

## Persons, communities, and the species problem

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**Abstract.** Attempts to secure higher moral status for most or all human beings than most or all nonhuman animals have been vulnerable to charges of overinclusion, of using criteria of questionable moral relevance, and of compromising the impartiality of moral status. Arguments defending or criticizing the relevance of species membership are common in the literature on cognitive disability, animals and moral status. In this paper, I propose an account of moral status allowing for variations based on community-membership. The account vindicates (A) that most human beings, including infants and cognitively disabled humans, have full or higher moral status regardless of their actual capacities, but it denies (B) that most nonhuman animals with cognitive capacities comparable to those of infants and cognitively disabled humans do not have full or higher moral status. I criticize two recent accounts of moral status and personhood (Jaworska and Tannenbaum 2014; Kagan 2016) that have attempted to combine A and B while avoiding speciesism. Instead, I articulate a notion of *person-communities*, and argue that community-membership can constitute a set of morally relevant grounds for elevated moral status while satisfying two fundamental desiderata of theories of moral status: *Moral Relevance* and *Supervenience*. However, I argue against one common presupposition about moral status: *Intrinsicalism*.

### Introduction

A theory of moral status must track morally relevant (descriptive) features. Call this theoretical desideratum *Moral Relevance*. The internal relation between moral status and properties generates problems if beings apparently similar in some narrow respects nevertheless appear to have a different status, for instance because they belong to different species. One can suitably define what counts as a morally relevant feature and then point to relevant differences between beings that appear otherwise similar. On all plausible accounts of moral status, some *individual characteristics* are candidate grounds of moral status: e.g., cognitive, emotional, or social abilities. On the other hand, it is easy to elicit judgments that, even when they appear similar in one respect (say, intelligence), animals of different species or categories have different kinds or degrees of moral status—notably, humans compared to

other animals. Call this a *group-based status difference*.

According to one account of the grounds of moral status, animals (human or nonhuman) can be similar with respect to their abilities yet differ with respect to the *relations* they bear to other individuals. This is one example of group-based status-conferring characteristics. By the same token, similarity with respect to relations can explain why beings dissimilar with respect to their abilities can have the same moral status. This account is compatible with individual characteristics also counting toward moral status, as well as with a second theoretical desideratum, *Supervenience*: i.e. that there cannot be a difference in (supervening) moral status without a difference in (base) status-conferring properties. For the latter can be relational, descriptive and still morally relevant. Another type of account based on cross-group differences is that beings similar with respect to their *actual* abilities may differ with respect to their *past*, *potential* or *counterfactual* abilities—i.e., respectively, the abilities they once had (cases of coma, dementia or non-congenital disability), can and normally will have ('normal' fetuses, infants and young children) or could have had (some cases of cognitive disability). Such arguments are common in the literature on cognitive disability and moral status. They have been criticized for arbitrary line-drawing between humans and other species, given the variability and overlap of psychological characteristics within and across species. Moral individualism, or its core thesis that I will call *Intrinsicism*,<sup>1</sup> states that only the intrinsic properties of individuals can be status-conferring.

*Intrinsicism* is a possible specification of the combination of *Supervenience* and *Moral Relevance*: that is,

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<sup>1</sup> A clarification is in order. The claim that moral status depends or supervenes on intrinsic properties admits of several interpretations. Narrowly construed, 'intrinsic' means either *nonrelational* features, in which case person-rearing relationships and modality cannot be grounds of moral status, or *extrinsic* features, in which they may, if we interpret them as intrinsic relations. Broadly construed, 'intrinsic' rather means something like 'features of an object independently of the relations in which it stands to other things.' Jaworska and Tannenbaum agree that moral status should depend on capacities that are an individual's own features, even if the possession of such capacities depends on relational facts (see their reasonableness and feasibility conditions below). As they emphasize, there is no principled reason to favor the narrow reading over the broad reading. See discussion at the blog PEA Soup (2014): <https://peasoup.typepad.com/peasoup/2014/02/margaret-olivia-little-and-jake-earl-does-a-human-baby-have-more-moral-status-than-a-cat-if-they-have-similar-occure.html>. As I argue here, there is no principled reason to favor *Intrinsicism* over alternative accounts of moral status, as long as they satisfy *Moral Relevance* and *Supervenience*.

no difference in moral status without a corresponding difference in intrinsic properties.

My goal in this paper is to explain how a community-based theory of moral status can account for personhood (or something close<sup>2</sup>) for all humans without excluding other animals. (The theory presupposes that *basic* moral status depends on some necessary and sufficient individual property like sentience, independently of species membership and relationships.) It aims to satisfy *Moral Relevance* and *Supervience* but denies *Intrinsicalism*. While the theory echoes a number of options in the current space of moral theory, my ambition is *meta-theoretical*: to vindicate the possibility of an unduly dismissed type of ground of moral status (and variations thereof). In section 1, I briefly introduce the challenge of providing a coherent theory of moral status inclusive of most human beings but exclusive of most nonhuman animals. In sections 2 and 3, I discuss the limits of recent attempts to meet the challenge by Agnieszka Jaworska and Julie Tannenbaum and Shelly Kagan. In section 4, I examine the possible

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<sup>2</sup> I will not place too much stock in the notion of personhood proper, except to capture a distinct type of moral status. Personhood is classically understood in a Lockean sense. According to Locke, a person is “a thinking intelligent Being, that has reason and reflection, and can consider it self as itself, the same thinking thing in different times and places” (Locke 1689, 2.27.9). In a nutshell, Lockean persons can think reflectively of themselves as persisting over time. In addition, “person” is a “Forensick Term appropriating Actions and their Merit; and so belongs only to intelligent Agents capable of a Law, and Happiness and Misery.” (2.27.26) In other words, persons can be held accountable for their actions, because, as self-reflective creatures, they can make informed decisions about their own future behavior.

David DeGrazia considers personhood a “cluster concept” of various features:

autonomy, rationality, self-awareness, linguistic competence, sociability, moral agency, and the capacity for intentional action. Not all of these properties are strictly necessary for being a person, as suggested by the personhood of normal three-year-old children lacking in autonomy. Nor is it sufficient to have just one of these properties; many animals are capable of performing intentional actions yet fall far short of personhood. A person is someone who has enough of these properties ... a being with the capacity for sufficiently complex forms of consciousness (DeGrazia 2007, 320).

