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On the Moral Status of Infants and the Cognitively Disabled: A Reply to Jaworska and Tannenbaum*

David DeGrazia

Agnieszka Jaworska and Julie Tannenbaum address a central problem confronting efforts to understand moral status: the Problem of Nonparadigm Humans. The authors contend that human infants and cognitively disabled human beings whose capacities are comparable to those of dogs nevertheless have higher moral status. In this discussion, I will first reconstruct the authors' assumptions and argumentative goals. In the article's two major sections, I will examine the authors' reasoning in pursuit of those goals and contend that the chain of argumentation contains several weak links. The discussion will close with brief reflections on how the problem might be addressed.

In their highly original discussion, Agnieszka Jaworska and Julie Tannenbaum address one of the central problems confronting efforts to understand moral status.¹ This is the *Problem of Nonparadigm Humans*: the challenge of accounting adequately for the moral status of those human beings whose capacities or other relevant traits apparently fall short of whatever is held to justify the attribution of higher moral status to persons or paradigm human beings than to (most or all) nonhuman ani-

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1. Agnieszka Jaworska and Julie Tannenbaum, "Person-Rearing Relationships as a Key to Higher Moral Status," *Ethics* 125 (2014): 242–71. Page references to this article appear parenthetically in the text.

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mals. The authors' contribution launches with four assumptions and pursues two argumentative destinations, before turning to reflections on the scope of their account. I will first reconstruct their assumptions and argumentative goals. Next, I will closely examine their reasoning in pursuit of those goals and argue that it is unpersuasive on several counts. The discussion will close with brief reflections on the scope of the authors' account and on how the Problem of Nonparadigm Humans might be addressed.

I. PRELIMINARIES

Jaworska and Tannenbaum begin with an assumption about differences in moral status:

Assumption 1: You, I, and other persons have higher moral status than dogs and at least most other nonhuman animals.

Distinguishing themselves from those who deny any moral status to nonhuman animals, Jaworska and Tannenbaum state another assumption:

Assumption 2: Dogs and many other nonhuman animals [perhaps sentient ones?] have moral status.

The conjunction of assumptions 1 and 2 implies that there are degrees of moral status among those who have it. Not everyone agrees, of course. But, even to consider the issue of whether moral status comes in degrees requires some understanding of what it might mean to assert that some beings have higher moral status than other beings who also have moral status. For the authors, the assertion "entails that the moral presumptions against interfering with you (destroying you, experimenting upon you, etc.) are far more stringent than those against interfering with the dog" (243). Some authors, by subtle contrast, understand the assertion of degrees of moral status in terms of harm, for example: "If a being has more moral status than another being, then a harm to the first being matters more, morally, than a similar harm to the second being."² Both of these assertions embody some version of what I call the *unequal-consideration model of differences in moral status*.³ According to this model,

2. Elizabeth Harman, "The Potentiality Problem," *Philosophical Studies* 114 (2003): 173–98, at 175.

3. See, especially, my "Moral Status as a Matter of Degree?" *Southern Journal of Philosophy* 46 (2008): 181–98. This model may be contrasted with the *unequal-interests model of differences in moral status*, a model that (1) accepts equal moral consideration for all beings with moral status and therefore equal moral weight for their prudentially comparable interests yet (2) emphasizes how differences in the interests that different beings possess can translate into stronger moral protections for some beings—at least in some circumstances (e.g., when some individual must be harmed or constrained). For example, as-

to assert that one class of beings (say, persons) enjoys higher moral status than another class of beings (say, sentient nonpersons) is to assert that the interests of individuals in the first class carry greater moral weight than the (prudentially) comparable interests of individuals in the second class—whether the greater moral weight is to be understood in terms of deontological constraints, consequentialist prioritizing, or some other consideration.

You, I, and other cognitively normal, sufficiently mature human beings are persons and therefore, according to the authors, enjoy higher moral status than dogs and at least the vast majority of other nonhuman animals. On what is our higher status based?

