

**Title: The problem of the Kantian line**

Abstract: In this paper I discuss the problem of the Kantian line. The problem arises because the locus of value in Kantian ethics is rationality, which (counterintuitively) seems to entail that there are no duties to groups of beings like children. I argue that recent attempts to solve this problem by Wood and O'Neill overlook an important aspect of it before posing my own solution.

**Introduction**

The basic problem I am going to discuss in this paper is that by focusing on rational beings, Kant's and Kantian ethics seem to draw the lines of community too narrowly. Call this the problem of the Kantian line. On the one hand, there is a strong intuition: certain beings outside the Kantian line (small children, dogs, cats, trees, etc.) have moral standing and, indeed, might be just as if not more important as/than the ones inside it. On the other hand, there is the Kantian theory telling us that these beings have no inner worth and that there are no genuine duties to them. The problem of the Kantian line has to do with this contrast between intuition on the one side and the dictates of Kant's and Kantian theory on the other.<sup>1</sup>

A striking statement of this problem can be found in John Rawls' *Justice as Fairness*:

I take it as obvious, and accepted by common sense, that we have a duty towards all human beings, however severely handicapped. The question concerns the weight of these duties when they conflict with other basic claims. At some point, then, we must see whether justice as fairness can be extended to provide guidelines for these cases;

and if not, whether it must be rejected rather than supplemented by some other conception. (Rawls 2003, 176n59)

In this passage, Rawls concedes that the severely handicapped fall outside the Kantian line, a line he explicitly has adopted in his theory of justice in describing the two moral powers that all moral subjects have, and Rawls suggests that if this cannot be remedied, justice as fairness—the entire conception of justice he had devoted his life to expounding—might have to be rejected.<sup>ii</sup>

In what has become one of the more influential treatments of this problem, Allen Wood argues that the easiest solution is simply to jettison the part of the theory that gets us into this mess in the first place, what he calls the personification principle (Wood 1998). If reflection leads us to reject Kant's line, then all we need to do is redraw it. This need not entail rejecting other, core insights of Kant's ethics. Onora O'Neill agrees (O'Neill 1998). Kant's Kantian line seems to have become another Maginot line.

In this paper, I argue that Kant's and Kantian ethics enable us to reconcile theory with intuition without redrawing the line: the Kantian line can remain Kant's line without implying hugely counterintuitive results. The paper is divided into four main sections. In the first, I explain where the Kantian line lies in more detail. In addition, I flesh out the Wood/O'Neill approach (henceforth: WO). I raise three objections to WO and I argue that the third exposes an issue that might help to solve the problem of the Kantian line in the end. From there, I move into what might be called Kantian apologetics. In the second, third and fourth sections, I offer six arguments to justify the idea that even if we toe the Kantian line, the kinds of behavior prescribed

by the theory toward those outside it will conform with intuitions. In fact, I argue, based on the third objection posed in section one, that a theory might conform with intuitions *only* if we toe the Kantian line. The first four arguments (section 2) focus on individuals in their first childhoods; the fifth one (section 3) focuses on individuals in their second childhoods; the sixth and final argument (section 4) focuses on the profoundly intellectually disabled.

### **1 Drawing the Kantian line**

According to Kantian accounts of personhood, X is a person only if X has the capacity for rationality. Having the capacity for rationality entails having a cluster of properties and abilities, foremost among which are the ability reflectively to set ends and the ability to govern oneself in accordance with reason. Kant explains this in terms of negative and positive accounts of freedom (Kant 1996, 94-95). Freedom defined negatively is the ability of an agent to determine him/herself independently of alien causes. Freedom defined positively is the ability of an agent to determine him/herself in accordance with a law that originates in his/her own will. This requires the ability to be governed in accordance with the representation of a law rather than merely to be governed in accordance with natural necessity.