DeGrazia considers that persons have (somewhat though not radically) higher moral status than nonpersons, although he also stresses that the relevant properties come in degrees, need not hang together, and the concept itself is vague in its application (2007, 320). He also worries that the concept might be descriptively redundant. Although personhood might add “moral content,” he argues that it is largely unhelpful to guide decisions except when the question of personhood is already settled. It is, in particular, unhelpful in “confronting moral issues regarding borderline persons—such as apes, dolphins, and certain humans” rather than appealing to “specific personhood-relevant properties.” (316) (DeGrazia 2007 appears less skeptical). I will assume that metaphysical persons have two main features: they have a relatively unified mental life and are the locus of practical concerns, although not necessarily attributions of moral responsibility. There is obviously much debate about the contours of metaphysical, moral, and legal personhood, which I bracket for reasons mentioned above. As I argue anyway, personhood should not be understood strictly in terms of capacities, and there are many types and degrees of moral status that personhood doesn’t adequately capture.

connections between individuals, species, and community, and how they bear on flourishing. In section 5, I examine Marya Schechtman’s account of personhood as a candidate community-based account. Schechtman’s account does exclude most nonhuman animals, but, in section 6, I articulate the idea of *person-communities*, as critical to flourishing and therefore to moral status (and draw from her idea of “person life”). Section 7 considers an objection to the connections established in Section 4.

## 1. The Challenge

Theories of moral status face the challenge of affirming the conjunction of: (A) *most human beings, including infants and cognitively disabled humans, have full moral status (FMS) or higher moral status (HMS) (i.e. they have at least most of the rights of persons) regardless of their actual capacities (i.e. whether or not they actually possess autonomy, rationality, self-consciousness, and so on); (B) most nonhuman animals with cognitive capacities comparable to those of infants and cognitively disabled humans have at most basic moral status (BMS)*. The challenge is to account for both claims while not relying on morally arbitrary factors such as bare group membership. The question matters if we believe that persons or beings with higher moral status can be harmed and wronged in more ways than others—e.g., have stronger claims to liberty, life, socialization, political participation, etc. Typically, too, persons are considered *moral equals*, as is implicit in (A). If so, then arguing that all humans are persons is arguing for basic human equality (see e.g. Waldron 2017). On Waldron’s account, for instance, *basic human equality* is the idea that there are no morally significant fundamental divisions among humans. This could be true even if they differed in many empirical respects (for instance, if the relevant descriptive property is what Rawls (1971) called a “range property” that applies equally to all human beings). All that said, the precise rights, protections or side-constraints do not matter for now, as long as we recognize that bearers of such status should be treated differently than those who do not possess the relevant status-conferring features, and typically, that all they should be treated as equals.

On some views, the challenge is to ground higher or full moral status for (almost) all and (almost) only humans on intrinsic features. Two recent attempts to answer the challenge include Jaworska and Tannenbaum’s (2014) *person-rearing relationships* approach and Kagan’s (2016) *modal personism*. Both theories seek to combine greater moral status for most (if not all) humans with lesser moral status for most (if not all) nonhumans, based on some relevant aspect of species membership. At the same time, this relevant aspect is expressed through an intrinsic property—a more or less uniquely human capacity on the one hand, a metaphysical property that happens to roughly coincide with species on the other. According to Jaworska and Tannenbaum, nearly no nonhuman can meaningfully participate in person-rearing relationships, while most humans can; according to Kagan, in nearby possible worlds, nearly no nonhuman could have been a person while most humans could. These two views avoid problematic appeals to potentiality as a ground for moral status (see Jaworska and Tannenbaum 2018 for a review of the objections). Both views also rely on intrinsic properties as the basis of moral status. I will argue later that their commitment to *Intrinsicism* is what undercuts their failure to meet the challenge. I will introduce each account, and their limitations, in turn.

## 2. Person-rearing relationships

Jaworska and Tannenbaum’s (2018) *SEP* entry on “The grounds of moral status” notes that attempts to secure the justification for the commonsense view that even those lacking cognitively sophisticated capacities have FMS have faced “considerable difficulties”: overinclusion, appeal to criteria of questionable moral relevance, and loss of the impartiality of FMS. In “Person-rearing relationships as a key to higher moral status” (2014), they seek to account for a set of widely shared assumptions about moral status:

- (1) Cognitively paradigmatic adults (“self-standing persons, or SSPs”) have higher moral status than dogs and most other animals.<sup>3</sup>
- (2) Dogs and many other animals have some moral status.
- (3) The ground of SSPs’ higher moral status is one or more sophisticated cognitive capacities.
- (4) Human infants and severely cognitively disabled humans have higher moral status than dogs and most other animals.

None of these four assumptions, they acknowledge, goes uncontested, but they are fairly widespread. The challenge is to develop an account that vindicates (4) in combination with (1)-(3).

The key step in Jaworska and Tannenbaum’s argument is to show that (3) does not rule out non-SSP humans. It does not, they argue, because what makes such capacities grounds for HMS is not the *actual realization* of SSP activities but the *capacity* to participate in them. Most humans who are not SSP are capable of “incomplete realizations” of SSP activities, and that is sufficient to elevate moral status because it inherits the value of the capacities in virtue of which we are SSPs (2014, 257). The capacities of non-SSP humans are like extensions of the capacities that a wide range of views consider relevant to moral status.

One example of an incompletely realized activity is learning a skill (e.g. the piano) by doing (e.g. starting with basic exercises), while being guided by the end of mastering the activity. A piano learner, against the right background conditions, is not playing the piano badly but rather engaging in incomplete realizations of playing the piano. Jaworska and Tannenbaum take certain activities of cognitively unsophisticated humans to be analogous. Children and cognitively disabled adults can “model” cognitively sophisticated activities “guided by a mentor’s (parent’s, caretaker’s) end of the mentee

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<sup>3</sup> Higher moral status here does not mean the full array (and strength) of protections and entitlements associated with FMS. (Jaworska and Tannenbaum 2018)

acquiring cognitive sophistication”: for instance, “playing a simple game like “I-smile-then-you-smile” becomes rule following as an incomplete realization of practical reasoning.” (2018; see 2014, 253-254)

The background conditions are essential to Jaworska and Tannenbaum’s attempt to meet the above challenge. They guarantee an adequate connection between the activities (learning) and the end (mastering). (As I explain in subsection b, they cannot so easily secure the exclusion of nonhumans from SSPs.) The conditions are:

(5) It must be minimally *reasonable* for the mentor to adopt this end;

(6) The mentee’s activities must be *feasible* means of achieving the mentor’s aim (2014, 246).