Assumption 3: The ground of persons' higher moral status is one or more sophisticated cognitive capacities.

Now the authors introduce a technical term: "We will call an individual (human or not) who has the relevant sophisticated cognitive capacities, whichever they are, and so also the corresponding high moral status, a *self-standing person* (SSP)" (243). This linguistic stipulation effectively incorporates the first three assumptions. From the standpoint of someone who doubts at least one of the assumptions—for example, that persons have higher moral status than dogs⁴—employment of the term will seem question-begging. At some points in the current discussion, I will favor the term *paradigm person*, by which I mean any individual (e.g., a cognitively normal, sufficiently mature human being) whose personhood and full moral status are not genuinely controversial. This usage is consistent with views such as Jaworska and Tannenbaum's but also consistent with views that hold that all beings with moral status have full moral status because the latter does not come in degrees; it is also consistent with views that hold that personhood (as commonly understood) is sufficient, but not necessary, for full moral status.

This takes us to the Problem of Nonparadigm Humans. Consider the sophisticated cognitive capacity (or set of capacities) that confers

suming it is plausible to claim that death generally harms a person more than it harms a sentient nonperson, the person's and nonperson's respective interests in remaining alive are not prudentially comparable, in which case equal consideration is compatible with stronger moral presumptions against killing persons than against killing sentient nonpersons. Parallel points about distinguishable interests may be advanced in connection with the liberty and functioning of persons and sentient nonpersons, respectively. See my *Taking Animals Seriously: Mental Life and Moral Status* (Cambridge: Cambridge University Press, 1996), chap. 8. Whether such moral differences within an equal-consideration framework are substantial enough to warrant the assertion of differences in moral status is admittedly debatable.

4. Harman, for example, considers but ultimately rejects this assumption ("The Potentiality Problem"), as do many champions of animal rights.

higher moral status, on the authors' view. Because this capacity is attributable to you and me but not to dogs, it would presumably not be attributable to some human beings—including infants and some severely cognitively disabled human beings—who are no more cognitively sophisticated than dogs. Hence the challenge of accounting for another assumption the authors make:

Assumption 4: Human infants and severely cognitively impaired humans have higher moral status than dogs and at least most other nonhuman animals.

Jaworska and Tannenbaum's primary argumentative goal is to show that infants whose cognitive capacities are otherwise like a mature dog's nevertheless have higher moral status. (They do not directly address the moral status of fetuses.) Their secondary goal is to extend the analysis to the severely cognitively impaired, thereby showing how they too have higher moral status. Their central contention in support of the primary goal is that an infant, unlike a dog, can participate as a reeree in person-rearing relationships and that this capacity grounds higher moral status. Let us turn to and evaluate their arguments.

II. CRITIQUE OF THE AUTHORS' REASONING ABOUT INFANTS

Jaworska and Tannenbaum begin with considerations in action theory. They contend that varying the end of an action can change its nature and value—as, for example, altering someone's purpose in hitting tennis balls can change her activity from fooling around on the tennis court to admirably striving for self-improvement and accomplishment. Moreover, the act of learning to do something involves being guided by the appropriate end, whether the end is one's own or that of someone else. A child's playing a game might in this way be guided by his parents' goal of his learning cooperative behavior. Now, turning an infant or other juvenile reeree into an SSP requires extensive interaction, and some of the relevant activities involve learning by practice. For instance, participating in simple rule-bound games such as peekaboo can be an early form of practicing to be a maker of evaluative judgments. Importantly, the reeree in such interactions cannot be entirely passive. She "must be an active and cooperative participant," and she "intentionally engages in the activities" that are means to becoming an SSP (253).

Having set up the idea of reerees' being active participants in activities that can help them grow into SSPs, Jaworska and Tannenbaum identify two candidates for "SSP activities": activities that distinguish SSPs from those with lesser moral status, including most or all animals. Making evaluative judgments, as already mentioned, is one candidate.

