of its having been *morally wrong*, even if the action resulted in their being better off than they would otherwise be (823-824). I think that this response simply uses the word "regret" in a different way than is intended by the proponent of the No Regret argument: the issue is whether those harmed do or should wish the harming action had not been performed. Second, Woodward says that, given the fact that I do not wish a state of affairs q did not obtain, it does not follow that I do not wish a state of affairs p, that was necessary for q, did not obtain. He gives the example that I may not regret making amends for a wrong I did (q), while I do regret committing the wrong (p), even though without it the amends would have been impossible. I think this example is inadequate to do the work we need in these cases. I can have the attitudes Woodward describes because I prefer the world without either wrong or amends to the world as it is, which I in turn prefer to the world with the wrong but without the amends. The situation in the two cases I described is different. The victims of the harm actually prefer the world with the harm and resulting benefits to the world without the harm. I think Woodward's move does suggest an interesting point: we can wish for things that are impossible. The raped woman could wish that she had gotten this very child without being raped. Frankl could wish that he had gained the very same insights without suffering. But I am not convinced that the possibility of such wishes affects the claims made in the No Regret argument.

argument. Harms may bring us valuable aspects of our lives that we would not want to have been without; but this does not vindicate the harms.

These two cases also yield another important lesson. They show that an action may be wrong *in virtue of harming* even though it makes a person better off than she would otherwise be. These two cases are importantly different from the Surgery case, in two distinct ways. First, I think that the harms involved in rape and Nazi imprisonment, are particular types of harms that are difficult, or perhaps impossible, to outweigh and render permissible.<sup>19</sup> Second, the considerations that are available to outweigh the harms in these two cases are *substantial benefits*; the considerations available to outweigh the harm in Surgery is *the threat of worse harm*.<sup>20</sup> Putting these two points together, we can see that the Surgery case is special in that what outweighs a reason against harming is a reason against allowing *worse harm of the same type*.

Once we have seen these three cases, we can see that Worse-Off is clearly false, because it yields the false claims that there is no harm in the rape case or the Nazi case. Not only is Worse-Off false, but it is deeply wrong-headed. After our discussion of the Non-Identity Problem, it might have appeared that Worse-Off

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<sup>19</sup> Woodward 1986 makes the excellent point that “people have relatively specific interests (e.g. in having promises kept, in avoiding bodily injury, in getting their fair share) that are not simply reducible to some general interest in maintaining a high overall level of well-being” (809). As applied to these two cases, the point is that someone’s specific interest in not suffering the trauma of rape or concentration camp imprisonment is not merely an interest in avoiding a lowering of overall well-being. Hanser 1990 makes the same point: “harming someone in the morally relevant sense cannot just be a special case of failing to maximize overall well-being . . . The fact that an action harms someone in the morally relevant sense has independent moral relevance” (67).

<sup>20</sup> Seana Shiffrin (“Wrongful Life, Procreative Responsibility, and the Significance of Harm” *Legal Theory* 5: 2: 117-148, 1999) points out that this is an important distinction. Her view of harm is close to the one I advocate here.

was only wrong when applied to *non-identity cases*. In non-identity cases, the harmed individuals are not made worse off because, if the relevant actions had not been performed, they would not have existed, so they would not have been better off. It might have seemed that the following close cousin of Worse-Off is true:

Better-Off: If a person would be better off if an action were performed than she would be if the action were not performed, then the action does not harm her.

Better-Off is simply the restriction of Worse-Off to persons whose existence is not affected by the action in questions: the positive claim that the affected person *would be better off than she would otherwise be*, leaves out the victims in non-identity cases, who are included under the weaker claim that *it is not the case that they would be worse off*. Points (ii) and (iii) show Better-Off to be false as well. So Worse-Off does not even capture the truth for cases other than non-identity cases.

The final task of this section is to consider two objections to my discussion of the rape case and the Frankl case. The first objection is that what makes the actions in each case impermissible is not *harm* at all, but rather the lack of *consent* of the parties to the actions. Raping someone and imprisoning someone, by their natures, involve lack of consent. The objector claims that the actions are wrong, despite the victims' lack of regret and despite the victims' being made better off, simply because there was not consent.

I agree with the objector that lack of consent plays a crucial explanatory role in both cases. But I affirm that *harm* also plays a crucial explanatory role. Part of the explanation of why it is wrong to rape, and why it is wrong to imprison

someone as the Nazis imprisoned Frankl, is how awful it is for the victim to go through these experiences, and how awful it is for the victim to have gone through the experiences. Part of what makes these experiences bad is that were not consented to. I claim that consent does play a crucial explanatory role, but that the harm to someone of going through these experiences also plays an important role in explaining what is wrong with these experiences. Furthermore, this harm provides reasons against the actions even in cases like the two I described above.<sup>21</sup>

The second objection is that my discussion of the cases trades unfairly on the fact that neither the Nazis nor the rapist either *foresaw* or *intended* the good effects of their actions. The objector claims that the agents' actions were wrong because, for all the agents knew, they were making the victims worse off.

To see why this objector is mistaken, note that we can distinguish whether an action is *objectively wrong*, impermissible given the facts, from whether it is *subjectively wrong*, impermissible given what the agent thinks the facts are. While what is known by the agent affects whether an action is subjectively wrong, it does not affect whether an action is objectively wrong. In the rape case and the Nazi case, the actions were objectively wrong. If the agents had known about the benefits that would ensue, the acts would still have been impermissible.<sup>22</sup>

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<sup>21</sup> It's compatible with what I have said here, that there can sometimes be impermissible rape involving no bad experiences, and perhaps also impermissible concentration camp imprisonment involving no bad experiences, where the impermissibility is solely located in the violation of consent. While this is possible, it is not usual, and such cases have importantly different moral features than the two cases I described.

<sup>22</sup> Woodward 1986 points out that we do not generally think that intentions matter to wrongness: "the usual view is that whether or not the benefit is intended or "aimed at" (Parfit's phrase) makes very little difference to the justifiability of the action, although it may perhaps make a difference to the blameworthiness of the action if we decide that his action was unjustifiable" (footnote 8). He says, about the Frankl case, that even if the Nazis intended the benefits to Frankl, and acted for his own sake, their actions would be impermissible. He also claims that the fact that a policy



## 5: Other Cases That Raise the Non-Identity Problem

The literature on the Non-Identity Problem discusses two other cases that raise the Non-Identity Problem. I will argue that these cases can be handled in the same way that I handled the Radioactive Waste Policy case.

**Teenage Mother:** A 14-year-old girl decides to conceive now and raise the child. Because she is so young, she gives her child a bad start in life: her child suffers from inadequate parental stability and support. If she had not conceived now, she would have waited and had a different child later, to whom she would have given a good start in life.

**Temporary Condition:** Tammy has a temporary condition that will cause any baby she conceives now to be born deaf. She conceives now. If she had not conceived now, her condition would have cleared up in two months and she would have conceived a different baby who would not have been disabled.<sup>23</sup>

In both cases, it seems that the woman acts wrongly by conceiving. I think that the Teenage Mother case is disputable on this point; so let's assume that the teenager knows that her child will suffer substantially as a result of her inadequate

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"happens to have, on balance, consequences such that it leaves [a harmed person] no worse off than he would be under any alternative policy is simply irrelevant" (814). This suggests that benefits can never make any harm permissible; I think this is too strong. It is an interesting question why the Nazis' behavior to Frankl, no matter their motive, is impermissible, whereas it is sometimes permissible to force soldiers to go through brutal boot camps, or to make children endure apparently harsh parenting. Those are cases in which the benefits to the individual appear to outweigh the harms.

<sup>23</sup> A variant of this case was first described by Parfit.

parenting, in the form of trauma and deep emotional problems.<sup>24</sup> The women do not make their children worse off by conceiving them. The children are not worse off than they would otherwise have been if they had not been conceived: they would not have existed. The problem, again, is to explain why there are reasons against the actions, though the actions make no one worse off.<sup>25</sup>

In both cases, conceiving causes the resulting child to be in a bad state. I claim that, in each case, conceiving harms the child because it causes the child to be in a particular kind of bad state. In making this claim about the Teenage Mother case, I am expanding on what I have said so far about harm. Suffering the trauma and emotional problems resulting from inadequate parental support, even if it involves no physical injury, constitutes suffering a harm, I claim.<sup>26</sup>

Because each child is harmed by her mother's action, there is a reason against the action. This solves the problem.<sup>27</sup>

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<sup>24</sup> Thomas Schwartz ("Obligations to Posterity," Richard Sikora and Brian Barry, eds., *Obligations to Future Generations* Philadelphia: Temple University Press, 3-13, 1978) denies that the teenage mother has any reason not to harm the fetus. Rather, he says, the teenager has a reason not to cause herself the burdens of very young motherhood; and that is the only reason against her action (absent further details).