Jaworska and Tannenbaum remain neutral about exactly what activities are characteristic of SSPs, but they find the view that *caring* is a characteristic SSP activity very plausible—and a sufficient, though perhaps not necessary, ground of FMS. According to Jaworska (2007), caring is a complex of rationally interconnected emotional dispositions tracking the fortunes of its object and where the subject perceives the object as important, subsequently forming stable intentions, plans, and policies concerning the object. Whether caring involves self-reflection and/or conceptualization of the object of care as important and/or perceiving reasons to act and feel for the sake of the object, the capacity is cognitively sophisticated and rules out many if not most nonhuman animals, but also young human infants.<sup>4</sup>

According to Jaworska and Tannenbaum, capacities, not activities, ground moral status.<sup>5</sup> Having the capacity to incompletely realize cognitively sophisticated activities, when a caretaker takes a reegee’s

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<sup>4</sup> Importantly, “while the reegee’s special moral status can be traced to the context of a caring relationship, it is not being cared about that grounds this status but rather being able to engage in activities transformed by the context of a caring (person-rearing) relationship.” (Jaworska and Tannenbaum 2014, 257)

<sup>5</sup> Jaworska and Tannenbaum deny that potentiality is sufficient, and so early fetuses do not have the moral status that the potential for cognitive sophistication would secure on other views. They also deny that their view bases moral status on relationships. They endorse the standard view according to which every moral agent has the same reasons to act or refrain

flourishing as an end, is sufficient. Flourishing is key to establishing (4) because the flourishing of most human beings involves (seeking to) develop sophisticated cognitive capacities whereas the flourishing of most other animals does not. This is what determines the content of (5) and (6). When the caretaker cannot reasonably take the end of developing sophisticated cognitive capacities as an *aim* to be realized, they can still reasonably take it as a *standard*, i.e. a guide as to the next best aim. Since the activities of many cognitively disabled humans are also feasible means to this next best aim, they meet conditions (5) and (6) for the capacity to incompletely realize SSP activities. So, for example, to incompletely realize caring, the modeling of the activity must be guided by a rearer's end of turning the incompletely caring being into a full-fledged carer. Thus, many human infants and cognitively disabled individuals satisfy a version of (3).<sup>6</sup> Since most animals do not, (4) is also true on the account. For, even though dogs can model caring through attachment, they cannot meet (5) and (6). It would not be reasonable for a dog's caretaker to hold the end of developing the dog's cognitive sophistication, since this is not necessary for the dog's flourishing, and, even if it were somehow reasonable, the activities of the dog would not be a feasible means of achieving the end. Dogs and most other animals are thus incapable of incomplete realizations of the right sort of activities (e.g. caring). And Jaworska and Tannenbaum take the latter result to be a virtue of their account, avoiding both under- and overinclusion charges (thus establishing (4)).

Jaworska and Tannenbaum (2015) (in response to DeGrazia 2014) further explain why mammals like dogs cannot participate in person-rearing relationships, but they are open to the possibility that, provided (5) and (6), cognitive enhancements could turn non-SSP into SSPs. So, on the one hand:

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from acting in the ways that the moral status requires (also see McMahan 2005). Person-rearing relationships set the conditions for SSPs, but they are not themselves grounds of moral status.

<sup>6</sup> They suggest that some modeling of caring might be possible even some time before birth (the late fetus can recognize its mother's voice, respond, and attend to it). (Jaworska and Tannenbaum 2015, 1101)

Mammals such as dogs can model caring, in their attachment to their mothers, their young, and so on ... but they cannot meet the further conditions. Their stumbling block with respect to end-aim is feasibility ... and with respect to end-standard, reasonability... (1100)

On the other hand, suppose there were an identity-preserving enhancement technique such that, combined with appropriate training (e.g. interactive games), we could (reasonably seek to) turn a dog into an SSP (dog\*) (Jaworska and Tannenbaum 2015, 1109). In training, a dog\* could model SSP activities and the trainer's ends could reasonably and feasibly guide the activity with the end of turning the dog\* into an SSP. She would incompletely realize SSP activities, have the corresponding capacity, and so have higher moral status than ordinary dogs.

Fair enough. However, the problem with this capacity-based route to elevated status is that participation in human communities and some SSP activities can be a precondition for the development and/or discovery of sophisticated capacities. Because there is still so much empirical uncertainty regarding animals' capacities, predetermining reasonableness and feasibility as tickets to inclusion may have the self-fulfilling effect of barring animals from ever incompletely realizing SSP activities. Jaworska and Tannenbaum's admission of hypothetical animals as SSPs thus raises a dilemma. On the one hand, if even intensive training could constitute enhancement to "turn a puppy\* into an SSP" (2015, 1109 fn41), then the difference between dogs and dogs\* might be one of degree rather than kind, and the fact that dogs typically fail conditions (5) and (6) the effect of our *presumption* that they cannot. If so, then Jaworska and Tannenbaum ultimately fail to uphold the conjunction of (A) and (B) on the basis of a significant (*non-ad hoc*) demarcation. On the other hand, their account could only admit of remotely hypothetical dogs\* (very much unlike dogs), but their concession to DeGrazia appears more liberal than that. Furthermore, because on their view moral status does not depend "on any actual rearer's reasonable intentions but on a capacity to enter a person-rearing

relationship” (2015, 1111), they still need an independent account of the scope of possibilities for developing such capacities. But there doesn’t seem to be a principled distinction between enhancements that are currently or could likely or remotely possibly be available. Finally, because the very development of these capacities seems to turn, if not on actual intentions, at least on persons choosing which animals to enhance, dogs\*’ elevated moral status ultimately depends on morally arbitrary factors. There has to be a less *ad hoc* way.

This limitation of Jaworska and Tannenbaum’s account is in fact common to a wide range of theories of moral status. I will return to this problem later on. But first, the second example is Shelly Kagan’s “personism”.