The other candidate for an SSP activity is caring, in which case infants' emotional engagement with caregivers might instantiate learning the SSP activity.

Let me briefly interrupt the flow of exegesis to note how implausible the second candidate is. If caring were an SSP activity, then few if any animals would be capable of it. But this is plainly false. Caring abounds throughout the mammalian order. (I believe that this is also true of birds, but I won't press the point.) The word "mammal" is etymologically related to "mammary"—the late Latin *mammalis* meaning "of the breast"—reminding us that mammals characteristically nurse their young. Unlike reptiles, amphibians, fish, and invertebrates, mammal infants are highly dependent on being nurtured. The mammal brain is well equipped for emotional capacities—including not only limbic and autonomic sympathetic nervous systems, which are shared with "lower" orders of animals, but also a distinctive neocortex—and there is ample evidence that mammals' emotional capacities, fashioned through natural selection, include the caring (not just the activity but also the feeling that tends to accompany it) that allows highly immature mammal infants to develop into more independent animals.⁵ Educated common sense suggests that, at the very least, mammalian mothers tend to care for their infants. It is not much of a stretch to think that juvenile mammals in turn typically care about their mothers. Other types of close relationships that occur in many mammal species indicate other instances in which caring is likely to be present in the animal kingdom. Caring cannot be an SSP activity because many nonpersons engage in this activity.

Returning to the authors' argumentation, the reason it matters that infants can participate in activities that involve learning skills that, in turn, can develop into those involved in (full-blown) SSP activities is that such youthful participation can constitute incomplete realizations of those activities. "Expressed in different terminology . . .," Jaworska and Tannenbaum add, "the reeree is already engaged in the form of life of an SSP, even though the reeree is not yet an SSP" (254).⁶ The reason this incomplete realization of SSP activities matters, in turn, is that even partial realization of these activities, according to the authors, inherits their value.

5. For a detailed examination of the evidence for the attribution of emotional lives to animals, see DeGrazia, *Taking Animals Seriously*, chap. 5.

6. For a formidable critique of such Wittgensteinian appeals to "forms of life" in addressing the Problem of Nonparadigm Humans, see Jeff McMahan, "Our Fellow Creatures," *Journal of Ethics* 9 (2005): 353–80. Jaworska and Tannenbaum confine their references to forms of life to a single paragraph of their paper, so McMahan's critique does not address their central argumentation.

For a reeree's activities to amount to learning SSP activities by practice, thereby constituting incomplete realizations of SSP activities, what follows must be true: (1) the activities are guided by the rearer's end of the reeree's becoming an SSP "while remaining the same individual";⁷ (2) the activities model SSP activities; and (3) the rearer achieves a sufficiently strong connection between the reeree's activities and the end insofar as (a) the choice of the end and of the reeree's activities as a means thereto is minimally reasonable and (b) the activities are feasible means to the end (254–55). Taking a normal nine-month-old infant as their example, Jaworska and Tannenbaum address the capacity of even young human beings to participate in—and partially realize—SSP activities. It is this capacity that grounds infants' moral status. Because the crucial trait is an already-existing capacity, the appeal is not, the authors insist, to the nine-month-old's potential to be an SSP or (what comes to the same) to realize, more fully, SSP activities (257). In view of what they go on to say about the difference here between animals and human infants, their disavowal of appeals to potential is highly questionable.

