

MARGINAL HUMANS, THE ARGUMENT FROM KINDS AND THE SIMILARITY ARGUMENT

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Abstract. *In this paper I will examine two responses to the argument from marginal cases; the argument from kinds and the similarity argument. I will argue that these arguments are insufficient to show that all humans have moral status but no animals do. This does not prove that animals have moral status but it does shift the burden of proof onto those who want to maintain that all humans are morally considerable, but no animals are..*

Key words: *Marginal Humans, Argument from Marginal Cases, Argument From Kinds, Argument From Similarity.*

It has been argued that all humans have moral status while no animals do (or that animals have considerably less than humans).¹ The reason usually given for this stark contrast is that humans (but not animals) are rational or autonomous or language users (or something similar) and it is this that makes them morally considerable. But there is a major problem here; not all humans are rational et al. So-called marginal humans do not have the kind of rationality sufficient to qualify for moral status. This argument is known as the argument from marginal cases (hereafter AMC) (Narveson 1977:164).

There have been many responses to the AMC, some of which I have discussed elsewhere (Tanner 2005). There are two responses I wish to concentrate on here. The first is the argument from kinds. This argument suggests that all humans (regardless of their individual capacities) have equal moral status because all humans are the *kind* of thing that

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¹ Those who have made variations of this argument include: Becker 1983; Benson 1978; Carruthers 1992; Cigman 1981; Cohen 1986; Cohen 2001:36-7; Devine 1978 & 1990; Fox 1986; Francis & Norman 1978; Frey 1977a; Frey 1989:115; McCloskey 1979; Narveson 1977; Nozick 1983; Paden 1992; Regan 1979; Regan 1983; Regan 1993; Rolston 1988; Sapontzis 1983 & 1985; Scruton 2000; Watson 1979.

have moral status.² The second argument is the similarity argument. According to this argument we should accord marginal humans similar moral status to us because they are similar to us (normal humans) in other respects.

In section one I will define the term marginal humans. In section two I will outline the AMC in more detail. In section three I will outline the argument from kinds. In section four I will raise some objections to it. In section five I will outline the similarity argument. In section six I will raise some objections to it. I will argue that both the argument from kinds and the argument from similarity do not succeed and that if we want to allow that marginal humans have moral status we must allow that animals that are relevantly similar to them do too.

I. MARGINAL HUMANS

Many different definitions of the term marginal humans have been offered (Bernstein 2002; Fox 1986:60; Narveson 1983:58; Regan 1979:189; Scruton 2000:53). But the important thing that they all have in common is that marginal humans are those who are lacking in some morally relevant respect, such as rationality. Marginal humans are those humans who, for whatever reason, are not moral agents. Roger Scruton identifies three different types of marginal humans: "we should" he says "clearly distinguish the case of 'pre-moral' infants, from those of 'post-moral' and 'non-moral' human adults" (Scruton 2000:53). Scruton uses the term 'moral' here to signify active membership of a moral community. But I think these terms are not quite appropriate for the current context and I will instead favour the terms pre-rational, post-rational and non-rational.³ By pre-rational is meant those who are not yet fully rational but if allowed to develop normally will become so. This category is comprised of children. Post-rational humans are those who once were rational but due to illness, accident, or old age are no longer rational. Non-rational humans are those who due to illness or accident are not, never have been and never will be rational.

Some philosophers have objected to the use of the term "marginal humans". For instance, Nathan Nobis says that the use of the term marginal humans is regrettable (Nobis 2004:43). Mark Bernstein says that:

The notion that these unfortunate people are being classified as 'marginal', as being on the fringes of humanity, is repulsive. 'Deficient' if anything, seems worse. To the best of my knowledge, there is not a commonly accepted term that does not disparage and so, with some regret, I will continue using 'marginal'. This is not a mere exercise in political correctness; the descriptions we use do affect our attitudes and action toward others. (Bernstein 2002:538)

It might be argued that the term MH is merely descriptive, that it is merely describing their position in relation to 'normal' humans. But for this description to be correct then at

² See for instance Benn quoted in Feezell & Stephens 1994:12; Cigman 1981:61; Cohen 1986:866; Fox 1986:60; Lomasky 1987:204-5; Machan 1991:163-4; May 1976:442; Rawls 1999:442-8; Scanlon 1998:185-6; Schmidtz 1998:61; Scruton 2000:54-5; Tooley quoted in Huffman 1993:22; Wennberg 2003:120.