### 3. Modal personism

There are three different types of humans who are not persons: fetuses and very young infants, who should go on to become (but are not yet) persons; humans who once were (but no longer are) persons; finally, severely cognitively disabled humans who cannot become persons. Kagan (2016) has argued, *pace* Peter Singer (1975), that speciesism is not a mere prejudice because it typically tracks a morally relevant property. Kagan suggests that most speciesists are probably *personists*. The interests of persons matter more than those of nonpersons. It just so happens that our judgments about species membership track some facts about humans, namely, that they typically are persons.

On personism, your interests count more if you are a nonperson member of a person species or if you actually are a person (regardless of species membership). On a wide version of personism, membership in a species of persons (a “person-species”) is sufficient for HMS (i.e. one’s interests count more). On a narrow version, *modal* personism, whether one could have been a person is what matters. Some members of a person-species not only cannot but could not have been persons. Human beings who

are neither actual nor potential persons are modal persons if their impairment is not genetically constituted but a result of external factors. But those whose genes would have necessarily prevented from becoming persons could not have been persons.<sup>7</sup> A human being that congenitally lacks the genes that direct the growth of a brain necessary for personhood *and* whose particular genes are essential to its existence and identity could not have been a person (Kagan 2016, 17-18; McMahan 2016, 27).

What is special about species membership unlike membership in any given group (e.g. genus, family, order, or club)? Even if typical members of a given group are persons, the significant level is that of species: “membership in a natural group normally tells us something about the *nature* of the individual member, while membership in an artificial group [e.g. the philosophy club] typically does not.” (Kagan 2016, 15) As for higher biological taxa like genus, they don’t tell us more than what we need to know, especially if they include other species whose typical members are not persons. “But for all that,” insists Kagan,

membership in the species is not, in and of itself, the morally relevant feature. What really matters is the *modal property itself*— the fact about what the individual could have been ... not the *biological* fact that a given creature is a member of a person species, but rather the *metaphysical* fact which normally follows from this, namely, that the creature could have been a person. (16)

In other words, membership in a person species is a *proxy* for modality.

Modal personism allows for degrees of modal distance from actual personhood. But Kagan does not have a principled account of which counterfactuals (nearby possible worlds) are relevant (i.e., close enough to count). Species membership is an informative proxy, but the account doesn’t tell us that

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<sup>7</sup> Kagan appears to think that they might have been persons, although this depends on whether their condition is due to developmental contingencies or a genetic disorder (Kagan 2016, 17). Jaworska and Tannenbaum (2014, 255, 269) deny that anencephalic infants can model SSP activities.

external—say, social, historical, technological—factors could not make some nonhumans modally closer to persons than most humans are, and some of these factors lack moral significance. If genetic enhancements made the above dog\* scenario feasible, they would alter the modal distance between dogs and personhood (DeGrazia 2016, 24-25). Pending a principled distinction between one’s ‘nature’ and one’s environment (and bearing in mind the epistemological controversy surrounding the notion of biological species to begin with; see Timmerman 2018), Kagan fails to establish a version of personism that tracks speciesist intuitions. Indeed, it is a little unclear what justifies his distinction between sources of impairment. Why should modal distance *per se* matter when this is the only respect in which two impaired beings differ? To borrow a metaphor from DeGrazia (2016, 24), the child who is a modal person would be like a kicker who misses a field goal though he could have made it: we might respond in many ways, but granting a scored goal isn’t one. Or if we did, we wouldn’t do in *on the basis of that counterfactual alone*. Likewise, for the child, that they could have been a person cannot by itself be a reason for their interests to count more than those of a potential person who is a modal non-person. Either modal persons include potential persons (as Kagan tentatively suggests, p. 17), but then the account may become overinclusive (are embryos and fetuses potential persons?), or neither modal nor potential persons have higher moral status. It cannot be that all modal persons have higher status than merely potential persons such as children on a normal developmental path.

Like Jaworska and Tannenbaum’s account, Kagan’s focus on the intrinsic nature of individuals is problematic. Both of their accounts also fall prey to a worry of arbitrariness. For, whether or not one possesses the required capacity or modal property, which makes a significant moral difference, is largely arbitrary—whether activities are reasonable/feasible means of achieving a caretaker’s aims (on one hand) or counterfactual distance (on the other hand) can turn on any number of (irrelevant) factors beyond anyone’s control, and unbeknownst to them. These worries threaten our hope of meeting the challenge. If we want to avoid arbitrary speciesism (as per *Moral Relevance*), we must either dismiss the

challenge (e.g. McMahan 2002; 2005) or reject *Intrinsicalism*.

In the remainder of the paper, I will argue that the challenge cannot be met, but that this need not commit us to *Intrinsicalism*, and that personhood (or FMS/HMS) is a function of whether one is a member of a (properly defined) *person-community* rather than a person-species. Here is a sketch of the forthcoming argument. Membership in a person-community affects which capacities one is likely to develop, but also which ones are required to flourish, what the standard expectations are, and what one's interests are. Relational differences are relevant insofar as moral status tells us how we should treat particular beings, and relational differences contribute to determining the relevant comparison classes to assess flourishing. From the flourishing/community and flourishing/personhood relations we can infer a community/personhood relation. It then appears that we have no reason to deny many nonhuman animals elevated moral status.

#### **4. Individuals, species and communities**

The Species Norm Account (see e.g. Nussbaum 2006) states that whether some particular individual flourishes and what they are entitled to depend on a species-specific standard. Moral individualists claim that how one ought to treat particular beings should only depend on their individual characteristics (McMahan 2005; Rachels 1990). They deny that species membership *per se*, in virtue of the characteristic or 'normal' capacities of most members of the species, determines how one should treat individuals, not that species membership can affect which capacities one does or is likely to possess (see in particular McMahan's (2002, 147-9, 153-65, 326-7) discussion of different versions of the 'Superchimp' case). This denial has two prongs: species membership itself is neither sufficient (human beings do not have moral status simply in virtue of being human) nor necessary (nonhumans cannot be denied moral status simply in virtue of not being human).