The authors note that some animals such as dogs have "the capacities to engage in activities with another being (animal parent or human owner⁸) that, at one level of description, are very similar to reerees' activities, for example, playing rule-governed games such as fetch, forming emotional bonds, and so on" (258).⁹ However, "without the context of a person-rearing relationship, the animal's activities cannot be transformed [by the ends of parents or caretakers] into incomplete realizations of the ideal supplied by SSP activities" (258). But, even if dogs cannot become SSPs (granting this assumption for a moment) and therefore cannot be embedded in minimally reasonable, feasible plans to be reared into SSPs, it is mysterious how human caretakers' ends could make it the case that infants have a crucial capacity that dogs—whose occurrent cognitive capacities are comparable—lack. There doesn't seem to be a real difference in present capacity here. The only real differences seem to be in the intentions of certain SSPs, in relationships with these SSPs, and in the potential of the infant, but not the dog, to become an SSP. This observation is very damaging for Jaworska and Tannenbaum, who are eager to avoid basing their account of

7. Strictly speaking, the words in quotation marks are redundant. Entity A cannot become entity B if A is not numerically identical to B. If numerical identity is disrupted between A and B, then A is succeeded by B.

8. Many of us who agree with Jaworska and Tannenbaum that dogs have moral status may prefer a term such as "caretaker" to "owner" (even if the latter is preferable to "master"). Surely it is problematic to regard beings with moral status as property, current law notwithstanding.

9. Note in passing: If these animals can form emotional bonds, why think they are incapable of caring?

moral status on potential or relationships, two bases they believe to be hopelessly misguided.¹⁰

Assuming with the authors that neither the potential to grow into an SSP, the rearing relationship itself, nor the two factors together can confer the capacity to participate in—and partially realize—SSP activities (thereby conferring higher moral status), the rearer's end or intentions must do crucial work. But the authors provide no good reason to believe that one's intentions can effect such a seemingly magical transformation. We should therefore not accept their claim that the normal nine-month-old infant has a capacity that the dog lacks and that serves as the basis for higher moral status.

Doubts about the authors' claim grow with consideration of a hypothetical scenario.¹¹ Imagine that stem cell science has advanced to a point at which individuals can undergo the introduction of human neural stem cells with the predictable result of massively augmented reasoning ability. Suppose it is possible to perform this intervention on dogs, thereby transforming them into SSPs. Let's assume, not implausibly, that such transformations would be numerical-identity-preserving so that canine individuals who are cognitively enhanced survive the transformation (rather than being replaced by smarter individuals).¹² Now imagine two dogs, A and B, who have different human caretakers. Both A and B engage in activities such as fetch that can constitute partial realizations of SSP activities, and the dogs have identical occurrent cognitive capacities. But A's caretaker intends (in accordance with a reasonable plan) to rear A into an SSP, taking advantage of fetch and

10. See Agnieszka Jaworska and Julie Tannenbaum's excellent discussion, "The Grounds of Moral Status," in *Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Stanford, CA: Stanford University, 2013), <http://plato.stanford.edu/archives/sum2013/entries/grounds-moral-status/>.

11. Thanks to an associate editor for prompting me to explore such a case.

12. On a biological understanding of the numerical identity of living things, a view I defend (David DeGrazia, *Human Identity and Bioethics* [Cambridge: Cambridge University Press, 2005], chap. 2), it is plausible to judge that a dog's identity would not be disrupted by such enhancement. The criterion for persisting over time, on this view, is continuing one and the same life. Moreover, it is plausible to maintain that the enhanced individual, now an SSP, would still be a dog, having been born of dogs, having a recognizably canine body, retaining a canine genome (notwithstanding the presence of some human neurons), and presumably retaining the capacity to reproduce with other dogs. If so, then dogs are not essentially nonpersons even if no dogs, so far, have been persons. Now, even if this thesis is incorrect, and the cognitive enhancement resulted in a being that was not a dog, it would not immediately follow that the transformation was identity-disrupting. After all, it is hardly self-evident that an individual could not survive a change in species—and continuing one and the same life seems compatible with doing so. This observation suggests that (animals who are currently) dogs are not essentially dogs, just as (current) children are not essentially children and can become adults. Of course, if a dog were enhanced into something that was not a dog, we would not have an example of a (current) dog who is an SSP.