³ I use the term rational here to stand in for rationality et al.

the very least the view that moral agency (or something similar) is a sufficient condition for moral considerability has to be assumed. Because only if this is assumed are such humans marginal. The term MH is theory laden, ideally one would come up with a more neutral term. Tom Regan uses the term non-paradigmatic to describe MH:

non-paradigmatic in the sense that they do not possess those attributes (e.g. rationality) that are paradigmatic of being humans. (Regan 1979:190)

But I think that non-paradigmatic could mean any number of things, any number of ways in which humans are unusual, including being an albino or being physically disabled – such people are not what is usually meant by MH. So I will not use non-paradigmatic.

It may also be objected that some so called "MH" are not actually marginal, for example that babies are not MH they are very definitely human. But the term marginal human does not, here, diminish their humanity; it is merely meant to indicate that the individuals in question do not possess the capacities usually thought relevant for moral status. In this sense babies and other MH are marginal as they do not possess rationality. It may be argued that a marginal person would therefore be a better way of describing these humans insofar as in this way their humanity is not brought into question. However, I do not think using the term marginal human does seriously undermine their status as humans and the use of the term MH is now widespread and so I shall, reluctantly, continue to use it for the sake of convenience.⁴

II. THE ARGUMENT FROM MARGINAL CASES

The phrase "argument from marginal cases" was first coined by Jan Narveson (an opponent of the argument) (Narveson 1977:164). Many have subsequently thought that the AMC is a modern argument. However, it has roots in ancient Greece.⁵ Porphyry appears to have been the first one to make the AMC (Porphyry 1965, III. 19).⁶ And Bentham also hinted out it when he pointed out that some animals are more capable than human infants, "a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day a week or even a month old" (Bentham 1948, Ch. 17).

The AMC is a challenge to the traditional view that all humans are morally considerable but no animals are (or if they are their status is slight). Support for this sharp division is drawn from the supposed fact that humans possess some capacity that animals do not, such as: rationality, language, autonomy, moral agency, the ability to reciprocate, et al. But what supporters of the AMC point to is that not all humans are fully rational et al. and

⁴ Examples of those who refer to these humans as marginal include: Almeida 2004; Bernstein 2002; Carruthers 1992; Cavalieri 2001; Cigman 1981; Cohen 1986; De Roose 1989; DeGrazia 1996; Dombrowski 1984 & 1997; Feezell & Stephens 1994; Fox 1986; Francis & Norman 1978; Frey 1977a; Jamieson & Regan 1978; Linzey 1976:24; McCloskey 1979; Narveson 1977; Newmyer 1996; Nobis 2004; Pluhar 1987, 1988b & 1995; Regan 1979; Ryder 1975; Sapontzis 1985:252; Scruton 2000; Singer 1995; Warren 1997; Wilson 2001; Young 1988.

⁵ Pythagoras, Empedocles, Theophrastus, Seneca, Ovid, Plutarch, Plotinus, Porphyry were all vegetarians and Plato was impressed by vegetarian thought (Dombrowski 1984:141; Newmyer 1996:40).

⁶ See Dombrowski 1984:143.

some animals are more rational et al. than some humans. To be consistent those who think rationality et al. is what makes humans morally considerable must admit either that MH have as little moral status as animals, or that animals have as much as MH. The AMC is a powerful challenge to the traditional view.⁷ Which is why it has received a great deal of attention recently.⁸

Most of those who think animals are morally considerable think the AMC is a powerful argument to this end, and I count myself among these.⁹

The AMC also has many critics who think animals do not deserve any greater moral consideration than the little they currently get.¹⁰ Before considering the argument from kinds and the similarity argument I will outline the AMC in more detail.

As noted above there are objections to using the term "MH" but for convenience I have opted to continue using the term. It may seem as though using the term MH undermines the impact of the AMC. The AMC works by saying that if MH are morally considerable then animals are too. But if we are comparing animals to "marginal" humans who have low moral status this weakens the AMC because it means animals will have low moral status too. But using the term MH will only undermine the AMC for those who would claim that animals have equal moral status to normal humans. This is not the claim that I wish to make. I want to claim that the status of animals should be raised to that which MH currently enjoy, the fact that their status is lower than normal humans does not undermine my position. The point of the AMC is to demand consistency in our thinking about animals.¹¹

There are many different versions of the AMC; I will outline some of the most important.¹² I will then go on to give my own version.

⁷ R. G. Frey (who opposes the argument) calls it "the most important... argument" for animal rights (Frey 1977a:186). Some supporters of the AMC agree it is the most noteworthy or important argument in defence of animals (Dombrowski 1997:4; Jamieson and Regan 1978).