The problem is that moral individualists must recognize that actual and potential capacities depend for their development on species, both biologically (genome) and socially (social organization, culture, history). Only these combined conditions define the set of potentialities of a given individual. Subsequently, it is only abstractly that an individual is comparable to individuals of other species.<sup>8</sup> Species membership (ancestry, parents) partly and non-randomly determines which traits one is likely to develop, and the social structures of different species and subspecies partly and non-randomly determine developmental paths. So, if a morally relevant difference is species-dependent, we must take account of the corresponding species facts in moral decision-making. For instance, Nussbaum (2006) rejects the second tenet of moral individualism, that species membership itself is morally irrelevant to how an animal ought to be treated. For different forms of life have different capabilities, which affects the harms they are susceptible to (361). Looking at individual facts without looking at species-characteristic facts deprives one of valuable background information even, indeed especially, when an individual departs from the species norm. Even by a moral individualist's lights these facts should matter as reasons to treat individuals in particular ways.

Now, membership in the human *community* and in the human *species* are for many purposes roughly equivalent. Both determine the flourishing conditions of a human child, which differ from the flourishing conditions of a young chimpanzee. This remains true of children with severe cognitive disabilities, who are entitled to a form of education enabling their participation in the human community, unlike chimpanzees.<sup>9</sup> The equivalence is imperfect, though. The flourishing of

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<sup>8</sup> “The problem with [the moral individualist's] argument [that claims of fortune do not depend on mere species differences],” notes Kittay (2005, 112), “is that McMahan begs the question. The Species Norm Account maintains that species membership provides the norm for whether a condition or loss is a misfortune. The Superchimp account provides a cross-species comparison based on the supposition that species membership makes no difference. Yet this is precisely what is in contention.” Also see Grau (2015, 219, 223).

<sup>9</sup> Some would deny that this reflects differences in moral status. For instance, Peter Singer's (1975) principle of equal consideration of interests could be read as a statement of equal moral status. Even if he conceded that unequal treatment could depend on relational facts, this would not affect moral status. But if we understand moral status as telling us how to treat others, then these species-dependent differences do reflect differences in moral status. I return to this point below.

enculturated chimpanzees requires some degree of participation in a human community, at the very least retirement in a sanctuary (Gruen 2011, chapter 5). And they differ from their wild counterparts not so much in virtue of their intrinsic potential or capacities than because of interactions between their intrinsic nature and context.<sup>10</sup> Still, even enculturated, human-trained chimpanzees have needs that radically diverge from what a specifically human community can afford.<sup>11</sup> Even though “capacities crisscross and overlap,” writes Nussbaum (2006, 363), the life of a child with severe mental impairments “is lived as a member of the human community and not some other community; it is there that she will either flourish or not flourish.”

One may, however, object to the Species Norm Account that it is too rigid and insensitive to context. Donaldson and Kymlicka (2011, 96-99), for example, consider Nussbaum’s approach both *too* individualistic (insensitive to interspecies contexts like domesticated communities, urban ecosystems, zoos, laboratories, and sanctuaries) and *insufficiently* individualistic (insensitive to within-species variations). In addition to species, individual history, personality, context, and the environment all matter. I concur with them that the relevant capabilities are greatly affected by context. (97)<sup>12</sup>

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Of course, we can also deny Equal Consideration, as Kagan does, or to interpret degrees of moral status as depending on *unequal interests* (DeGrazia 2007).

<sup>10</sup> In *The Evolution of Bruno Littlemore*, novelist Benjamin Hale (2011) illuminates this contrast by giving voice to a human-trained chimpanzee growing increasingly contemptuous of his wild counterparts, his own past, and his less talented fellow experimental subjects, as he becomes increasingly embedded in his relationship with his trainer/partner.

<sup>11</sup> Consider the case of Nim Chimpsky (1973-2000), a chimpanzee raised as a human infant by a number of foster families and researchers in the 1970’s, as part of “Project Nim,” a research project on (sign) language acquisition led by Herbert Terrace at Columbia University, before being recruited for biomedical and pharmaceutical research and ultimately retired to the subpar sanctuary Black Beauty Ranch. After a promising start, the project never provided satisfactory results, even according to Terrace himself, who went on to criticize the project’s premises and claim that animals are radically incapable of symbolic language (Nim’s nickname is a reference to Noam Chomsky’s Universal Grammar theory). Hess (2008) and James Marsh’s 2011 documentary *Project Nim* illustrate the divergence I have in mind.

<sup>12</sup> Nussbaum’s concession that dogs’ communities require “intimate human members” (366) remains at the level of the species norm.

Sensitivity to species norms and to context are not mutually exclusive, though. And both highlight limits of moral individualism (or *Intrinsicalism*). To the extent that flourishing depends on species, context or likely a combination of both, some status-relevant facts are (extrinsically) relational. And even if we were to deny the significance of species norms, moral individualism would not follow for, as noted, context affects the relevant capabilities for any particular animal. For instance, chimpanzees thrive in distinctive complex social communities. How, say, cognitively disabled Superchimps ought to be treated depends, not just on their capacities and/or facts about their species, but also on which communities they participate in. These are relevant differences if, as moral individualists and I hold, moral status tells us how we should treat particular beings. Hence, rejecting *Intrinsicalism* is compatible with *Moral Relevance*. What comparison classes we ought to use to assess flourishing is context-sensitive.

In the next section, I examine one last attempt to meet the challenge, which does not presuppose *Intrinsicalism*. I explain why it fails, but also why it holds promise. I discuss Schechtman’s original account of personhood and investigate the possibility of “person-communities” as a more appropriate benchmark than species membership. I then argue that we and many other animals are members of person-*communities*, and that the intrinsic plausibility of the person-community approach lends plausibility to a community-based case for inclusive personhood, HMS or FMS.

## 5. The person-life view

The core idea of Schechtman’s (2014) account is that the lives of persons are inherently social and involve occupying a “person space”. The “person life view” (PLV) defines persons in terms of the characteristic lives they lead: to be a person is to live a “person life” and persons are individuated by individuating person lives. A person life consists of the kinds of practical interactions characteristic of persons, in a person space, a locus of characteristically human practical interests and concerns within human-typical socio-cultural infrastructures. Schechtman seeks to answer three questions: what the

basic structure of a person life is, what distinguishes it from other kinds of lives, and what individuates and unifies particular person lives over time.