other activities (feasible means to this end) with the help of cognitive enhancement, whereas B's caretaker has no such intention with respect to B. Jaworska and Tannenbaum's account apparently implies that because of this difference in intentions, A's relevant activities, unlike B's similar activities, are partial instantiations of SSP activities, and, for this reason alone, A has much higher moral status than B. This is scarcely credible. This result is even more incredible if we imagine that A quite imperceptibly suffered a hematoma that precludes successful cognitive enhancement—destroying A's potential to become an SSP (although A's caretaker doesn't know about the hematoma and retains a reasonable belief that A can become an SSP). Now A lacks the potential to be an SSP whereas B has the potential, yet on the authors' account A has higher moral status than B. It is implausible to hold that intentions can make such a difference to beings' moral status.

III. CRITIQUE OF THE ACCOUNT'S EXTENSION TO THE COGNITIVELY DISABLED

The authors' secondary goal is to show, by extending their analysis, that cognitively impaired human beings whose relevant occurrent capacities are no higher than a dog's nevertheless have higher moral status than a dog's. Here Jaworska and Tannenbaum consider the case of nine-year-old Ashley, whose "development never progressed beyond that of an infant" (259) due to some non-genetics-related factor. They contend that "Ashley, unlike most animals, has the capacity to engage in activities transformed by a person-rearing relationship and so also has the moral status this confers" (259). Considering that Ashley can never become an SSP, so that no rearing activities can realistically aim to transform her into one, the authors' contention is counterintuitive. How do they defend it?

According to Jaworska and Tannenbaum, even when it is unreasonable to maintain an end aim because the end is known to be unattainable, it may be reasonable to treat the end as a standard worth pursuing (260). Now, whether or not the authors are correct on this point, they do not defend it convincingly. Their favorite example concerns justice: even if current political realities in a particular state make justice unattainable there, it may be reasonable to pursue justice as a next-best way of combatting current injustice. But, for this to count as a helpful example, one must suppose that justice is all-or-nothing. This isn't plausible, which is why one might intelligibly believe that, say, China is less just than Canada but more just than Syria. Thus, the reasonableness of pursuing justice where perfect justice is known to be unattainable does not support the claim that it can be reasonable to pursue aims known to be unattainable; rather, the example supports the obvious claim that it can be reasonable to seek more of a good thing when perfection is manifestly

out of reach. In any case, Jaworska and Tannenbaum assert that end standards have so much in common with end aims that they can play the same role in transforming the nature and value of actions (260).

A crucial moral requirement of parenting, Jaworska and Tannenbaum continue, is holding the flourishing of one's child as an end, even when her flourishing is impossible. Moreover, "Ashley's flourishing requires her becoming an SSP" (262). The authors support this pivotal assertion by noting that each of "two plausible views of the relevant benchmarks" vindicates it (262). (Unfortunately, they simply assert without argument that the two views, to be discussed in the next paragraph, are plausible.) Contra Jaworska and Tannenbaum, I submit that if a human being is incapable of becoming an SSP, her flourishing is a function of having a good quality of life understood in more hedonistic or preference-based terms. On this view, a severely retarded individual who mostly has good days by standards appropriate to his cognitive baseline—having more satisfying or pleasant experiences than frustrating or painful ones, getting most of the things he wants—is flourishing. I reject any claim that this individual is faring badly just because most mature human beings expect higher cognitive functioning and associated accomplishments, relationships, and so on, in what they would consider rewarding lives; the tendency to accept such a claim may reflect a tendency of SSPs to project their criteria for satisfying lives (which are reasonable criteria for them) onto the rest of the species. Accordingly, I find the more subjective prudential value theories implicit in the views of most disability activists to be more defensible than the objective-list accounts embraced by Jaworska and Tannenbaum and like-minded theorists.¹³ Thus, I deny that the flourishing of Ashley or any nonparadigm human is precluded, or even diminished, by the impossibility of becoming an SSP.