<sup>25</sup> Michael Bayles ("Harm to the Unconceived," *Philosophy and Public Affairs*, 76: 5: 292-304, 1976) argues that there cannot be an account of these cases based on individualistic considerations. He argues for the following impersonal principle: "There is good reason for legislation to prevent the birth of persons who would lack substantial capacity to achieve or take advantage of a quality of life of level  $n$  or whose existence would decrease the number of people who might live with a quality of life at that level" (302). (The principle could be modified from a legal claim to a moral claim.)

<sup>26</sup> I claim that the point of comparison for harm involves a healthy mental state as well as a healthy bodily state.

<sup>27</sup> Hanser 1990, though he says there is harm in the Radioactive Waste Case, denies that there is harm in these two conception cases. He says, about a case similar to Temporary Condition, that the mother is "not responsible for the defect-producing circumstances of her pregnancy" (69); thus he would say that the mother in Temporary Condition is not responsible for the badness to the child of deafness. Hanser sees "wrongful procreation" (69) as raising a special problem; he does not attempt a solution. I think this is a mistake. If we can foresee that some factor for which we

If we grant that the mother benefits her child by causing all the good elements of his life, and that there are reasons in favor of the action in virtue of these benefits, we can still hold that the actions are wrong. If we compare the two courses of action, conceiving now and *not conceiving now*, we will see that both have the same reasons in favor of them--namely, that a child will be created who will be substantially benefited--while only the option of conceiving now has a strong reason against it, namely that the child will be harmed.

I conclude that I have offered a successful solution to the Non-Identity Problem, as it appears in the Radioactive Waste Policy case, the Teenage Mother case, and the Temporary Condition case.<sup>28</sup>

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are not responsible will cause a bad result if we act in a certain way, this fact *can* provide a reason against the action.

Woodward 1986 (815-816) offers a very different account from my own of why the mother's action in Teenage Mother is impermissible. He says that we should not undertake actions that will lead us to have moral duties that we cannot meet. If the teenager knows she will be unable to meet her duties to be a good mother to her child, then she should not conceive. I think this is an important part of the explanation of why the teenager's action is impermissible; but I think that my own explanation in terms of harm is also important. Because Woodward aims to explain the impermissibility of the actions in Non-Identity Problem cases through the notion of *rights violations*, he sees a particular problem in one version of the Temporary Condition case. Suppose the condition causes deafness by affecting the genes of the egg the mother's ovary releases. While not having one's needs met by one's mother might constitute a rights violation, Woodward does not see any rights violation in this version of Temporary Condition. I can't comment on whether I think he should say there is a rights violation, because I don't understand Woodward's criterion for the existence of rights. (See my brief discussion of Woodward at the end of Section 2.)

<sup>28</sup> There is an important respect in which the Teenage Mother and Temporary Condition cases are different from the Radioactive Waste Policy case. In the two conception cases, I stipulated that if the woman had not conceived now, she would have conceived later. But it might appear that her action would be equally wrong if it is unclear whether she would ever use her opportunity to conceive a healthy child later; what matters is that she has the opportunity. My account may appear to be unable to accommodate this fact, because I rely on the claim that there are parallel reasons, due to the benefits to the created child, in favor of conceiving now and *not conceiving now*. I think that we can still say that there are reasons in favor of not conceiving now, even when it is not certain or not true that the mother would ever conceive later, in virtue of the benefits she *could* bestow later if she does not conceive now.

## 6: The Second Problem: The Moral Status of Merely Possible People

The Second Problem also arises by consideration of the Radioactive Waste Policy case. I discussed the Non-Identity Problem largely under the assumption that we do adopt the Policy; the problem was to explain why the action we perform is wrong. The Second Problem arises under the assumption that we do not adopt the Policy. We want to be able to say:

(7) It would have been wrong to adopt the Policy.

And so we must be able to say:

(8) There are reason against adopting the Policy, in virtue of the harm that the Policy would cause to people who would exist if the Policy were adopted.

The people who would be harmed are merely possible people; they do not actually exist. Endorsing (8) might appear to commit us to:

(9) Merely possible people actually have moral status.

(8) says that there actually are reasons that stem from possible harms to merely possible people. That there actually are reasons that stem from particular individuals might appear to require that these individuals actually have moral status. But (9) appears to be false; and I claim that this appearance is correct. Merely possible people do not actually exist, so they do not actually have any properties; so, they do not actually have moral status.<sup>29</sup>

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<sup>29</sup> Versions of the Second Problem arise for the Teenage Mother and Temporary Condition cases, on the assumption that the actions are not performed; there are reasons against the actions, yet there is no one who would have been harmed by them. The solution I advocate below will also apply to these cases.

Instead, the following weaker claim is true:

(10) Merely possible people are such that, if they existed, they would have moral status.

Can we ground the truth of (8) in the truth of (10)? I claim that we can. To see that we can, we must move from a bad method of finding the moral-status-based reasons against harm to a good method. The bad method is the following:

*Bad Method of finding Moral-Status-Based Reasons:*

First ask: Which things have moral status?

Then ask: If my action were performed, would it harm any of these things?

Suppose we adopt the Bad Method, and we endorse (9), the claim that merely possible people actually have moral status. Then, adopting the Policy would harm some things that actually have moral status, and so (8) is true, the claim that there are reasons against the Policy in virtue of the harm it would cause. But (9) is false. Suppose we recognize that (9) is false and deny (9): suppose we say that merely possible people do not actually have moral status. Then, on the Bad Method, there is no moral-status-based reason against adopting the Policy. Adopting the Policy would not have harmed anything that *has* moral status.

However, we need not adopt the Bad Method. Instead, we can adopt:

*Good Method of Finding Moral-Status-Based Reasons:*

First ask: If my action were performed, would it harm any things?

Then ask: If my action were performed, would the harmed things have moral status?

If we adopt the Good Method, then we can deny (9), the claim that merely possible persons *have* moral status, instead holding only (10), the claim that merely possible persons would have moral status if they existed. Because adopting the Policy would harm harmed some things that would have had moral status, the Good Method implies that there *are* reasons against the Policy.

The Good Method is intuitively compelling, in that it says we have reasons not to perform any action that would be *a harming of something with moral status*, that is, any action that would be *a harming of something that would have moral status*.<sup>30</sup>

In Chapter Two of my dissertation, “Creation Ethics: The Moral Status of Early Fetuses and the Ethics of Abortion,” endorsement of the Good Method rather than the Bad Method is a crucial component my view. The fact that we must adopt the Good Method in order to handle the Non-Identity Problem lends valuable support to the view I advocate there.

### 7: The Third Problem: Can Harm Explain Wrongness?

The Third Problem involves a comparison of two actions:

Temporary Condition: Tammy has a temporary condition that will cause any baby she conceives now to be born deaf. She conceives now. If she had not conceived now, her condition would have cleared up

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<sup>30</sup> Woodward 1986 (821) offers essentially the same response to the Second Problem. He understands the problem as the complaint that we cannot “appeal to the rights” of people who do not and will not exist. He says that “a certain course of action would be wrong . . . [if] it would involve the creation of rights and obligations that would probably inevitably be violated” (821).

in two months and she would have conceived a different baby who would not have been disabled.

Permanent Condition: Patty has a permanent condition such that if she ever conceives a child, the child will be deaf. She conceives.

I will make three assumptions about these cases, all of which I think are warranted. First, the state of being deaf is worse than a healthy bodily state, so causing deafness is harming someone. Second, Tammy's action is impermissible. Third, Patty's action is less bad than Tammy's action. Tammy could have avoided causing anyone to be deaf by waiting two months to conceive; the inconvenience of waiting two months does not outweigh the serious harm she causes. Patty, on the other hand, must undergo the much more serious burden of not conceiving a child at all if she is to avoid causing someone to be deaf. Patty's reasons against conceiving are much stronger than Tammy's reasons against conceiving now, so Patty's action is less bad.