⁸ Some of those who have discussed the AMC include: Almeida 2004; Bernstein 2002; Carruthers 1992; Cavalieri 2001; Cigman 1981; Cohen 1986; Cohen 2001:36-7; De Roose 1989; DeGrazia 1996; Dombrowski 1984; Dombrowski 1997; Everitt 1992:51; Feezell & Stephens 1994; Fox 1986; Francis & Norman 1978; Frey 1977a; Frey 1989:115; Jamieson & Regan 1978; Linzey 1976:24; McCloskey 1979; Narveson 1977; Newmyer 1996; Nobis 2004; Pluhar 1987; Pluhar 1995; Rachels 1990; Regan 1979; Regan 1983; Regan 1993:197; Rollin 1983:109; Ryder 1975; Sapontzis 1985:252; Scruton 2000; Singer 1995; Warren 1997; Wilson 2001.

⁹ Those who have supported the AMC (some more explicitly than others) include: Almeida 2004; Bernstein 2002; Cavalieri 2001; Clark 1977; De Roose 1989; DeGrazia 1996; Dombrowski 1984 & 1997; Everitt 1992:51; Feinberg 1978 & 1989; Fox, M. W. 1983:310; Feezell & Stephens 1994; Hartshorne 1978 & 1979; Jamieson 1981; Jamieson & Regan 1978; Johnson 1991; Linzey 1976:24; Nielson 1978; Nobis 2004; Pluhar 1987 & 1995; Rachels 1986, 1989 & 1990; Regan 1979; Rollin 1983:109; Ryder 1975; Singer 1995; Sprigge 1979; Wilson 2001.

Not all those concerned about animals are in favour of the AMC. See for example: Sapontzis 1985:252; VanDeVeer 1979.

¹⁰ Those who criticise the AMC (some more explicitly than others) include: Becker 1983; Benson 1978; Carruthers 1992; Cigman 1981; Cohen 1986; Cohen 2001:36-7; Devine 1978 & 1990; Fox 1986; Francis & Norman 1978; Frey 1977a; Frey 1989:115; McCloskey 1979; Narveson 1977; Nozick 1983; Paden 1992; Rolston 1988; Sapontzis 1983 & 1985; Scruton 2000; Watson 1979.

¹¹ Scott Wilson makes a similar point (Wilson 2001:136).

¹² Both supporters and opponents of the AMC have come up with their own versions of the AMC, but I will only outline the versions of the supporters here because they are more likely to give an accurate description of the argument. Supporters of the AMC who have outlined versions of it include: Almeida 2004:27; Bernstein

One of the earliest modern formulations of the AMC is that made by Peter Singer in *Animal Liberation* (first published in 1975):

human beings are not equal; and if we seek some characteristic that all of them possess, then this characteristic must be a kind of lowest common denominator, pitched so low that no human being lacks it. The catch is that any such characteristic that is possessed by all human beings will not be possessed only by human beings. (Singer 1995:237)

Richard Ryder points out that animals are often treated in ways that we would find unacceptable in MH who are "less intelligent... communicative and... able to stand up for themselves than the average dog, cat or monkey" (Ryder 1975:3).

Andrew Linzey is often quoted as an advocate of the AMC, which he outlines thus:¹³

If we accord moral rights on the basis of rationality, what of the status of newly born children, "low grade" mental patients, "intellectual cabbages" and so on? Logically, accepting this criterion, they must have no, or diminished, moral rights. (Linzey 1976:24)

Tom Regan distinguishes two versions of the AMC:

(1) certain animals have certain rights because these [marginal] humans have these rights *or* that (2) if these [marginal] humans have certain rights, *then* certain animals have these rights also. The former alternative represents what might be termed the stronger argument for animal rights; the latter, the weaker. (Regan 1979:189)

Above I have given a few formulations of the AMC, there are many more, but the above are sufficiently representative for my purposes. In what follows I will give my own formulation.

All the above formulations are making basically the same point: that moral considerability cannot consistently be withheld from animals if it is granted to MH. Regan has pointed out an important difference between the weaker and the stronger versions of the AMC. The weaker version claims that *if* MH are morally considerable animals are too. The stronger version claims that MH *are* morally considerable and so animals are too. The second version requires additional arguments to show that MH are morally considerable. Below I will lay out my own version of both more formally.

Weaker version of the AMC (hereafter WAMC):

- 1) If a capacity/capacities such as rationality et al. is necessary for moral considerability then animals are not morally considerable, but then nor are MH who lack that capacity.
- 2) MH may be morally considerable despite the fact they lack rationality et al.
- 3) If MH are morally considerable then no capacity they lack can be necessary (though it may be sufficient) for moral considerability. There must be another capacity that is also sufficient for moral considerability.

2002:525; Cavalieri 2001:76; Feezell & Stephens 1994:8; Johnson 1991:52; Linzey 1976:24; Pluhar 1987:23; Regan 1979:189; Ryder 1975:3; Singer 1995:237, & 239-40; Tanner 2005:54-55; Wilson 2001:136.