Her strategy is to start with paradigmatic cases on which there is general agreement and then determines how much deviation is compatible with personhood. “The typical mature person is sentient, reflectively self-conscious, a self-narrator [see Schechtman 1996] ... and a rational and moral agent” (Schechtman 2014, 112). Person lives and person spaces are “two sides of a single coin” since developing as a person requires “an environment that provides the proper scaffolding and social support”, while “particular psychological capacities ... are required if one is to engage in the more sophisticated kinds of interpersonal interactions found in a standard person life.” (ibid.) A person life has three (mutually supportive) components: the *physical and psychological attributes* of the individual; the *kinds of activities and interactions* that make up the individual’s daily life and their relation to “the general form of life of typical enculturated humans”; and, crucially, “the *social and cultural*<sup>13</sup> *infrastructure* of personhood—the set of practices and institutions that provides the backdrop within which the kinds of activities that make up the form of life of personhood become possible” (113) The crucial infrastructure includes “presuppositions about what (who) gets brought into the form of life that is personhood.” Instead of assessing their capacities, “when we encounter other humans” we “automatically see them as persons and interact with them as such.” (ibid.)<sup>14</sup>

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<sup>13</sup> Schechtman refers to “culture,” “social infrastructure,” and “person-space” more or less interchangeably. They include “religious traditions, institutions of punishment, codified systems of governance, economies, educational institutions, technologies, systems of symbolic representation through which information and knowledge are transmitted, means of transportation, and developed practices concerning arts, entertainment, and leisure” (115).

<sup>14</sup> Schechtman’s approach is inspired by Wittgenstein. Also see Timothy Chappell’s (2011) “proleptic” approach to personhood: e.g., “a parent’s attitude toward her child is always, basically, what Wittgenstein famously calls ‘an attitude towards a soul.’” (7) “To see some creature as a person is to take an attitude toward that creature that, *before* any behavioral evidence comes in, is already different from our attitudes to creatures that (we think) are not persons.” (12)

Schechtman then considers three types of non-paradigmatic cases: atypical developmental trajectory in humans (e.g. severe cognitive disability), anomalous social positions (e.g. slaves and oppressed categories), and nonhumans (animals, androids and robots). Her discussion of nonhuman persons is tentative and ultimately unsatisfactory. I will argue, nonetheless, that nonhuman animals can be accorded a place in person spaces.

The lives of humans who never develop the full array of capacities of typical adults are not paradigmatic person lives, yet, notes Schechtman, “these individuals are clearly seen as persons and given a place in person-space ... [M]any of the elements of a person life are in place well before maturity and do not require mature capacities.” (120) Now, if being brought into person life is *sufficient* for personhood, “we might wonder why similar treatment is not sufficient to make a poodle a person.” (121)<sup>15</sup> To this Schechtman replies that poodles and people have different forms of life, which inform our respective judgments regarding “a family who are informed that their human infant will never be able to talk or dress or feed herself” and “family who are told that their beloved poodle puppy will never be able to talk or dress or feed herself.” (ibid.) Such differences, she claims, are not arbitrary, not mere conventions. Even when individuals fall short of the Lockean standard of personhood, characteristic human social infrastructures create space for them to live person lives “in myriad ways”; not so for poodles. Furthermore, humans, not poodles, normally have forensic capacities that require human social infrastructures, whose persistence in turn requires that we maintain our expectations even in the face of deviations from paradigms (131).

Schechtman’s argument can be reconstructed as follows:

P1 Being a person is living a person life

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<sup>15</sup> Harman (2007) argues that the fact that some persons love something, worship it, or deeply care about it (e.g., fetus, sacred mountain), cannot endow it with moral status.

P2 Person lives require location in a person-space

P3 Location in a person-space requires particular social infrastructures

P4 The characteristic social infrastructures (including expectations and judgments of fortune) of humans are not shared with poodles

C1 Therefore, poodles cannot be located in person-spaces

C2 Therefore, poodles cannot live person lives

C3 Therefore, poodles cannot be persons

In the next section, I grant P1-P3 but I dispute P4. In other words, an inclusive conception of personhood can grant animals personhood (thus denying C1-C3) for reasons roughly analogous to those for which it grants personhood to nonparadigmatic humans.

## **6. Person-communities**

PLV establishes a close link between personhood and the human form of life. Schechtman does not deny that our characteristic social organization has evolutionary roots shared with other species (115). Nevertheless, the cross-species overlap doesn't help poodles. Echoing my earlier concerns, she writes: "To describe a typical poodle as having the same or greater capacities than a human with an atypical developmental trajectory is ... misleading because this takes the capacities out of the context in which they are employed." (125) Still, although dogs are not expected to live person lives, I argue that these differences do not rule out an animal-inclusive conception of personhood.

In fact, Schechtman herself left the door open (131). Recall that one can only be a person if a person space is available for one. Schechtman considers two pathways to animal personhood. The most direct is that of animals who possess the forensic capacities necessary to interact with others in person-specific ways (132). It's "a largely empirical question" whether and which animals fit the description, but we cannot rule it out, because "intelligence can express itself in surprising ways" and "ingenuity

and technology” could overcome obstacles to these ways of engagement. In principle, then, a dog-like creature (a dog\* perhaps) “could demonstrate enough of the attributes of a mature person to live a person life.” (ibid.) We can also, and more easily, “imagine an atypical nonhuman primate finding a place in person-space.” (133)<sup>16</sup> Recent works of fiction works such as the 2011 movie *Rise of the Planet of the Apes* and Benjamin Hale’s novel *The Evolution of Bruno Littlemore* give us a glimpse of such possibilities.<sup>17</sup> These possibilities raise a host of interesting questions: Should we integrate strangers to our like dogs and dogs\* into our communities? That is, does the possibility of nonhuman personhood give us *pro tanto*, sufficient, or conclusive, reasons to bring ever more beings into person-space if we could, such that it would perhaps be *wrong* of us to fail to (socially) enhance these animals? If so, should we integrate them into our communities or communities of their own? If so, might dogs\* (and dogs, depending on available technology) have a sort of *potential* elevated status until we accord them actual elevated status? For reasons of space, I can only tentatively say that I am attracted by there being at least *pro tanto* reasons to enhance the moral status of some animals when we can *and* when this benefits them in ways that clearly ameliorates their opportunities for flourishing. I am much less tempted to say that we are obligated to do so.