The Third Problem is to explain the difference between the two cases. Both Tammy and Patty harm their children, on my view. They harm their children in the exact same way, by conceiving while they have a condition that causes deafness. The problem is that if Tammy's action is wrong in virtue of the harm to her child, Patty's action ought to be equally wrong in virtue of the harm to her child. Parfit glosses the problem as follows. He says that Tammy's action is not wrong merely in virtue of the harm to her child; rather, it is wrong because she had an alternative that would have involved no harm. He says this shows that

we cannot explain the wrongness of Tammy's action simply by appealing to the harm to her child.<sup>31</sup>

Parfit's comments bring up the question of what counts as *being the explanation* of wrongness. On my view, Tammy's action is wrong because she harms her child. But the explanation does not stop there, as Parfit points out. The harm to Tammy's child provides a reason against her action, *and she has no reason against not performing the action that can outweigh or otherwise defeat this reason*. Does the fact that we must add this further statement to our explanation show, as Parfit thinks it does, that the harm does not explain the wrongness of the action? I don't think it does. Harm *never* fully explains the wrongness of any action, in that sense. Perhaps some harms are such that nothing could justify them. But many harms are such that some circumstances could make them permissible. When we say that an action is wrong in virtue of the harm it causes, we are saying that there were no reasons in favor of the action that outweighed the reason provided by the harm.

Tammy's action harms her child, and there is a very weak reason for her to perform the action. Patty's action harms her child, but there is much stronger reason for her to perform her action--it is the only way for her to conceive and gestate her own child. This explains the difference between the cases.

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<sup>31</sup> In Parfit 1984; the argument is repeated in Parfit's "Comments," *Ethics* 96: 4: 832-872, 1986 (861).



## 8: The Fourth Problem: Super-Conservation

The Fourth Problem relies on the following case:

**Super-Conservation:** We have a choice whether to adopt a Super-Conservation Policy. If we do not adopt the Policy, we will continue with our reasonably good conservation policies, which will ensure that future generations enjoy a high level of well-being, and which allow our own level of well-being to rise steadily. If we do adopt the Policy, our own level of well-being will still rise, but slightly more slowly; future generations will enjoy a vastly higher level of well-being than they would otherwise have. Implementation of the Policy would have such widespread effects that different people will exist in the future depending on whether we adopt it. The benefits to future generations are much greater than the costs to us.

Parfit takes it to be clear (about a case like Super-Conservation, with different details) that we ought to adopt Super-Conservation. I think this is a mistake. We have no obligation to adopt Super-Conservation. It would be very nice of us to do so, but this is not required of us.<sup>32</sup> I am not entirely sure why Parfit takes it to be clear that we should adopt Super-Conservation. Perhaps he endorses:

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<sup>32</sup> Some writers who discuss the Non-Identity Problem agree with me on this point. See Hanser 1990 (66). Woodward 1986 (820) goes even further, saying there may be a moral objection to adopting a policy like Super-Conservation.

- (11) In general, whenever one can undergo a small sacrifice to provide a significant benefit to many other people, one ought to do so, even if those other people are better off than oneself.

But surely (11) is false. Suppose that if poor children would each give up a delicious ice cream cone, then fifty happy and rich adults would receive massages every day for the rest of their lives. It would be nice of the children to give up the ice cream, but it would not be morally required.

The Fourth Problem is to explain why the Super-Conservation Policy is required. Parfit treats this problem and the problem about the Radioactive Waste Policy as on a par: he thinks that any explanation that explains why we should not adopt the Radioactive Waste Policy should also explain why we should adopt the Super-Conservation Policy. So, the Fourth Problem is meant to show that a solution to the Non-Identity Problem that cannot also handle the Super-Conservation Policy case is misguided.

My solution to the Fourth Problem is to reject its assumption. It is false that we ought to adopt the Super-Conservation Policy.<sup>33</sup>

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<sup>33</sup> Nevertheless, my disagreement with Parfit is not about whether the balance of moral reasons tells in favor of adopting the Super-Conservation Policy. On my view, the balance of moral reasons do tell in favor of adopting the Policy, because—as I will argue below—we do have reasons to benefit people who would not exist if the benefiting actions were not performed. But I think that adopting the Super-Conservation Policy would be *supererogatory*; it is not morally required.

## 9: The Fifth Problem: The Happy Child and Reasons to Benefit

The Fifth Problem arises by considering the following claim:

**The Asymmetry:** There are reasons not to create someone who would have a life that would not be worth living; but there are no reasons to create someone who would have a life that would be worth living.

The problem is that it looks as though any grounding for the first half of the Asymmetry will also support the second half. This is seen as a problem, because many people find the Asymmetry intuitively plausible. The first half of the Asymmetry is uncontroversial. To see why the second half appears to be true, consider the following case:

**Happy Child:** A couple could have conceived, given birth to, and raised a child who would have had a happy life. They did not.

It does not appear that there was any reason for the couple to have a child in Happy Child; it does not appear that any justification was required for their not having had a child. While some people deny the Asymmetry,<sup>34</sup> holding that there are reasons to create in cases like Happy Child, many people find the Asymmetry intuitively attractive.

First some terminology. Let's use the term "non-contingent persons" for persons who will exist regardless of whether one performs a particular action, and "contingent persons" for persons whose existence is dependent on whether a particular action is performed. Whether a person is non-contingent or contingent

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<sup>34</sup> Utilitarians, who claim that we ought to do whatever would result in a greater sum of happiness, would deny the Asymmetry.

is relative to a possible action. Relative to most actions, most actual people are non-contingent. But every person is contingent relative to each action that, had it not been performed, would have prevented her existence. Merely possible people are contingent relative to any actions we could have performed that would have led to their existence, and relative to any actions we do perform that, if not performed, would have led to their existence. (Merely possible people are neither contingent nor non-contingent relative to any actions that do not or would not affect whether they exist.) Note that if I am considering killing an existing person, then that person is *non*-contingent relative to my action. While my action will affect whether he exists at a particular time, it will not affect whether he exists at all.

Suppose the first half of the Asymmetry is true: we have reasons not to create a person whose life would not be worth living. The truth of this claim appears to require that harms to contingent persons can provide reasons against actions. That is, it seems that the following claim must be true:

Harm to Contingent Persons: The fact that an action would harm a contingent person is a reason against the action.

We can then say that causing the bad aspects of the person's life, in virtue of which the life would not be worth living, is harming the person. The Harm to Contingent Persons claim implies that there are reasons against creating the person in virtue of this harm.

Now we might ask whether the following claim is also true:

Benefit to Contingent Persons: The fact that an action would benefit a contingent person is a reason in favor of the action.

There is a compelling argument that if Harm to Contingent Persons is true, then Benefit to Contingent Persons is also true. The argument begins by pointing out that the following claim is true:

Symmetry for Non-contingent Persons: The fact that an action would harm a non-contingent person is a reason against the action. The fact that an action would benefit a non-contingent person is a reason in favor of the action.

Even people who believe that harms provide much *stronger* reasons than benefits do will accept the Symmetry claim. Surely there is *some* reason in favor of any action that would benefit someone, even if this reason is very weak indeed.

But now, the argument against the Asymmetry goes, if Symmetry for Non-Contingent Persons is true, then surely if Harm to Contingent Persons is true, then Benefit to Contingent Persons must also be true. If a symmetry claim holds for non-contingent persons, it should also hold for contingent persons. The claim that we have reasons not to create a person whose life would not be worth living demonstrates that the well-being of contingent persons can be a source of reasons. But then, surely benefits as well as harms to contingent persons should provide reasons. This is true for non-contingent persons. Surely it would be ad hoc, and indefensible, to endorse the Harm to Contingent Persons claim as a grounding for the first half of the Asymmetry, without endorsing the Benefit to Contingent Persons claim as well.

If the Benefit to Contingent Persons claim is true, then we do have reasons to create a person whose life would be worth living. This person's life would involve many benefits, which she would not have had if we had not created her.

So creating her would benefit her, and so there are reasons in favor of benefiting her. This argument concludes that if there are reasons against creating a person whose life would not be worth living, then there are reasons in favor of creating a person whose life would be worth living: the Asymmetry is untenable.

In Section 9.2, I will consider a response to this argument that the Asymmetry is untenable. I will argue that this response shows the above argument to be unsuccessful. However, in Section 9.3, I will argue that there is another argument against the Asymmetry which is successful. Therefore, in Section 9.3, I will argue that the Asymmetry should be rejected. As in my response to the Fourth Problem, I will argue that the Fifth Problem should be rejected rather than solved.

### 9.2: Consistently Grounding the Asymmetry

Consider this view:

Asymmetrical Reasons Proposal: The Harm to Contingent Persons claim is true; the Benefit to Contingent Persons claim is false.

The above argument claimed that anyone who endorses the Symmetry claim cannot endorse the Asymmetrical Reasons Proposal. But I want to argue that the Symmetry claim can be grounded in a view that will also support the Proposal.

One might justify the Symmetry with an asymmetrical explanation, as follows. I will call this view the Negative Reasons View. On the Negative Reasons View, reasons as regarding harm and benefit to non-contingent persons are grounded in *reasons against courses of action*. These reasons against courses of action are all reasons not to make people be worse off than they would

otherwise be. The rationale for such a view might be that, at least for reasons regarding harm and benefit, there are reasons not to act in certain ways in virtue of the legitimate complaints individuals could make if we acted in those ways. (Of course there may be other moral reasons that are not based in the possibility of legitimate complaint.)