¹³ For example he is quoted by: Frey 1977a:187; Frey 1980:29; Regan 1979:194.

- 4) Many animals are similar to those MH thought to be morally considerable.
- 5) Therefore: if MH are morally considerable so are animals that are relevantly similar. If animals are not morally considerable then neither are MH.

Stronger version of the AMC (hereafter SAMC):

- 1) If a capacity/capacities such as moral agency et al. is necessary for moral considerability then animals are not morally considerable, but then nor are MH who lack that capacity.
- 2) MH are morally considerable despite the fact they lack rationality et al.
- 3) MH are morally considerable, therefore no capacity they lack can be necessary (though it may be sufficient). There must be another capacity that is also sufficient for moral considerability.
- 4) Many animals are similar to those MH that are morally considerable.
- 5) Therefore: because MH are morally considerable relevantly similar animals are too.

WAMC leaves the moral considerability of MH an open question. Yet those who want to deny the moral considerability of animals while affirming the moral considerability of MH are faced with a dilemma: either deny MH are morally considerable or admit animals are too.

Some philosophers have taken the latter horn of the dilemma and admitted that MH are not morally considerable.¹⁴ For example, Frey says the AMC shows experimenting on MH is permissible because they lack moral status (Frey 1983:115).¹⁵ Jan Narveson argued "the proper way to deal with them [MH] is simply whatever way is dictated by our interest in such things", MH are "mere things" (Narveson 1983:45).

This may seem to undermine WAMC because if it is admitted that MH are not morally considerable then nor are animals. But the fact that some philosophers have been forced to admit that, on their position, MH have no moral standing shows the strength of the WAMC insofar as it forces them to take a consistent attitude towards animals.¹⁶ But the real strength of WAMC can be seen when it is addressing its real targets: those who wish to insist that MH are morally considerable. It is to such people, the majority, that WAMC is addressed.

It is worth noting here that despite being "weaker" this version of the AMC is still very strong. Those who want to say that MH are morally considerable but animals are not are faced with a real problem: they must defeat the WAMC. To defeat WAMC they must show there is a morally relevant property (or set of properties) that all humans have (including MH) and no animals do. That opponents of WAMC are forced to make such arguments is an important victory for supporters of the AMC.

¹⁴ Those who admit this include: Frey 1983:115; Gauthier 1977:268-69; McCloskey 1979:31; Narveson 1983:45. Paske argues that "not all human beings are moral agents and hence it may be that not all human beings have equal inherent value [and presumably, therefore, no right to life]" (Paske 1988:510). He denies that MH have right to life (Paske 1988:511). However, he does not think it follows that they ought to be treated in the same way as animals, though he provides no argument for this (Paske 1988:510).

¹⁵ Though he adds the caveat that because there may be side effects of experimenting on MH e.g. if massive numbers of people opposed then it may be unjustified (I will consider this repost to the AMC below in section 2.7).

¹⁶ Benson makes a similar point, he says that some people are prepared to say that MH have little or no moral status does not rob the AMC "of all force" (Benson 1978:535).

Whether or not SAMC is valid depends on premises 2 and 3 being sound. SAMC thus requires additional arguments that MH are morally considerable and what it is that makes them so. It is beyond the scope of this paper to provide such arguments. So I shall be concentrating on WAMC and when I refer to the AMC hereafter it is WAMC I will have in mind.

Part of purpose of AMC is to shift the burden of proof on to those who deny animals are morally considerable. This much, at least, has been achieved. Opponents of AMC must agree, at least to some extent, or else they would not have felt the need to come up with arguments to counter it.¹⁷ There have been many attempts to show that there are criteria met by all humans and no animals. But it is the argument from kinds and the argument from similarity that I wish to concentrate on here.

III. THE ARGUMENT FROM KINDS

Some philosophers have argued that humans are the *kind* of thing that are usually morally considerable thus all humans are morally considerable. If this argument is correct then marginal humans are morally considerable and animals are not and the AMC has been defeated.¹⁸ For example, Thomas Scanlon argues whether something is morally considerable depends not on an individual's capacities but on the typical capacities of its kind (Scanlon 1998:185-6). Carl Cohen says:

Persons who, because of some disability, are unable to perform the full moral functions natural to human beings are not for that reason ejected from the human community. The critical distinction is one of kind. Humans are of such a kind that rights pertain to them *as humans*; humans live lives that will be, or have been, or remain *essentially* moral... The rights involved are human rights. (Cohen 2001:37)

David Schmidtz puts it thus:

humanity's characteristic rationality mandates respect for humanity, not merely for particular humans who exemplify human rationality... some humans lack the characteristic features... The point is that we can, we do, and we should make decisions on the basis of our recognition that mice, chimpanzees, and humans are relevantly different types. (Schmidtz 1998:61)

Roger Scruton argues that humans, regardless of their mental capacities, deserve our moral consideration:

¹⁷ Many philosophers have felt the need to meet the AMC including: Becker 1983; Benson 1978; Carruthers 1992; Cigman 1981; Cohen 1986; Devine 1978 & 1990; Fox 1986; Francis & Norman 1978; Frey 1977a; McCloskey 1979; Narveson 1977; Nozick 1983; Paden 1992; Rolston 1988; Sapontzis 1983 & 1985; Scruton 2000; Watson 1979.