Two accounts imply that Ashley's flourishing should be interpreted by reference to SSPs. One is the Intrinsic Potential Account, which maintains that one's flourishing should be assessed by the benchmark of the highest capacities that one has possessed or had the intrinsic potential to possess. (Intrinsic potential, a matter of one's "nature" or genetic constitution, is contrasted with such extrinsic possibilities as gaining an enhanced intellect through a brain graft or neural stem cell implant, assuming the intervention occurs after one has come into being.¹⁴) Although disagreeing with this account, I appreciate that there are respect-

13. For elaboration of this idea, see my "Disability and Disadvantage through the Lens of Value Theory," *APA Newsletter on Philosophy and Medicine* 11 (published online spring 2012).

14. Let us make one assumption in this complicated territory and note a second assumption. First, let's assume (for simplicity's sake), as the authors apparently do, that

able reasons for embracing it. One advantage of this account is that one's flourishing is tethered to one's own potential or actual characteristics, generating standards that have a reasonable claim to relevance.

Not so for the second account of flourishing Jaworska and Tannenbaum regard as plausible, the Species Norm Account, according to which one must meet age-appropriate benchmarks determined by one's species in order to flourish. It just seems irrelevant to how well one is faring in life whether one is doing well by the standards that are common among species members. Species is a biological category and, in itself, has no greater moral or prudential relevance than other biological categories such as subspecies, genus, and order. Indeed, the authors themselves seem to understand this point when they assert that appeals to species are unsuccessful bases for assigning moral status and addressing the Problem of Nonparadigm Humans.¹⁵ Why are they open to such an appeal in the context of interpreting individuals' flourishing? A possible answer is suggested in a note in which they acknowledge a disadvantage of the Intrinsic Potential Account: "the moral status of humans with a genetic severe [*sic*] cognitive impairment would remain unaccounted for" (269 n. 50). Presumably this is because a human with such a genetic impairment never had the intrinsic potential to develop into an SSP, in which case her flourishing would not require her becoming one, so that there could be no minimally reasonable end of treating her as if she could develop into an SSP. In view of this implication, the authors have a serious problem: one account of flourishing that they consider leaves the moral status of some nonparadigm humans—even among those who are judged to have the capacity to par-

one's genetic constitution is the genome with which one "originated" or came into being rather than one that resulted, say, from genetic interventions performed after one came into being. Second, the authors assume that genetic factors are definitive of one's intrinsic potential whereas environmental factors are not. But environmental factors can occur during gestation, and one might argue that if they alter one's potential (say, making mental retardation imminent) before the emergence of sentience, such environmental effects are relevant to intrinsic potential. This would be the case if we originate at the time that the human organism becomes sentient, as implied by the thesis that we are essentially "minded beings" (see Jeff McMahan, *The Ethics of Killing* [New York: Oxford University Press, 2002], chap. 1), for factors that exert their influence before one's origination would partly establish one's nature. If, by contrast and as I believe (*Human Identity and Bioethics*, chaps. 2 and 7), we originate at the time the human organism comes into being, then the authors' privileging of genetic over environmental factors in determining intrinsic potential would largely be vindicated; any preorigination environmental effects on gametes, for example, are likely to affect the being's nature and potential through effects on its genome.

15. They write: "Other accounts (e.g., appealing to potentiality, species membership, species relationship) have attempted to explain the higher moral status of babies and the severely cognitively impaired, but all fail one or more key criteria for a successful account of moral status" (244).

ticipate in SSP activities—unaccounted for, while the other account they consider, the one that appeals to species norms, is deeply implausible.¹⁶

On either of the two accounts, Ashley's flourishing requires her becoming an SSP: she has the intrinsic potential to become an SSP because her disability is unrelated to her genetic constitution (a fact relevant to the Intrinsic Potential Account), and, of course, she is *Homo sapiens* (relevant to the Species Norm Account). Although Ashley cannot actually become an SSP, Jaworska and Tannenbaum claim, her activities can meet the conditions for being incomplete realizations of SSP activities (264). Thus, Ashley has the capacity to participate in SSP activities and therefore, like the healthy nine-month-old infant, has higher moral status than a dog. Having exposed several weak links in the argumentative chain, I maintain that we should reject the argument.