On the Negative Reasons View, there is a reason not to harm any non-contingent person because she could legitimately complain that the agent could have avoided harming her. Note that this explanation relies on the fact that if one harms someone, she will be in a position to legitimately complain.

On the Negative Reasons View, there is a reason *in favor of* any action that would benefit a non-contingent person because there is a reason *against not benefitting*. If the action were *not* performed, the individual could legitimately complain that the agent could have benefited her and did not. Note that this explanation of reasons to benefit non-contingent persons relies crucially on the fact that if we do not benefit these people, they will be in a position to legitimately complain. Thus, this explanation relies crucially on the fact that if we do not benefit them, they will still exist.

The Negative Reasons View supports the Symmetry for Non-contingent Persons. What does it imply about harms and benefits to contingent persons? Suppose if a particular action were performed, it would harm someone; but if the action were not performed, this person would not exist. The situation is relevantly like the situation of harms to non-contingent persons, in that if the action were performed, there would be someone who could legitimately complain about it. So, on the Negative Reasons View, there is a reason against the action

provided by the harm. The Negative Reasons View implies the Harms to Contingent Persons claim.

Now suppose that if a particular action were performed, it would benefit someone; but if the action were not performed, this person would not exist. The situation is *not* relevantly like the situation of benefits to non-contingent persons. According to the Negative Reasons View, there is a reason in favor of performing an action that would benefit someone only if there is a reason *not to refrain from performing* the action, in virtue of the legitimate complaint that the person in question could make if the action were not performed. If the action in question were not performed, there would not be anyone who could legitimately complain that she could have been, but was not, benefited. So on the Negative Reasons View, there is no reason in favor of performing the action provided by the fact that it would benefit someone. The Negative Reasons View does not support the Benefits to Contingent Persons claim.

The Negative Reasons View implies the Symmetry for Non-contingent Persons and the Harms to Contingent Persons claim; but it does not support the Benefits to Contingent Persons claim. Thus, the Negative Reasons View can ground the Symmetry as well as the Asymmetrical Reasons Proposal.

The Asymmetrical Reasons Proposal supports the Asymmetry because it holds that there are reasons against creating a person whose life would not be worth living, provided by the harm to her; but there are no reasons in favor of creating a person whose life would be worth living, because the benefits to her do not provide reasons.



### 9.3: A Problem for the Proposal

The last section showed that it is possible to consistently affirm the Asymmetry, while also claiming that we have reasons against harming and in favor of benefiting all non-contingent persons. However, there is a more serious objection to the Asymmetry. I will first explain the objection as a complaint against the Proposal from the last section.

It is often *permissible* to act in such a way that a person will be created who would not otherwise be created. For example, it is often permissible to decide to conceive a child, if one reasonably believes the child would have a life worth living. However, the Proposal I sketched in the last section would deny this. Every person endures some harms in her life. So, the Harm to Contingent Persons claim implies that there are reasons against any action that would bring about the creation of a person. In fact, these harms are outweighed by the benefits the person would experience if created; that is why it is permissible to create people, despite the harms they will experience. But, according to the Proposal, the mere fact that a person would be benefited *is not* a reason in favor of creating her. Indeed, if the Proposal is supported in the way I proposed, by the Negative Reasons View, it is hard to see why there would ever be a reason to perform an action in virtue of the benefit to a person who would thereby be created. While denying the Possible Benefit Principle involves merely denying that there is *always* such a reason, it is hard to see why there would sometimes be such reasons, and other times not.

So, the Proposal implies that it is never permissible to create a person, because there are always reasons against such creation, in virtue of the harms the

person would suffer, and there are *no* reasons in favor of the action provided by the benefits the person would receive.

The general lesson is that, in order to explain the permissibility of creating a person, we must allow that both the good and the bad elements of the life the person would have, are morally relevant. We must allow the good elements of the life to count in favor of creating; otherwise nothing will outweigh the way in which the bad elements of the life count against creating. We cannot deny that the bad elements of the life count against creating it; otherwise we would have no resources to explain why it is impermissible to create a person whose life would not be worth living.

#### Section 9.4: Rejecting the Asymmetry, and Embracing Reasons to Benefit

In light of the argument in the last section, I advocate that we embrace both the Harms to Contingent Persons claim and the Benefit to Contingent Persons claim. The Benefit to Contingent Persons claim implies that we do have some reason to create the Happy Child. I think this is a result that we can accept, even if we have the initial intuition that there is no such reason.

We might want to deny that there is any reason to create the Happy Child, because it does not seem that we are doing anything wrong when we fail to create happy children. However, the latter claim is compatible with the claim that we have reasons to create the Happy Child, just so long as we allow that these reasons are not too strong to be outweighed by other considerations. I propose that we adopt both of the following views:

- (a) Reasons not to harm are stronger than reasons to benefit.

(b) Reasons to benefit non-contingent persons are stronger than reasons to benefit contingent persons.

(a) is a commonly-held view; I will not rehearse a defense of it here. I think that (b) can be defended by appeal to the considerations raised in the last section. While I do not want to claim, as the Proposal did, that our reasons to benefit are *wholly* located in the badness to the individual if we do not benefit her, I do want to claim that our reasons to benefit non-contingent persons are based in *both* the goodness to the individual of being benefited *and* the badness to the individual of not being benefited. Because both of these features are present with reasons to benefit non-contingent persons, but only the first feature is present with reasons to benefit contingent persons, (b) is true.

Now an objection might be made to my account. I have claimed that we need to grant that there are reasons to benefit contingent persons, because these reasons must be able to *outweigh* our reasons not to harm them, in the case of a happy child who would suffer some harms and many more benefits if created. However, claims (a) and (b) appear to imply that our reasons to benefit contingent persons such as the happy child are *very weak*, perhaps too weak to do this outweighing.

My response to this objection is that talk of strength of reasons is of limited use. *Type of reason* as well as *strength of reason* is often significant. I think that (a) and (b) are particularly useful when comparing reasons that stem from effects on distinct individuals. However, reasons to benefit a particular contingent person P are of the right *type* to outweigh reasons not to harm P (so long as the harms are not too serious). Perhaps benefits to others could never

outweigh certain of these reasons not to harm P; nevertheless, benefits to P himself may be able to outweigh these reasons.

#### 10. Conclusion: The Non-Identity Problem Solved

Some actions both determine whether a particular person exists and appear to harm her by causing some bad effect; these actions also appear to benefit her, because without the action she would enjoy none of the benefits she in fact has.<sup>35</sup>

I have argued that these appearances are correct: the actions do harm and benefit, even though the affected persons would not have existed if the actions had not been performed. I have argued that the Worse-Off claim, which offers a purported *necessary* condition for harm, is wrong: an action can harm someone though it does not leave the person worse off than she would otherwise be. I have advocated the following *sufficient* condition for harm:

- (3) An action harms a person if the action causes early death, bodily damage, or deformity to her, even if she would not have existed if the action had not been performed.

In advocating (3), I have not provided an analysis of harm. Rather, I have claimed that the cases covered by (3) should all be understood as clear cases of harm. On the view I have developed, actions have reasons against them in virtue of harming, even when the harmed persons would not have existed if the actions had not been performed; and actions have reasons in favor of them in virtue of

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<sup>35</sup> There are no benefits in unusual cases in which that person would have no benefits during her life; this is disagreement about whether this is possible, because some people think that getting to exist at all is a benefit.

benefiting, even when the benefited persons would not have existed if the actions had not been performed.

In the original non-identity cases of Radioactive Waste Policy, Teenage Mother, and Temporary Condition, the benefits to the created person do not outweigh the harms and render the relevant actions *permissible* because there is an alternative which involves the same benefits but no comparable harms, so the balance of the moral reasons tells against performing the action. In the comparison case Permanent Condition, there is no alternative with the same benefits; I have explained why the creation action in this case is less bad than in Temporary Condition, but I have not tried to settle the dispute between those who think the action in Permanent Condition is *wrong* but less bad and those who think it is *permissible*.

I have argued that we need not say we have no reasons to create a happy child. We do have some reasons to conceive whenever we would conceive a happy child; but these reasons are easily outweighed. Nevertheless, I have argued, these reasons can themselves outweigh the reasons against creation of a particular happy child due to the harms that child will suffer; they are of the right type to do this outweighing.