Schechtman’s second (more standard) pathway to personhood involves, not animals within human culture but animals who typically have the capacities to develop infrastructure and institutions of their own. (134) If these are “sufficiently like ours to allow for the right kinds of interactions”, then they

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<sup>16</sup> The Nonhuman Rights Project (NhRP) has filed petitions for a common law writ of habeas corpus in New York on behalf of captive chimpanzees, Tommy and Kiko, and Hercules and Leo, resting their case on the cognitive, social, and emotional capacities of chimpanzees and demanding that they be moved to a sanctuary. Interestingly, in their brief supporting NhRP, a group of philosophers (Andrews et al. 2018) consider a series of possible grounds of legal personhood, including those commonly alleged to account for the personhood of all humans while precluding that of nonhuman animals. While NhRP’s case centrally rests on the autonomy, the authors build a broader base according to which chimpanzee are persons on all defensible accounts of personhood. One of these accounts is based on community, such that personhood is achieved “through development and recognition within a community of persons.”

<sup>17</sup> But see footnote 11 above.

allow for person lives. Great apes, elephants and cetaceans might have recognizable person lives. There is indeed evidence that, for instance, chimpanzees and cetaceans display innovative tool-use or song-making, traditions, and cultural differences,<sup>18</sup> akin to the use of various rituals and artifacts within and across human cultures, and more generally that they, among other species, engage in “normative practices” (Vincent et al. 2019), many of which presuppose the sort of social interactions that could constitute personhood.<sup>19</sup>

Schechtman also notes “the possibility ... of discovering a species of marine mammals with whom we could communicate well enough to negotiate the use of waterways or engage in other cooperative ventures” (135) Interestingly, members of those species who lack person capacities “would nevertheless be persons within their own infrastructure (and so, by extension, within ours) for the very same reasons that humans with atypical developmental trajectories are.” (ibid.) In my view, this transitivity of personhood is important. For it allows for meaningful participation in any sufficiently robust social infrastructure to be sufficient for the recognition of personhood within *other* social infrastructures. So, if a nonhuman being (animal, alien, whatever<sup>20</sup>) participated in a remote person space, but not in ours, their occupying *a* person space would still ground personhood. One virtue of

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<sup>18</sup> Culture is commonly cashed in terms of differences that cannot be explained by either genetics or ecology. Typically, chimpanzees have cultures insofar as their exhibit behavioral patterns that solidify through social transmission *within* groups and vary *across* groups independently of genetic and environmental variations. When combined with robust mechanisms of social transmission, culture can also evolve cumulatively.

<sup>19</sup> On cetacean cultures, see Rendell and Whitehead’s (2001) target article and responses, and Whitehead and Rendell (2015). On chimpanzee cultures, see Whiten et al. (1999). Boesch (2012) reviews evidence in many other species of primates.

<sup>20</sup> Can corporations be persons on my account? After all, Google has become increasingly pervasive in the social fabric of our lives, and we do assign it/them responsibilities. Google is definitely a locus of practical concerns. And, at least in the U.S., corporations do have legal rights. My (defeasible) hunch is that whatever degree of metaphysical and/or moral (non-legal) personhood we attribute to Google is largely parasitic on the personhood we attribute to its *individual* executives and/or shareholders. Two interacting factors might affect our judgments here: how unified and persisting, as opposed to loosely aggregated, a given corporation is (an ontological question), and to what extent people perceive it as a unified whole or a mere aggregate (a psychological question). The literature on group minds is large, complex and beyond the scope of this paper. See Huebner (2016).

this view is that one cannot deny personhood simply on the basis of a lack of participation in one's community, nor can one deny it to a being who would be *capable* of participating in our community even though they currently do not. So, on this view, one cannot deny personhood to slaves merely because they do not fully take part in the social infrastructures that constitute personhood. In fact, part of the egregious wrongs of slavery consist in denying slaves many opportunities to manifest their personhood.

Three caveats are in order. First, we need to ensure that other communities do not engage in *aberrant* attributions of personhood, so as to avoid an unreasonable proliferation of persons.<sup>21</sup> Second, it will not always be easy to detect the capacity to participate in our community in the relevant way. Indeed, how do we recognize a person-community? And when we do, how should we treat members of that community? By our or their standards of treatment of persons? As a safeguard, it's important to remember that basic moral status—hence general protections against harming—do *not* depend on community membership. Finally, as regards cultural animals such as whales, great apes, and elephants, they need not accord personhood *to one another*, as long as they occupy recognizable analogs of person spaces (for instance, that they engage in mourning rituals might be relevant whether or not they take themselves to be doing so, have a concept of death, etc.). To assuage the worry that this sounds too *ad hoc*, consider that human societies include a lot of persons who cannot or will not accord personhood to one another. Participation, not the attribution of status, is the relevant fact.

Still, aren't there individuals whom we recognize as persons yet who do not participate in any social infrastructure? What of hermits, people who were brought up in a social infrastructure but then leave it to live in isolation? I'm inclined to consider growing up within the infrastructure sufficient. Plus, hermits still possess all the relevant capacities and, as it were, carry the socio-cultural baggage with

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<sup>21</sup> On this topic, see Harman (2007)'s objections to Warren's (1997) "principle of the transitivity of respect."

them. But what of people who never got a chance to participate in any social infrastructure and the development of whose capacities was thwarted as a result of their isolation? After all, Schechtman (2014, 118) considers that living in a person-space is *necessary* for sophisticated human capacities to develop. I'm inclined to reply that we still recognize them as persons—especially if we extend PLV to include capacities unique to other species—but I must say I'm less confident and cannot rule out that the account would entail that they only have basic moral status. However, these borderline cases do not threaten my account any more than they threaten other accounts of moral status, whether they be based on capacities or relations.

Still, Schechtman's two pathways preclude *poodle* personhood. Should we care? Maybe not, but I think we can bridge the gap by showing that domesticated animals are already part and parcel of our social infrastructures, and so that they can be located in person-spaces and live person lives. The concept of person-*communities*, rather than person-*species*, provides the required framework. *Pace* Schechtman, the infrastructure of these communities can be characteristically interspecific.