IV. REFLECTIONS ON THE SCOPE OF THE AUTHORS' ACCOUNT AND ON THE ENDURING CHALLENGE

As someone who shares Jaworska and Tannenbaum's concern for infants and the cognitively disabled, I hope that robust moral protections for these human beings can be rigorously defended—whether by appeal to moral status or to other grounds of protective obligations. I have contended that the authors fail to provide a cogent argument for the thesis that the cognitively normal nine-month old infant and the severely disabled Ashley have higher moral status than a dog.

Suppose, however, they had done so. Then they would have successfully addressed the Problem of Nonparadigm Humans as it applies to human beings who are relevantly similar to a healthy nine-month-old infant or Ashley. But what nonparadigm humans are relevantly similar to them? What is the scope of "the capacity to participate as a reeree in person-rearing relationships"? Despite carefully noting that their objective has only been to show that "a baby or severely cognitively impaired human who is otherwise cognitively similar to an animal such as a dog has a higher moral status" (269), they suggest that the scope of their

16. It might appear that Jaworska and Tannenbaum accept the first horn of this dilemma because they note that their approach does not handle the moral status of all nonparadigm humans. But Jaworska and Tannenbaum concede the latter point primarily because not all nonparadigm humans have the capacity to participate in SSP activities (see, e.g., 268–69). The Species Norm Account of flourishing has the advantage of not excluding from the scope of the authors' account those humans who have similar occurrent cognitive capacities as those who have the aforementioned capacity yet lack the potential to be SSPs due to genetic factors. In other words, the Species Norm Account of flourishing "expands the range of humans for whom flourishing requires becoming an SSP" (263) and therefore allows the authors' theory of moral status to confer high moral status on more nonparadigm humans. The authors leave open which account of flourishing is correct (see also, e.g., 269 n. 50).

argument may be fairly broad, extending to “unimpaired neonates (and cognitively impaired children arrested at this low level)” (269).

On this point, they are surely mistaken. Even if we granted that caring were an SSP activity, distinguishing persons from nonpersons, the authors stated early in their article that purely passive relating to a caregiver is not sufficient for partial realization of an SSP activity. Again, in their words, one “must be an active and cooperative participant,” and one “intentionally engages in the activities.” Newborn infants can’t participate actively and do not perform intentional actions. The same is true of some older human beings who are very severely disabled, such as those in the very late stages of Alzheimer’s disease. This criticism gains traction even if the asserted SSP activity is making evaluative judgments rather than caring.

Thus, even if Jaworska and Tannenbaum’s main arguments were successful, they would have left untouched a larger portion of the Problem of Nonparadigm Humans than they realize. This may or may not be a significant disadvantage, depending on whether their approach could be combined with another approach in a comprehensive hybrid solution—and depending on how much it matters whether an account of moral status is theoretically unified. Interestingly, Jaworska and Tannenbaum trumpet the advantages of “preserving the unity of explanation of all cases of higher moral status” (270), something their own account, even if successful, would be unable to achieve. Meanwhile, many or most attempted solutions to the Problem of Nonparadigm Humans have been directed at the full range of these human beings. Or more precisely, they have been directed at the full range of those nonparadigm humans whose moral status we generally agree to be comparable to that of paradigm persons. An example, to be discussed below, is the equal-consideration approach.

It will help, in considering theoretical options, to be clear about which nonparadigm humans an account should strive to cover. I suggest this target: the set of human beings who are not paradigm persons but are sentient. These individuals, we know, can be hurt and harmed in ways that matter morally. Anencephalic infants and individuals in irreversible comas or “persistent” (irreversible) vegetative states represent more debatable cases; perhaps the best account of moral status will not imply that they have moral status, or full moral status, even if social sensibilities, respect for past preferences (in the case of formerly sentient, irreversibly unconscious individuals), and other considerations recommend certain protections and constraints in their treatment.