In elaborating my explanations of these cases, I have appealed to reasons against harming, and in favor of benefiting, particular individuals. I call these “moral-status-based reasons.” These reasons are *individualistic*. Parfit and others have argued that individualistic reasons cannot account for these cases. For example, Parfit appears to endorse the following claim:

The Same Number Quality Claim: If in either of two outcomes there will be the same number of people, then we have reason to create the outcome in which the people are better off.<sup>36</sup>

Parfit endorses this claim but two aspects of his view are important: first, this is an impersonal rather than an individualistic claim; second, he offers no account of *why* the claim is true. I also hold that in many cases, we have reasons to create people who are better off,<sup>37</sup> but I have an *explanation* of this truth in terms of moral-status-based reasons: we have reasons in favor of each outcome in virtue of the benefits in that outcome, and reasons against each outcome in virtue of the harms in that outcome. That is why, in many cases, the balance of reasons tells in favor of creating the people who will be better off.

Finally, I have argued for a method of how we discover which moral-status-based reasons there are:

*Good Method of Finding Moral-Status-Based Reasons:*

First ask: If my action were performed, would it harm any things?

Then ask: If my action were performed, would the harmed things have moral status?

This method enables us to get the correct result: that we have the same reasons for and against a particular action, regardless whether we do perform the action.

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<sup>36</sup> This is close to the claim Parfit endorses (*Reasons and Persons*, 378).

<sup>37</sup> We may not always have reason to create a better off person than a less well off person: if the former has a better life because she has had both incredible benefits and incredible harms, it will sometimes be a difficult issue, on my view, whether it is permissible to create her, due to the seriousness of the harms.

**Chapter Five:**  
**Ethics Without Ethical Theory:**  
**A Reasonable Moral Epistemology**

This dissertation has two central aims, each of which is achieved via its own methodology. One aim is to develop a novel view of moral status and show that it can underlie certain commonly-held combinations of views, and defend it in the face of some particular objections. The second aim is to establish that this novel view is the correct view of moral status. The methodology by which I aim to achieve the first goal is, I think, uncontroversial: I simply state the novel view, point out that if it is true then each of the views that make up the combinations of attractive views is also true, and point out that the novel view thereby provides a way that the attractive views can all be true together; furthermore, I respond to specific objections to the novel view. However, the methodology by which I aim to achieve the second goal is, perhaps surprisingly, deeply controversial. This chapter aims to defend one aspect of this second methodology, that it involves arguing for substantive ethical claims without commitment to either a particular ethical theory or a particular meta-ethical view. Because I want my arguments in this chapter to address a methodological question that is more general than the question of whether the particular arguments of this dissertation are successful, the arguments I develop below do not refer to, or depend on, the details of the way I have argued in preceding chapters.

### 1. Exploring a Specific Ethical Question

Suppose that I want to figure out how an adult ought to treat her friends' children. I try to answer this question by thinking of a range of cases in which I have strong beliefs about how one should behave, and then trying to come up with principles that would be consistent with these beliefs. I *inspect* each of these principles by considering whether it accommodates my beliefs about the cases I've already thought about, seeing how it applies to new cases, evaluating whether it can be held together with the other principles I've newly formed, and subjecting it to any other critique that seems relevant. I then modify each principle--or, I simply reject the inspected principle and try to formulate an entirely new one--and then I inspect the new modified principle in this same way. Eventually, I hope to come up with a set of principles that stands this inspection test.

The process might start as follows. I think that I should not tell five-year-old Timmy that Santa Claus doesn't exist if he asks me, because Timmy's parents have decided not to tell him yet, and I think that he doesn't need to know. However, I think that I should tell fifteen-year-old Mary the basic facts about birth control if she asks me, even though Mary's parents have decided not to tell her yet, because I think that Mary does urgently need this information. I might notice that I, a woman, feel I should be honest with Mary, a girl, but that I need not be honest with Timmy, a boy. I might consider the following principle: an adult *woman* should use her own judgement about what the *female* children of her friends are told; but she should honor her friends' decisions about what their *male* children are told.



I reject this principle for two reasons; each is sufficient. First, I see that this principle doesn't really accommodate my two beliefs. It gets the right answers about what I ought to do. But because the principle mentions nothing about whether the information is needed by the child, it fails to accommodate the explanatory aspects of my beliefs. Second, the principle finds a moral difference in a difference that appears morally irrelevant in this case. Whether a child is a boy or a girl does not strike me as itself morally significant; it's not the kind of fact that makes a moral difference, at least not without further information about how it makes that difference. This second reason could stand on its own against the principle, but I can also strengthen it by considering more cases. I realize that if fifteen-year-old Stephen asks me, I think I should tell him the facts about birth control even if his parents have decided not to tell him. So the principle yields unacceptable verdicts on new cases.

These reasons lead me to reject the principle, and they also point me towards a new principle: one should respect one's friends' decisions about what their children are told, unless the children need information. I then go on to inspect this principle. I examine whether need for information is enough, or whether only urgent need is enough, and if so, what constitutes urgent need.

The process of articulation and inspection of principles continues in this way. Of course, the example I've just given is silly, in that anyone with the two specific beliefs I described wouldn't be even initially tempted by the principle I articulated. But the type of inspection I described is not silly; it's a natural way to go about figuring out what specific ethical principles to believe.

It's a natural way; but is it a reasonable way? Someone might object that an inquiry like the one I've described is bound to get nowhere, that it's hopelessly misguided. They might argue that such an inquiry cannot start or proceed in this way, because it ignores crucial questions in two important ways. First, one can't begin to talk about what one is morally permitted or morally obligated to do until one knows the *content* of these claims. Are these assertions of objective fact? Are they expressions of attitudes? Are they claims about one's own personal morality, which is just one among many legitimate moralities? Without answers to these questions, the objector claims, the above examination has no content. Second, even putting the first worry aside, this is the wrong *way* to find answers to specific ethical questions. Specific ethical claims are true in virtue of the facts about what makes something a moral obligation. Until one knows which ethical theory is true, one cannot begin to answer these questions. Once one is committed to a particular version of consequentialism, Kantianism, virtue theory, contractualism, or etc., then one knows how to proceed in answering specific ethical questions, because one knows what questions to ask. The ethical theory tells one what kinds of factors are morally relevant and how they are morally relevant; so one knows how to find the ethical truth about particular situations. The objector maintains that without having first settled each of these two types of questions, a specific ethical inquiry is little more than stumbling around in the dark.

## 2. Aims of This Chapter

In this chapter, I want to defend a certain kind of moral reasoning. I call an argument which uses this reasoning a “specific ethical argument,” which I define as follows:

**Specific ethical argument: (Def)** An argument for a specific ethical conclusion, in which there is no commitment to any particular ethical theory nor any commitment to any particular meta-ethical view.

**Specific ethical reasoning: (Def)** The reasoning that goes on in specific ethical arguments.

**Ethical theory: (Def)** A claim that provides a general and systematic answer to the question “What is morally permissible?” and that does so by giving an explanatory account of what makes actions morally permissible.

**Meta-ethical view: (Def)** a claim that answers the questions “What is the content of moral claims?”, “Is there a single true morality”, etc.

Some examples will help to make these definitions clear. Specific ethical conclusions include claims about the ethics of abortion, about how adults should treat their friends' children, and about whether the doctrine of double effect is true. An ethical theory is some specific version of consequentialism, Kantianism,

virtue theory, contractualism, or etc.<sup>1</sup> A meta-ethical view is a view such as moral realism, moral skepticism, moral relativism, emotivism, or etc.

The reasoning I described in section 1 is one example of specific ethical reasoning. But specific ethical reasoning need not be driven by beliefs about particular types of cases, as that reasoning was. Rather, specific ethical reasoning could be driven by somewhat general ethical beliefs that are not as general as complete ethical theories. For example, one might begin an examination of the ethics of abortion by noting the following beliefs: anything with a right to life should not be killed; persons have a right to life; and fetuses are potential persons. One might then recognize that one important question to answer is whether having the potential to have a right to life is sufficient to already have a right to life. One might examine this question without discussing any particular cases at all, or only bringing cases in as a way of testing principles that are derived from other somewhat general beliefs.

I am concerned to defend specific ethical reasoning in the face of two objections (their names are abbreviations of “Ethical Theory Objection” and “Meta-ethical Objection”):

**Theory Objection:** Specific ethical reasoning is bad reasoning; it cannot provide justification for a specific ethical conclusion, because specific ethical conclusions can

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<sup>1</sup> Contractualism as formulated by Thomas Scanlon (*What We Owe To Each Other*) gives only a partial ethical theory, about how persons should treat one another. The view would have to be extended to provide a full ethical theory that also discusses how non-persons should be treated.

only be established after a particular ethical theory is first established.

**Meta Objection:** Specific ethical reasoning is bad reasoning; it cannot provide justification for a specific ethical conclusion, because specific ethical conclusions can only be established after a particular meta-ethical view is first established.