¹⁸ Philosophers who have made variations of the AFK include: Benn quoted in Feezell & Stephens 1994:12; Cigman 1981:61; Cohen 1986:866; Fox 1986:60; Lomasky 1987:204-5; Machan 1991:163-4; May 1976:442; Rawls 1999:442-8; Scanlon 1998:185-6; Schmidtz 1998:61; Scruton 2000:54-5; Tooley quoted in Huffman 1993:22; Wennberg 2003:120.

Our world makes sense to us because we divide it into kinds, distinguishing animals and plants by species and instantly recognising the individual as an example of the universal. The recognitional expertise is essential to survival and especially to the survival of the hunter-gatherer. And it is essential also to the moral life. I relate to you as a human being and accord to you the privileges attached to the kind. It is in the nature of human beings that, in normal conditions, they become members of a moral community, governed by duty and protected by rights. Abnormality in this respect does not cancel membership. It merely compels us to adjust our response. Infants and imbeciles belong to the same kind as you or me: the kind whose normal instances are also moral beings. It is this that causes us to extend to them the shield that we consciously extend to each other and which is built collectively through our moral dialogue. (Scruton 2000:54-5)

According to Scruton only those who are moral beings are worthy or moral consideration. What makes a being a moral being is that they are rational and are able to enter fully into the life a moral community; they are a moral agent. However, to be worthy of moral consideration one does not have to be a moral being. All that is required is that one is of a *kind* that are usually moral beings i.e. that one is human. Hence, if Scruton's arguments are correct all humans are worthy of moral consideration while animals are not despite their similar capacities because marginal humans, but not animals, are of the right kind.

There are many other versions of the argument from kinds (hereafter AFK) but they are all making essentially the same point; that it is the kind you belong to not your individual capacities that matters when determining moral status.

IV. OBJECTIONS TO THE AFK

i. What does kind mean?

Many proponents of the AFK do not explain what they mean by kind.¹⁹ It is essential that those who make the AFK explain what they mean by kind; they need to show what kinds humans are and what kinds animals are in order to show that humans are a different kind from animals. There are at least two things that might be meant by kind: what is normal and what is natural.

Kind may be that which is normal; that most humans are like this (see Benn quoted in Feezell et al. 1994:12). But, if this is what is meant by kinds this makes moral status contingent on how most humans are. If moral status depends on rationality et al. and most humans lost their rationality et al. then no humans (even those who are rational et al.) would be morally considerable. This is a conclusion no-one who supports the AFK would be willing to accept.

But perhaps more importantly, as Nathan Nobis puts it, the principle is clearly false (Nobis 2004:48). Normal humans are different from MH and can do things MH cannot. If this line of reasoning were accepted we would have to accept the fact that if it is the norm for humans to be blind then all humans (including those who can see) are actually blind. If

¹⁹ For example Carl Cohen does not explain what he means by kind (Cohen 1986:866; Cohen 2001:37).

proponents of the AFK are to be believed, in the kingdom of the blind the one eyed man is blind.

Kind may be interpreted as natural. The idea may be that it is natural for humans to be rational et al. so that all humans (including MH) are rational et al. What might be meant by natural is by no means clear.²⁰ But even if its meaning can be cleared up, difficulties remain; namely, the same difficulties as with the normal interpretation, i.e. that it is plainly not true. The fact that most humans are naturally rational et al. does not mean all humans are.

More importantly, what is natural for humans (how the human race has evolved) is a matter of chance. Humans could have evolved quite differently in which case what is natural for our kind would also have been quite different.

One other thing that may be meant by kind is that species is a natural kind. Natural kinds are naturally occurring things. Some philosophers argue that there are no natural kinds (Bernstein 2002:529). Others argue that species is not a natural kind (Clark 1988:31; De Rouse 1989:91). I think that even if there are natural kinds there is good reason to think species is not one.