So I suggest that theorists who are concerned about nonparadigm humans can agree to focus on those who are sentient, in the hope of achieving a satisfactory account covering these individuals. We might leave it for another day to see whether such an account can and should

be extended to those who are only potentially sentient and those who were previously sentient. At this point in our discussion, however, a casual use of the term “sentient” is probably insufficient. By “sentient” I mean capable of having feelings: conscious sensations, emotional experiences, or moods. Sentient human beings, importantly, include all infants and cognitively impaired individuals who are not entirely incapable of consciousness. In the real world as we know it, all beings capable of consciousness are sentient.¹⁷ And this capacity survives periods of dreamless sleep and temporary anesthesia; the capacity must not be confused with occurrent states of consciousness. Nor is this capacity, which involves current ability grounded in brain architecture, to be confused with mere potential, which involves future ability contingent on neural development. With our target in view, a few further remarks may be helpful.

Suppose we judged that sentience is sufficient not only for moral status (consistent with Jaworska and Tannenbaum’s assumption 2) but for full moral status (entailing rejection of their other three assumptions). This would be some sort of equal-consideration view. One undeniable attraction of such an approach is the elimination of the Problem of Nonparadigm Humans. The nonparadigm humans whose moral status we seek to confirm are sentient. Therefore, on this approach, they straightforwardly have full moral status. Some, presumably including Jaworska and Tannenbaum, will find this solution to the problem overly revisionary from the standpoint of common morality. We would be deprived of the justification for much routine use of animals for human purposes, at least when such use is significantly harmful to the animals. Accordingly, we would have to judge that vast areas of current animal usage are morally indefensible. Of course, many people—including quite a few philosophers, activists, and others—already believe this. They will regard as irrelevant Jaworska and Tannenbaum’s observation that most philosophers and other people accept assumption 1: that persons have higher moral status than dogs. After all, the widespread acceptance of this assumption may be due to a shared prejudice, an underestimation of animals’ mental lives, or some other factor that can be expected to distort beliefs. It is notable that the paper never considers the possibility that assumption 1 is erroneous. Of course, any paper must make some assumptions. But it would be appropriate to note that this assumption, on which the paper pivots, is not beyond reasonable doubt.

On the other hand, maybe assumption 1 is correct, and to embrace equal consideration for all sentient beings is to go too far in a progressive, animal-liberating direction. If so, the Problem of Nonparadigm Humans remains. In this case, I would take seriously several possibilities:

17. Thus, we need not worry about possible gods or other beings who are conscious without having any feelings.

(1) combining appeals to sentience (a necessary condition for moral status) with appeals to potential personhood as a means of conferring full moral status on infants;¹⁸ (2) viewing the difference in moral status between persons and sentient animals as relatively small (smaller than would be required to justify routine harming of animals for “unnecessary” human benefits), so that the Problem of Nonparadigm Humans becomes less severe; and (3) allowing that those sentient human beings who are not potential persons due to severe disabilities be protected, in part, by appeals to widespread moral sentiments, social relations, and the need for public order. Regarding the last suggestion, we should not expect too much from an account of moral status. Some appropriate moral protections may have their source not in the traits of the individuals protected—in their moral status—but in other factors that are relatively stable features of human social life. I will have to leave it to another occasion to explore these possibilities in depth.

18. Harman presents one way of running with this idea (“The Potentiality Problem”), although I do not find her account fully satisfactory. Regarding the basic idea of combining appeals to sentience and potential personhood, it should be noted that it implies that late (sentient) fetuses have full moral status, even if the pregnant woman’s autonomy and bodily integrity must also be addressed in the ethics of late abortion. Also, any appeal to potential should not commit the fallacy of inferring from the fact that something is potentially X that it already is X or has the value of X. Appeals to potential that are worth considering are far subtler than this and can take various forms.