This paper proceeds by considering what I take to be the best arguments for these objections. I consider two arguments for the Meta Objection and four arguments for the Theory Objection. I argue that each of these arguments fails, and therefore the objections fail. Thus, two of my conclusions in this paper are:

**First Conclusion:** The Theory Objection to specific ethical reasoning is wrong.

**Second Conclusion:** The Meta Objection to specific ethical reasoning is wrong.

As I consider the arguments for the objections, I articulate a picture of how moral reasoning should be done. I argue for the following two further conclusions:

**Third Conclusion:** Not only is the Theory Objection wrong, so specific ethical reasoning *can* reasonably be done before a particular ethical theory is established, but specific ethical reasoning *must* be done before a particular ethical theory is established.

Fourth Conclusion: For most meta-ethical reasoning, it does not matter in what order one does meta-ethical reasoning and specific ethical reasoning.

The issues this paper addresses are about *moral epistemology*, but I address them primarily because I am concerned to make a point about *moral methodology*. I am concerned to defend a kind of paper, which I will call a “specific ethical paper,” in which a conclusion is argued for through specific ethical reasoning.<sup>2</sup> I am concerned to argue that:

Fifth Conclusion: The specific ethical paper is a good way of doing ethics; and it is a crucial part of ethical inquiry.

The Fifth Conclusion follows from the Third Conclusion; it will be denied by anyone who hold the Meta Objection or the Theory Objection. I suspect that the Fifth Conclusion is doubted by far too many people doing philosophy today. And I think that their doubt is due to commitment to one or both of the Theory and Meta Objections. So I think it is important to see why those objections fail, and why the Fifth Conclusion is correct.

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<sup>2</sup> Well-known example of good specific ethical papers are Judith Jarvis Thomson's "A Defense of Abortion" and "Killing, Letting Die, and The Trolley Problem", Peter Singer's "Famine, Affluence, and Morality", Philippa Foot's "The Problem of Abortion and the Doctrine of Double Effect", Michael Tooley's "Abortion and Infanticide", and David Velleman's "Well-being and Time". All of these papers argue for a specific ethical conclusion without assuming a particular ethical theory or meta-ethical view. Anyone who urges the Meta Objection or the Theory Objection is burdened with having to deny that these papers exhibit good reasoning.

### 3. Two Naive Arguments for the Objections

*First Argument for the Theory Objection:* “Claims in ethical theory justify and ground specific ethical claims, so we can only know specific ethical claims by deriving them from ethical theory claims that we know antecedently.”

This argument for the objection straightforwardly confuses what makes a claim true--what grounds it--with what could justify us in believing the claim. For example, the fact that Susie is a good student may be grounded in her excellent performance in class and the brilliance of her essays, but I may justifiably believe that fact because I heard her teacher say so. Similarly, the fact that I am morally obligated to give Jim five dollars after I promised to do so, may be grounded in the principle that one should treat others as ends in themselves; yet I may justifiably believe that fact because I know that otherwise I would feel guilty.<sup>3</sup>

*First Argument for the Meta Objection:* “A specific ethical inquiry cannot proceed unless one knows the content of the claims being explained and articulated. The meta-ethical questions have to be settled, otherwise one doesn't know what one is talking about, and useful exploration cannot occur.”

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<sup>3</sup> This confusion seems to occur in Jeff McMahon's "Moral Intuition" (in *The Blackwell Guide to Ethical Theory*). He is concerned to argue that a reasoning process deriving moral principles from beliefs about particular cases is compatible with a foundationalist story of justification according to which the moral principles justify our beliefs about the particular cases, and *not* vice versa. He says that such reasoning merely makes explicit our already implicit beliefs in the moral principles, suggesting that one cannot have a particular moral belief unless one already has a moral general moral belief. But this is an implausible characterization of what goes on when we reason from particular moral beliefs to more general principles. When we endorse a newly-articulated moral principle, our justification is that it accords with our particular beliefs.

This objection equivocates on the meaning of the phrase "knowing the content" of one's claims. One can know the content of a sentence in the sense that one can understand others when they use the sentence and one is competent to use the sentence oneself; and one can know the content of a sentence in the sense that one can give an adequate analysis of its content. If meta-ethical questions are left open, we do not know the content of our ethical claims in this second sense. But we need only know the content in the first sense to engage in useful exploration.

#### 4. The Importance of Specific Ethical Inquiry for Ethical Theory

In this section, I consider three more compelling arguments for the Theory Objection; in the process, I argue for Conclusion Three, that specific ethical reasoning is an important part of ethical reasoning, and that it is important to reasoning about which ethical theory is true.

*Second Argument for the Theory Objection:* "Specific ethical claims have implications for ethical theory claims, and vice versa, so specific ethical inquiry can't be done while ignoring ethical theory. Therefore, an ethical theory must be established before specific ethical inquiry is done."

It's absolutely true that many specific ethical claims are not independent of ethical theory claims. So it's true that specific ethical inquiry can't be done while *ignoring* ethical theory. But it doesn't follow that ethical theory questions should be settled *before* specific ethical questions are addressed. This argument has force only if we assume that there is no space between ignoring ethical theory, on the one hand, and awaiting the establishment of a particular ethical theory, on the



other. I will now argue that there is space between these two extremes; and that specific ethical reasoning inhabits this space.

At any point in time, whether it's the day one starts serious philosophical inquiry, or ten years later, one has a variety of ethical views: these include beliefs about specific ethical questions, beliefs about ethical theory questions, and beliefs about meta-ethical questions. This set of views inevitably has two features: it involves conflicts and it is incomplete. One's views involve both explicit conflict and implicit conflict, in which some of one's views commit one to (or make it reasonable to believe) a claim  $p$  while others of one's views commit one to not- $p$ . For example, one may believe that one should provide help to strangers in need when providing such help is not too arduous; but one may also believe that keeping a large portion of one's income for one's own use is morally acceptable.

One's views are incomplete in three important ways: there are interesting explanatory questions left unanswered, there are relevant implications unexplored, and there are important questions left unanswered. For example, one may have a set of beliefs about trolley problem cases but be unable to explain why those ethical facts hold; one may not have investigated the implications of one's belief that children should not have a sexual orientation forced upon them; and one may not have answered tough questions about how one ought to act in difficult situations that are likely to arise in one's professional life.

One may wish to improve one's ethical views by adopting a set of views that involve less conflict and that are less incomplete. I will make two important points about how it is reasonable to proceed. First, it is unreasonable to try to settle ethical theory questions while ignoring one's specific ethical beliefs. One's

revised view should come out of the whole of one's initial starting point, which includes one's specific ethical beliefs, which (as noted in the Third Argument for the Meta Objection) do have implications for ethical theory. This first point has an important consequence. Not only are the specific ethical beliefs with which one starts relevant to an ethical theory exploration; but the commitments that can or should come out of these specific ethical beliefs are also relevant. *So, specific ethical reasoning is important to explorations in ethical theory in that it places important defeasible constraints on the outcomes of those explorations.*

Second, it would be unreasonable to bring only specific ethical beliefs into specific ethical papers. As the objector states, specific ethical papers should not be written *ignoring* ethical theory questions; and as I describe them, they are not. Some beliefs in ethical theory, such as beliefs about what kinds of moral explanations can be given, do play an important role in a specific ethical argument. These ethical-theory-level beliefs can play a role in the argument though no complete ethical theory is assumed. For example, an argument about the moral status of fetuses might note that it would be unreasonable to say that fetuses in North Carolina have moral status while fetuses in South Carolina lack moral status. The belief that this is the wrong sort of difference to make a moral difference, is a belief about what kind of moral explanations can be given; it's an ethical-theory-level belief. Similarly, the deliberations described in Part One involved the recognition that the difference between boys and girls cannot be morally explanatory without careful elaboration of how that difference makes a moral difference.

*Third Argument for the Theory Objection:* “One is unlikely to get very far through specific ethical reasoning. A more reliable method of reaching specific ethical truths is to first settle on an ethical theory, using one's initial beliefs including one's specific ethical beliefs, and *then* use that ethical theory to try to figure out the hard, previously unanswered specific ethical questions. So, for example, one's initial specific ethical beliefs can go into the process of deliberation in which one endorses an ethical theory. But once that ethical theory is endorsed, it alone should be used to determine i.e. when it is permissible to lie, what one owes to one's friends that one doesn't owe to others, and etc.”

First, this version of the objection fails because of the first point that came out of the picture of belief revision I just described. If one takes seriously that one's initial specific ethical beliefs constrain one's revised ethical theory beliefs, then one must take seriously not only the initial specific ethical beliefs themselves, but also the claims to which those beliefs *commit* one. So the method of reasoning described by the objector may take the initial specific ethical beliefs inadequately into account, by looking at them in themselves but not examining what beliefs they suggest and imply.