Darwin's theory of evolution indicates that species is not as obvious a natural kind as is often made out. Given that species is not immutable, that individuals evolve to form new species it is hard to insist that species is a reliable kind. Species evolve. Random differences are thrown up within a species and those that are more likely to give their bearers a competitive advantage are more likely to survive. These individuals are then more likely to reproduce and pass on their characteristics to their offspring. Thus, species gradually change. Once there are a significant number of such changes then one species will have evolved into another. Given this, the speciesist is presented with a problem: how can we know when one species becomes another? At what point along the evolutionary road can we say for sure that a particular creature is one species and not another? We must either reject species as a significant boundary or we must allow all those who preceded *homo sapiens*, *homo erectus* for example, including those who were not rational et al. were also morally considerable.²¹ It would be arbitrary to draw a line as there was no single point at which all the offspring of *homo erectus* were *homo sapiens*.

Similarly, those who insist that species is morally relevant would have to allow that if evolution took a different path, if our descendents became less rational et al. then even if they are less rational et al. then other species, they are morally considerable while other species are not. This is contradictory. Another worrying thought is that if *homo sapiens* now took two different paths, one continuing as we are and the other evolved so that they became much more rational et al., stronger, clever etc. they could say that it is not being *homo sapiens* but the new species that matters. If our moral considerability is independent of our species our moral status would be more secure – it would be unaffected by evolutionary changes in others.

It may be objected that Darwin was unaware of DNA and this would be a way of classifying species that is consistent with his theory. Firstly, it is not clear why DNA should matter. But if it does, it hardly fares much better. If DNA does matter speciesists need to

²⁰ See G. E. Moore for a discussion of this (Moore 1993:93-99).

²¹ DeGrazia makes a similar point (DeGrazia 1996:58).

give an account of why only human DNA matters. Even if they can show that only human DNA matters they are still faced with the dilemma presented by the AMC. Not all humans do have the same DNA, some humans are born with genetic defects making them unlike normal humans. In addition to this some animals such as chimps may share more DNA with humans than these genetically abnormal humans, for instance the difference between normal human and chimp DNA is 1.6%, in other words we share 98.4 % of our DNA with chimps (Rodd 1990:37-8). If DNA is what matters then some animals could be more genetically human than some humans. So speciesists must either give up DNA as a test of species or admit some animals into the moral community.²²

If human DNA is what matters then any DNA must have the same status. This includes unfertilised eggs, spermatozoa, hair, skin cells etc., any thing that contains human DNA. This leads to the conclusion that human DNA has the same moral status as actual humans. It also means that abortion is wrong as is not reproducing.

It may be objected that natural kinds can change and so the fact species change does not undermine it as a natural kind. But even if species is a natural kind it is not the only natural kind; humans belong to other natural kinds e.g. mammals, being alive. Why is species the kind that should matter and not one of the others?

Even if we do need to draw lines and divide things into different kinds it is by no means clear that the divisions should be made by species. A more appropriate barrier would be the being's capacities according to which moral considerability is ascribed.

ii. Racism and sexism

The AFK seems to commit its proponents to racism, sexism and other isms (Huffman 1993:22; Nobis 2004:56). This is because proponents of the AFK insist that it is not only ok to, but we *ought* to judge individuals by their kind. If it is ok to judge a human being by their kind when that kind is species it must be ok to judge them by their kind of sex or race.

Proponents of the AFK would probably argue that humanity is a relevant kind while race or sex is not. One's humanity is relevant (whereas one's race or sex are not) because all humans are rational and it is being of the rational kind that matters.

But whether rationality is the relevant kind (as opposed to sentience or being alive for instance) is a matter that is by no means uncontroversial. In order to establish that marginal humans are morally considerable because they are the right kind, proponents of the AFK have first to show that being rational is *the* morally relevant characteristic. The burden of proof lies with the proponents of the AFK to say why being rational is *the* kind that is relevant.

There are still people who do think that women or ethnic minorities are rational. Proponents of the AFK can do nothing (except present them with empirical evidence to the contrary) to dissuade such people that there is something wrong with racism or sexism. They have no principled reasons for objecting to the racism or sexism of someone who genuinely believes that another race or sex is irrational. Yet it is precisely the fact that people are being judged on the basis of their *kind* rather than their individual merits that

²² DeGrazia makes a similar point (DeGrazia 1996:60).

make racism and sexism so objectionable. Proponents of the AFK *cannot* think there is anything wrong with racism or sexism at all. For them, this is the way things *ought* to be.

iii. Intuitions and direct moral status

The AFK is at odds with our intuitions about the moral status of MH. It is not just that MH are manifestations of the human form (as Scruton says) that means such individuals demand our moral consideration. A painting or sculpture manifests the human form, and perhaps does so better than many MH. Yet we do not think it is morally wrong to destroy a painting because it displays the human form. We think it wrong to harm MH because to do so is to wrong the individuals themselves not some rather vague notion of humanity. It is not because MH are of the human kind that we think they deserve moral consideration; we think they deserve such consideration in their own right and to harm them is to wrong the individuals themselves.

iv. Difference in degree not in kind

Michael Fox argued that humans are different in kind from animals and although some animals have some of our capacities (e.g. language) these capacities are so developed in some of us that they are qualitatively distinct, they are different in kind (Fox 1986:44).