This possibility has been extensively explored by Sue Donaldson and Will Kymlicka in their theory of domesticated animal citizenship, initially developed in *Zoopolis* (2011). Domesticated animals have been selectively bred for generations to live and work within human communities and include companion animals, farmed animals, and some lab animals. Insofar as their flourishing requires active participation in a distinctive type of interspecies community, we have identified a distinctive (relational) characteristic of theirs that grounds distinctive obligations. In my view, they have a distinctive moral status based on their community membership. Donaldson and Kymlicka also ascribe intrinsic, universal moral status to all sentient animals, and I assume that sentience is necessary and sufficient for basic moral status. Still, domesticated “co-citizens” have distinctive community-based rights on their account, elevated moral status (personhood, HMS or FMS) on mine.

By way of example, consider the case of farm animal sanctuaries. Donaldson and Kymlicka (2015a) describe how, in North America, they primarily function on a “refuge+advocacy” model (rescuing animals from abuse and exploitation, and educating the public). They then identify an alternative “intentional community” model that upholds the distinctive needs—and, I think, status—of farm animals. The alternative model looks at what animals want—what kind of housing they want, whether, when and with whom they want to socialize, what sorts of activities, including play, leisure or work, they want to participate in, and so on. The model shifts away from a conception of animals as “wards of care” to that of “co-citizens” with a stake of their own, who have an interest in being empowered in four areas: *association, reproduction, environment, and work*. Donaldson and Kymlicka write: “if citizenship is about recognizing membership, voice and agency within socially meaningful relationships involving cooperation, trust and intersubjective recognition”, then domesticated animals qualify. (2015b, 237).

Are domesticated communities person-communities? I think so. If domesticated animals typically possess the capacities and dispositions to live in interspecies person-communities, they can occupy person spaces. If they can occupy person spaces, they can live person lives. If so, poodles are persons too. And if the above account is correct, I have identified a group-based characteristic that satisfies *Moral Relevance* and *Supervenience* without *Intrinsicalism*. One virtue of the account is that, by satisfying the first two desiderata, it provides a genuine account of moral status that avoids arbitrariness and speciesism. At the same time, it accounts for the distinctive character of personhood independently of (Lockean) person-typical cognitive capacities and for the relevance of context. Not all animals are persons, but not all persons are either human beings or cognitively sophisticated animals. The failure of both the person-rearing relationships account and modal personism to meet the initial challenge motivated the rejection of *Intrinsicalism*. But it also made room for an alternative account of personhood that does not fall prey to the objections that motivated them in the first place. Before concluding, though, an important clarification is in order.

## 7. Moral status and flourishing

Even if flourishing demands that we take into consideration community membership, not just species membership, some may object that this doesn't show that moral status depends (even partly) on community membership. As Jaworska and Tannenbaum (2015) remark, on the Species Norm Account of flourishing the question is not how to allocate moral merits or entitlements. The account may be irrelevant to moral status and yet important to determine what different beings need to flourish. Jaworska and Tannenbaum's account of *flourishing* is actually distinct from their account of *moral status*, which is based on individual capacities. So, by arguing that there is a connection between community and flourishing, I have not shown there is a connection between community and moral status.

However, note that the connection between moral status and capacity for well-being is central to many accounts of moral status. I concede that one's theory of flourishing need not coincide with one's theory of moral status, but they cannot be independent. Otherwise, it is unclear why capacities matter in the first place. In fact, a connection is embedded in Jaworska and Tannenbaum's statement of their reasonableness condition (5).

Why do social relations bear this relation to moral status? Because they affect the range of one's interests and ways in which one's well-being can be affected. If the reason moral status can be enhanced by sophisticated capacities is that such capacities make a difference along these dimensions, then if social relations make a difference they should also be able to enhance moral status. Many domesticated animals and other members of interspecies communities provide cases in point, as do cognitively disabled children brought up among typical human person-communities. If this is correct, an inclusive account of personhood, FMS or HMS based on community membership need not adversely affect

those that are not members of such communities. It simply captures the distinct obligations that arise from different (morally relevant) relationships. Insofar as they should be recognized agent-neutrally, they bear on moral status. As such, the account satisfies *Moral Relevance* and *Supervenience*.

To sum up, species boundaries only accidentally, and approximately, map onto the boundaries of personhood, FMS and HMS. But neither do intrinsic characteristics exhaust the map of relevant features. An account of moral status must be supplemented by an account of the relevant social relationships. Moreover, a community-based account is (1) compatible with capacities also being grounds for status enhancement; (2) inclusive (for both non-paradigmatic humans and some animals); and (3) compatible with *Moral Relevance* and *Supervenience*. Unlike common attempts to secure nonhuman personhood, my approach does not depend on evidence that animals meet the standard criteria for personhood (e.g. self-consciousness, rationality, autonomy, etc.). While social relationships are neither necessary nor sufficient for basic moral status, they can enhance it.<sup>22</sup> If so, we should reject *Intrinsicalism*.<sup>23</sup>

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<sup>22</sup> Interestingly, a prominent proponent of relationships as a ground for moral status denies that it should matter for animals. Kittay writes, in a recent Presidential Address to the APA:

Although we can have important relationships with some animals, the main route to our moral obligations to animals is not through relations but through knowledge of the intrinsic traits a particular animal or species of animal. When an animal exhibits what we take to be morally significant traits, behaviors, or relationships, we ought to respond in a morally responsible fashion. Being human is a sufficient condition for the stringent moral obligations we have to humans, but it needn't be a necessary condition. (Kittay 2017, 39)

With human beings, we stand in morally significant relations prior to knowing anything of their particular characteristics as particular individuals: all (and only) human beings are born of a mother (36)

<sup>23</sup> A reader asked about what they see as an implication of the rejection of *Intrinsicalism*. If *Intrinsicalism* is true, then generally there isn't much we can do to *make* a creature into a person. But if *Intrinsicalism* is false, and some kind of community-based view is true, then we as persons may have the power to make non-persons into persons. I'm unsure whether that's a point in favor of or against *Intrinsicalism*, but I question the first inference: *Intrinsicalism* by itself does not deny that technological enhancements could not alter the moral status of a being simply by enhancing their intrinsic capacities. I see no reason to take this possibility as either more or less damning for *Intrinsicalism* than the corresponding possibility would be for my view, especially with the hedges already attached to our reasons to bring more persons into person space (cf. Section 6).

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