The second problem with this objection is that whenever one looks at a new specific ethical question, even if one didn't realize one had beliefs about the relevant cases, one often finds that one does; either these beliefs were previously held, or they are newly formed. These ethical beliefs ought to go into the process of reasoning to an answer to the specific ethical question.

There is a type of ethics paper, call it an ethical-theory-driven paper (and the reasoning it employs, ethical-theory-driven reasoning), which might seem to

use the method described by the objector. Such a paper tries to answer a specific ethical question by assuming a particular ethical theory and then arguing for an answer to a specific ethical question from within the ethical theory. Some such papers are very successful, so they might seem to vindicate the objector. But they do not, because they don't actually use the methodology the objector describes. Such papers do not ignore particular beliefs about cases. Rather, such papers are successful precisely because they succeed in telling a story wholly within their ethical theory that nevertheless accords well with independently-held specific ethical beliefs. Furthermore, such papers reach conclusions that are clearly very different from those they might have reached had they ignored the specific ethical beliefs. Their success is due to their ingenuity in getting their ethical theory to yield certain results.

As an example, consider Christine Korsgaard's paper "The Right to Lie: Kant on Dealing with Evil". Korsgaard argues that a Kantian ethical theory *can* yield the result that it is permissible to lie to a murderer at the door, who asks where one's father is in order to kill him. It seems that the arguments in this paper must have been written to accommodate the common belief that it is permissible to lie to the murderer at the door. A straightforward application of a Kantian view to this case, ignoring our particular beliefs, would conclude that such a lie is impermissible. Furthermore, the value of this paper is not that it tells those already committed to a particular version of Kantian ethical theory what to say about lying to the murderer at the door. Rather, it is part of a defense of Kantian ethical theory itself; it shows that this ethical theory can accommodate a common specific ethical belief, and thus makes the ethical theory to that extent plausible.

The two different elements of the methodology of the ethical-theory-driven paper could be separated into two steps: a first step in which the specific ethical beliefs are considered to yield a tentative conclusion; and a second step in which that general conclusion is revised to something that can come out of the assumed ethical theory. This means that we can endorse the methodology of the ethical-theory-driven paper without impugning the type of specific ethical reasoning I'm concerned to defend. A specific ethical argument does the job of the first step in an ethical-theory-driven paper. So the results of a specific ethical inquiry could be combined with any particular ethical theory in a further second step, to yield a result as in an ethical-theory-driven paper. Specific ethical reasoning isn't in tension with ethical-theory-driven reasoning; the former is one part of the latter.

So, for example, suppose a specific ethical argument concludes that in certain types of cases, the difference between whether a lie is permissible or impermissible can be traced to whether the person to whom one lies has immoral intentions. This argument could be seen to do the first half of the work of Korsgaard's paper on lying to the murderer at the door, which relies on an argument that different moral standards apply in the presence of evil.

This discussion of the Third and Fourth Argument for the Theory Objection show that the Third Conclusion is true:

Third Conclusion: Not only is the Theory Objection wrong, so specific ethical reasoning *can* reasonably be done before a particular ethical theory is established, but specific

ethical reasoning *must* be done before a particular ethical theory is established.

Specific ethical reasoning must be done before an ethical theory is established, because it places important defeasible constraints on that ethical theory.

*Fourth Argument for the Theory Objection:* “If one examines the question “What is the true ethical theory?” on its own, ignoring specific ethical beliefs, one discovers that only a single answer is possible. Thus the best way to answer specific ethical questions is to proceed from the true ethical theory.”

This version of the objection fails because of the strength of our specific ethical beliefs. There are arguments that purport to show that a particular ethical theory is correct, without reference to specific ethical beliefs.<sup>4</sup> Suppose these arguments appear somewhat compelling. Nevertheless, an ethical theory derived in this way is bound to conflict with a lot of specific ethical beliefs, because it is derived without taking them into account. Someone might reasonably have a much firmer commitment to her specific ethical beliefs than to the argument in question. This puts such a person in a dilemma. She has a choice between rejecting her specific ethical beliefs or accepting that there is a puzzle as to how the argument fails. It is reasonable to choose to take the argument as presenting a puzzle, not as providing sufficient reason to reject one's specific ethical beliefs.

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<sup>4</sup> In *The Limits of Morality*, Shelly Kagan argues that utilitarianism is the only acceptable ethical theory. He says that we can and must reach this conclusion without taking any specific ethical views into account. Kantian theorists also believe an argument can be given for Kantian ethics, that is independent of specific ethical beliefs.

In fact, a person could reasonably hold on to a set of specific ethical beliefs even if they conflict with every presently articulated ethical theory, and even if there is good reason for her to think that no articulable ethical theory could be consistent with these specific ethical beliefs. Such a person may believe that there is a correct ethical theory that is articulable. Thus, she may be stuck with conflicting beliefs: on the one hand, she believes her set of specific ethical beliefs and that this set conflicts with any articulable ethical theory; on the other hand, she believes that there is an articulable ethical theory. In this position, it may be most reasonable for her to keep all of these beliefs as they are, awaiting a novel solution that might lead to a more coherent picture. She is in a situation like that of today's physicists, who endorse the conflicting theories of general relativity and quantum theory, and await a resolution. Of course we hope that our deliberations won't leave us in such a situation, but we shouldn't *assume* that they won't. To take the existence of a plausible argument for an ethical theory as sufficient reason to end specific ethical inquiry, is to assume we cannot end up in this situation.

##### 5. The Independence of Ethics and Meta-ethics

In this section, I consider a second, more compelling argument for the Meta Objection. I then argue for Conclusion Four, that by and large, specific ethical inquiry and meta-ethical inquiry can go on in any order.

*Second Argument for the Meta Objection:* "Specific ethical inquiry cannot go on without assuming a particular meta-ethical view. Indeed, moral beliefs carry meta-ethical commitments with them, so every specific ethical argument

takes place within an assumption of a particular meta-ethical view. For example, people sometimes say ‘Doing that would be wrong; it just would be wrong, it doesn’t matter how anyone feels about it,’ explicitly disavowing emotivism; or people sometimes say ‘That would be wrong; but that’s just my opinion,’ explicitly avowing some form of relativism. Even when a meta-ethical view is not explicitly avowed, it is part of an ethical belief whether the claim of permissibility or impermissibility is an objective or relative truth, and whether it is a recognition of fact or merely an attitude.”<sup>5</sup>

Two things should be said in response to this objector. First, it’s not at all clear that someone who says “that’s just my opinion” after making an ethical claim is endorsing moral relativism. Indeed, I might say, if we are discussing whether Sarah or Carolina is taller, but neither is present, “Sarah is taller; but that’s just my opinion” in order to indicate that I do have a belief on the matter, but I do not expect others in the conversation to take me as the authority. Second, and more importantly, even if people sometimes do express substantive meta-ethical commitments during discussion of specific ethical questions, that does not undermine the possibility of the kind of specific ethical inquiry I described, in which there is no commitment to a particular meta-ethical view. I have already noted that most people, at any point in time, have meta-ethical beliefs along with ethical-theory-level beliefs and specific ethical beliefs. That the meta-ethical beliefs may get expressed along with the specific ethical beliefs does not demonstrate that the meta-ethical beliefs are *part of* the specific ethical beliefs.

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<sup>5</sup> I thank Robin Jeshion for articulating a version of this objection to me.



What is crucial is that a person's specific ethical beliefs and her meta-ethical beliefs are *separable*: any person's meta-ethical view might be revised without her specific ethical beliefs changing at all; and vice versa. This shows that the meta-ethical beliefs are not part of the specific ethical beliefs; and that specific ethical inquiry can go on without commitment to a particular meta-ethical view.

This brings me to a general point. As I understand them, meta-ethical views divide into two categories. I will call them the revisionary views and the non-revisionary views:

Revisionary meta-ethical views: moral nihilism, moral skepticism

Non-revisionary meta-ethical views: moral absolutism, moral relativism,  
moral subjectivism, emotivism

(I am not sure that these lists are exhaustive, but in what follows I will speak as though they are.) The revisionary views are revisionary in that most people have a lot of ethical beliefs and take themselves to have much ethical knowledge: moral nihilism says all these beliefs are false; moral skepticism says none of these beliefs constitute knowledge, and no beliefs could. The non-revisionary views are not revisionary for the following reason:

The Compatibility Claim: The non-revisionary meta-ethical views are compatible with most ordinary ethical beliefs, with the possibility of moral knowledge, with the utility and value of moral arguments for conclusions, and with the coherence of moral dispute and discussion.