However, given all the scientific information currently available many scientists now agree that the difference between humans and animals is a difference in degree, not in kind (Jane Goodall, Charles Darwin, Gallup). Gordon G Gallup Jr. says "psychologically and biologically, most of the differences between humans and chimpanzees are a matter of degree, not a matter of kind" (Gallup 1977:311). Charles Darwin says "the difference in mind between man and the higher animals, great as it is, certainly is one of degree and not of kind" (Darwin 2004:151). It is not only scientists who think this; some philosophers do too (Cavalieri 2001:79).

All the abilities and capacities that humans have can be found to some degree in other animals. It is hard to see how the difference in degree actually constitutes a difference in kind. Large differences in degree do not translate into a difference in kind in other areas. For example, there is a very large difference in degree between someone who is very stupid and someone who is very clever. If a difference in degree between animals and humans is sufficient to make a difference in kind then why can the same not apply to differences of degree in humans. If large degrees in difference of mental abilities are actually a difference in kind then it is arguable that those who have the bare minimum of mental abilities deserve less consideration than those who reach the top levels. This is something virtually no-one would agree to; and most who make the AFK would resist.

v. The AFK is self-defeating

Scanlon et al. argue that because humans are a kind that are rational et al. all humans are rational et al.²³ But, Nobis argues, this same kind of argument can be used to show no humans are morally considerable because humans also belong to other kinds (Nobis

²³ In Cohen's case it is the capacity for free moral judgements.

2004:51; also see Cargile 1983:244).²⁴ Humans are of the kind that: eats; breathes; exists; is alive; is a mammal; is sentient.

Nobis argues that "objects in the world" is a kind and most of this kind lack rationality et al.²⁵ Humans are an object in the world. Thus, following the logic of the AFK, humans are not rational et al. and so do not have any moral status. Defendants of the AFK might argue that everything is of the kind with rationality et al. and so everything is morally considerable. But this means everything is morally considerable. Thus, on the AFK, humans both are and are not morally considerable this is a contradiction and is devastating for the AFK.

vi. Status by association

Another objection to the AFK is that MH are getting moral status by association.²⁶ If X is a member of a kind where most of that kind hold an MA, then Scanlon et al. are committed to saying that X has an MA even though X does not. According to the AFK because X is of a kind, they are associated with, those who do have an MA, X also has an MA. This is not only nonsensical, it is unfair to those who have earned an MA in the usual manner. But what is worse is that it, using the logic of the AFK, it is also possible to show that no one has an MA. All those with an MA belong to the kind *homo sapiens* who are of a kind that do not usually have MAs. Thus, on the AFK those with MAs would be robbed of their degree, and the same goes for any qualification or ability that is not usual for their kind. This guilt by association is as unreasonable as convicting a person of murder because all their kind, their family say, were murderers.

What is more, this sort of thinking is something we would never usually use in making judgments of any kind. If we want to know who is the best candidate for a job we look at the individual's merits and qualifications, not at their kind. If we made all our decisions and judgments based on the kind of thinking recommended by proponents of the AFK we would often end up with unqualified or incompetent staff. Just imagine I am hiring a doctor. I have ten candidates from which to choose. Nine of the ten candidates have all the relevant qualifications and experience but their kind are not usually doctors (they have all come from backgrounds where it is usual to become a plumber), the tenth however is of a kind who are usually doctors (their family and most people in their neighbourhood are doctors) but are not themselves qualified as a doctor at all. Which candidate should I choose? Most of us would choose one of the nine qualified applicants. Proponents of the AFK, however, are committed to recommending that we choose the right kind of candidate, in this case the unqualified individual. This is sheer madness.

vii. The AFK is an ad hoc addition

The AFK is objectionable because it is an *ad hoc* addition to the original argument. When someone has a theory which has a problem that they cannot accommodate they

²⁴ This point can be made about moral status (Nobis is discussing rights in response to Cohen).

²⁵ Nobis is referring specifically to the capacity for free moral judgements. But again the point applies to anything that is meant to distinguish humans as morally considerable.

²⁶ Dombrowski and Nobis make similar points (Dombrowski 1997:160). Nobis calls it the 'Getting a Property by Association Principle' (Nobis 2004:53).

have two options: either abandon the initial thesis, or add a special new clause to their thesis: an *ad hoc* clause. In this case the original thesis is that have rationality et al. makes humans morally considerable. The problem is that not all humans are rational et al.; the *ad hoc* clause is that not only those who have rationality et al. but the *kind of thing* who have rationality et al. are morally considerable.

Sometimes it is ok to add an additional clause to an argument in light of new evidence as this will refine the theory and make it more detailed. But there are cases where *ad hoc* clauses are added and it is not acceptable to do so. This is when the clause is added not with the intent of refining a theory so it can accommodate a new problem but with preserving the theory without paying any attention to the new problem. The AFK is such an *ad hoc* addition.

V. ARGUMENT FROM SIMILARITY

A related argument is what R. G. Frey calls the similarity argument. He states it thus:

[I]n all other respects except rationality and perhaps certain mental accomplishments, the severely mentally-enfeebled betray strong similarities to other members of our species, and it would and does offend our species horribly to deprive such similar creatures of rights. (Frey 1977:188)

On this argument those who are similar to normal humans have moral status in virtue of their similarity to normal humans. Narveson makes the similarity argument when he says:

And of course there is also the factor of sentiment-generalisation, which impels us to extend our sympathies on the basis of superficial similarities, perhaps even on the basis of race or species. Catering somewhat to such extensions, which are the only non-rational components of the case after all, is reasonable because it costs us very little and there is a modest amount to be gained by it. (Narveson 1977:177)

The similarity argument may appear to be the same as the AFK it is, however, subtly different. The similarity argument relies on the idea that MH are *similar* to normal humans, the AFK relies on the idea that humans are the *kind* of thing that has rationality et al. Being the kind of thing that has rationality et al. is different from being similar to something that has rationality et al. For example, a human is the kind of thing that has two legs, but not everything with two legs is of the human kind. Yet anything with two legs is similar to humans, at least insofar as they have two legs.

VI. OBJECTIONS TO THE ARGUMENT FROM SIMILARITY

i. The similarity argument is an ad hoc addition

The similarity argument, like the AFK, is an *ad hoc* addition. In this case the *ad hoc* clause is that not only those who have rationality et al. but those who are similar to them are morally considerable. Such an *ad hoc* clause is unacceptable in this case because it does not add new information.

ii. Animals are similar to humans too

An objection raised by Dale Jamieson and Tom Regan is that if similarity to humans is sufficient for moral status then some animals must also have such moral status, as some animals are more similar to normal humans than some MH (Jamieson and Regan 1978:35).²⁷ For example, an adult dog is more rational than an anencephalic and is thus more similar to a normal human. If similarity is all that matters then the similarity objection has failed to show that all humans are morally considerable and no animals are.

iii. The similarity argument is an argument from analogy

The similarity argument is an argument from analogy; it argues that because MH are like normal humans in some respects they are like them in having moral status. Like all arguments from analogy it depends on those to whom it is addressed finding the similarities equally striking. I think this argument from analogy is very weak. There is no good reason to suppose that because MH share some properties with rational humans (like DNA) they must share others (moral status). The weakness of this analogy can be shown by the use of an example. Mattresses are usually something upon which you can get a comfortable night's sleep. Imagine a mattress with all the springs poking out. It is similar to other mattresses, it has springs and is designed for sleeping on etc. Yet it does not share the property that one can get a comfortable night's sleep on it, it is precisely the opposite of comfortable. Just because it shares some features with other mattresses that are comfortable does not make this particular one comfortable. The same goes for the moral status of MH; just because normal humans are morally considerable it does not follow MH are.

VII. CONCLUSION

I have argued that the AFK and the similarity argument are insufficient to show that all humans have moral status regardless of their capacities. That the AFK and similarity arguments fail does not show that the AMC is correct. However, it does shift the burden of proof on those who want to maintain that all humans are morally considerable, regardless of their individual capacities, while animals are not (or have a much lower status).²⁸

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²⁷ Jamieson and Regan's are discussing moral rights but the same applies to moral status.

²⁸ I wish to thank Dr. Gerald K. Harrison and an anonymous reviewer from *Facta Universitatis* for their comments on earlier drafts of this paper.

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MARGINALNI LJUDI, ARGUMENT VRSTE, ARGUMENT SLIČNOSTI

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U ovom radu proučavaju se dve reakcije na argument marginalnih slučajeva; argument vrste i argument sličnosti. Smatram da su ovi argumenti nedovoljni da pokažu da svi ljudi imaju moralni status ali ne i životinje. Ovo ne dokazuje da životinje imaju moralni status, ali prebacuje teret dokaza na one koji tvrde da se svi ljudi smatraju moralnim, ali ne i životinje.

Ključne reči: *marginalni ljudi, argument marginalnih slučajeva, argument vrste, argument sličnosti*