From the Compatibility Claim, it follows, in particular, that the non-revisionary meta-ethical views are compatible with the value and coherence of the specific ethical reasoning I have described and am defending.

The Compatibility Claim has been disputed. For example, it has been argued that moral subjectivism, moral relativism, and emotivism cannot account for the coherence of moral dispute and disagreement; and that emotivism cannot account for the utility and value of moral arguments for conclusions. I think that these concerns have been adequately laid to rest elsewhere. I take it that there is now no *simple, obviously correct* argument that moral subjectivism, moral relativism, or emotivism cannot make sense of the coherence and value of specific ethical reasoning. While some do continue to maintain that this compatibility fails for one of these meta-ethical positions, that dispute is at this stage one on which reasonable and well-informed people may disagree. Thus, someone who engages in specific ethical reasoning is free to remain neutral among the non-revisionary meta-ethical views.

On the other hand, someone who engages in specific ethical inquiry cannot remain neutral regarding the revisionary meta-ethical views. By engaging in such inquiry, and endorsing that engagement, she is committing herself both to the claim that moral nihilism is false and to the claim that we are in a position to know something about morality, contra moral skepticism. This person need not *establish* the falsity of moral nihilism and moral skepticism before proceeding with her inquiry; that is, she need not refute every argument for either view. We have no such strong epistemic burdens, to refute all arguments that purport to show our investigations to be misguided, before we begin. Rather, she is

committed to the denial of moral nihilism and moral skepticism. When she is confronted with an argument for one of these views, she ought to try to see what is wrong with it. But she might reasonably be unable to see its flaw immediately while still engaging in specific ethical reasoning; she might treat it as a puzzle to be solved, for the reasons I discussed in response to the Fourth Argument for the Theory Objection.

Let me turn now, briefly, to the question of whether it matters in what order one examines specific ethical questions and meta-ethical questions. I want to distinguish three meta-ethical questions:

- A. Is either of the revisionary meta-ethical views correct?
- B. How do arguments for the revisionary meta-ethical views fail?
- C. Which of the non-revisionary views is correct?

Question A is not independent of specific ethical beliefs. If any of those beliefs are correct, and constitute knowledge, then the revisionary meta-ethical views are wrong. Thus, anyone who endorses a revisionary meta-ethical view threatens a great deal of her specific ethical beliefs; such a view should not be adopted without a full appreciation of its implications, which may well require some specific ethical inquiry. Arguments for moral nihilism or moral skepticism should not proceed while ignoring specific ethical beliefs.

Questions B and C may be investigated by anyone who answers “no” to Question A. Questions B and C can be explored independently of specific ethical reasoning. I think that investigation of questions B and C takes up the bulk of fruitful and reasonable meta-ethical reasoning, and it is these investigations that I mean by “most meta-ethical reasoning” in the Fourth Conclusion:

**Fourth Conclusion:** For most meta-ethical reasoning, it does not matter in what order one does meta-ethical reasoning and specific ethical reasoning.

## 6. A Related Objection

There is an objection to specific ethical reasoning that is also commonly believed, distinct from the worries raised in the Theory and Meta Objections. I will discuss it briefly:

*Conflicting Beliefs Objection:* "Specific ethical papers cannot establish any conclusion because they rely on specific ethical beliefs on which there is wide disagreement."<sup>6</sup>

This objection fails because no paper needs to "establish a conclusion" in this sense: no paper needs to offer an argument for a conclusion that would be acceptable to everyone. Rather, papers argue for conclusions from starting places.<sup>7</sup> Any philosophical inquiry has to start somewhere. The starting place is bound to be controversial--especially in ethics. But the inquiry is still worthwhile, to everyone: to those who share the starting place, because the paper argues that they should change their beliefs in certain ways; and to those who don't share the

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<sup>6</sup> For example, Jeff McMahan says it would be a problem if there were such conflict (which he doesn't think there is): "if a case fails to elicit the same intuitive response from most readers, it provides no basis for moral argument" (107, "Moral Intuition" in *The Blackwell Guide to Ethical Theory*, ed. Hugh LaFollette).

<sup>7</sup> I say they argue from "starting places" rather than "premises" because the argument may take the form: if we start believing a, b, and c, it's best to adopt d and give up c, because the set a, b, and d is the best revision from that starting place.

starting place, because it says something about the position of some of their opponents, which may make this position more or less attractive.

## 7. Conclusion

I have argued that there is nothing wrong with trying to answer a specific ethical question by making arguments that do not assume a particular ethical theory or a particular meta-ethical view. In the course of this discussion, I have described a picture of ethical reasoning according to which specific ethical reasoning is not only reasonable but *necessary*. It gives us valuable answers about what we are committed to, and thus it constrains, though only defeasibly, what ethical theory conclusions we should reach.

To the extent that the questions are independent, it does not matter what is done first. Thus, most meta-ethical questions can be answered independently of specific ethical questions; and vice versa. But to the extent that they are not independent, it matters greatly that the questions be pursued simultaneously. Thus, ethical theory and specific ethical investigations should be done at once, neither waiting for the completion of the other project, and each taking the other investigations seriously.

## 8. Coda: Ethics Versus Other Philosophical Fields

It might seem that very little that I have said depend on any special features of *ethical claims* that distinguish them from other kinds of claims. It might be asked, therefore, how far my conclusions can be generalized. Other fields of inquiry also have first-order claims that can be distinguished from second-order claims, and less

general claims that can be distinguished from more general claims. Questions about whether particular scenarios are possible can be distinguished from general questions about possibility. Questions about whether a particular person knows or is justified in believing certain propositions can be distinguished from questions about the analysis and nature of knowledge and justification.

I would maintain that for these fields as well, to the extent that questions about one type of claim are independent of questions about other types of claims, it does not matter in what order the types of claims are investigated; but to the extent that the types of claims are not independent, it does matter that an individual's investigations about one type of claim take beliefs about the other type of claim into account. The generalization of my arguments in this paper also implies the following:

- Someone who has been presented with an argument for skepticism about knowledge of the external world, who finds the argument compelling and cannot see a flaw in it, may reasonably see the argument as presenting a puzzle to be solved, and may reasonably continue to hold her beliefs about the external world, to reason on the basis of them, and to form new such beliefs.

However, there are two important differences between ethics as a philosophical discipline and other areas such as epistemology and investigations of possibility. Philosophers in other areas are often only concerned with questions at the highest level of generality, and with second-order questions. The epistemologist does not investigate which claims we actually know about the external world; that is for the scientist. The theorist about possibility does not

investigate, for example, which informative identities are true, and thus which purported possibilities are not possibilities; that is for the scientist or the ordinary person. It is not part of the philosophical pursuit in these areas to investigate many first-order questions that non-philosophers may be interested in investigating. And a converse claim is true: non-philosophers are often uninterested in, and/or lack explicit beliefs about, many of the issues that concern philosophers in these areas.

By contrast, ethical philosophy is concerned with specific ethical questions as well as general ethical questions and meta-ethical questions. And non-philosophers commonly do have beliefs about each type of question. I think these differences may lead to a naive mistake about what makes for good ethical philosophy. Because good non-ethical philosophy involves grappling with claims of highest generality and with second-order claims, it may appear that the ethical philosopher who focusses on specific ethical questions is shirking some philosophical duty. But once we see that ethics is simply different from other areas in that philosophers address first-order questions more centrally in ethics, we need not be led into this naive mistake.

## 9. Further Questions

More than any other chapter in this dissertation, this one raises many questions that I have not addressed, and is most properly seen as a small beginning to what could be a very big project. This is partly due to the nature of my task: I want to show that all the most promising arguments against specific ethical reasoning fail, but there will inevitably be arguments I've failed to discuss that others see as more

promising than the ones I do discuss. In particular, many people do find specific ethical reasoning suspect, and I have found that many people who have heard or read this chapter have a pet theory about what "the central objection" or "the best objection" or "what's really bothering everyone" is. For one example, an ethicist claimed that it's obvious that specific ethical reasoning is fine as an ordinary person's reasoning, but that philosophy should be subject to stricter epistemological standards--so, I'm wrong to think that specific ethical reasoning and specific ethical papers stand and fall together. An epistemologist thought that idea was absurd--that could not possibly be what's really bothering everyone. I want to straightforwardly concede that I have not addressed every complaint that people have about specific ethical reasoning and specific ethical papers, but I have addressed some complaints that are taken far too seriously, and I think I have shown them to be unsuccessful as criticisms.

To continue this project, I would address other objections to specific ethical reasoning. I would also examine whether the literature on reflective equilibrium can throw light on my question, because the methodology I defend may be properly seen as fitting within the reflective equilibrium methodology.