Christine Korsgaard interprets this as the ability of an agent to reflect on the grounds for his/her beliefs and/or choices; to decide whether those grounds are good ones; and to govern him/herself accordingly.<sup>iii</sup> This could be analyzed further into capacities like: self-control, understanding, value, instrumental reason and im-

agination.<sup>iv</sup> Here, self-control would be the ability to pull back from an impulse in order to attain reflective distance; understanding would be the ability to comprehend the options with which one is faced (and that one has options); value would be the starting points one might use to veto or condone one or another option; instrumental reason would be the ability to move from those starting points to a conclusion by means of deliberation; and imagination would be the facility for making sense of the possible consequences of different options.<sup>v</sup> Such an analysis could be carried further, for example, by attempting to tie these mental capacities to mechanisms in the brain.<sup>vi</sup>

However, even without additional discussion it is probably evident that if one takes Kant at his word when he says that rational nature exists as an end in itself, then bacteria, plants and insects fall outside the Kantian line.<sup>vii</sup> This is why Rawls notes that justice as fairness might have to be rejected if it cannot provide guidelines about these cases. The problem of the Kantian line is a big deal, and it is so not only to utilitarians who argue that the relevant capacity for moral consideration should be the capacity to suffer rather than the capacity to reason.<sup>viii</sup>

As noted above, on Wood's account the solution is to reject the personification principle because it follows from this principle that "rational nature is respected only by respecting humanity *in someone's person*, hence that every duty must be understood as a duty to a person or persons" (Wood 1998, 196, my emphasis). Wood arrives at this conclusion by considering Kant's famous humanity formulation of the categorical imperative: "So act that you treat humanity, whether in your own person or in the person of any other, always at the same time as an end, never

merely as a means” (Kant 1996, 80, emphasis omitted). Kant uses the term ‘humanity’ in a technical sense rather than to pick out all but only humans. The humanity formulation of the categorical imperative says that rational nature should be treated as an end in itself in persons, and it is generally interpreted as requiring that rational beings be treated respectfully on the grounds of their inner worth or dignity.<sup>ix</sup>

In advocating the rejection of the personification principle, Wood argues—and O’Neill agrees—that the problem of the Kantian line can be remedied by dropping the “in your own person or in the person of any other” clause of the humanity formulation of the categorical imperative (Wood 1998, 196; O’Neill 1998, 212). In other words, Wood thinks that the problem of the Kantian line can be solved by treating rational nature with respect even when not in persons. This is illustrated in the following excerpt:

...my main argument here depends on saying that we should also respect rational nature in the abstract, which entails respecting fragments of it or necessary conditions of it, even where these are not found in fully rational beings or persons.

The point I am making is easiest to see, and hardest to deny, in the case of many human beings...who lack ‘humanity’ (in the technical sense [i.e., rational nature]), and therefore must fail...to be persons at all. They include small children and people who have severe mental impairments or diseases which deprive them, either temporarily or permanently, of the capacity to set ends according to reason. (Wood 1998, 198)

However, there are three problems with WO.<sup>x</sup> The first is that rejecting the personification principle does not get WO to where they claim it gets them. This is because personhood extends over all those beings that have rational nature. If the extension of personhood did not include all beings with rational nature, then reject-

ing the personification principle certainly would alleviate the problem of the Kantian line: in that case, enjoining agents to treat rational nature with respect *in persons* would be telling them to respect rational nature in some instances, but it would leave open whether they ought to respect rational nature in others. One might think that the implication of such an injunction would be that there are no duties of respect in those other cases. Thus, jettisoning the personification principle would do some work.<sup>xi</sup>

But because personhood does include all beings with rational nature, the enjoinder to treat rational nature with respect *in persons* tells agents to treat rational nature respectfully wherever they might happen to come across it. It follows immediately that, as it stands, the personification principle does no work and, thus, rejecting it does not get us anywhere. To put it bluntly, respecting rational nature is not the same as respecting “fragments” or “necessary conditions” of rational nature, and there is no entailment relation between the two.

The second problem is that an injunction to respect fragments and necessary conditions of rational nature seems like it will face a problem that is analogous but opposite to the one faced by the more traditional Kantian line. That is, whereas the more traditional Kantian line seems to be too restrictive, this new, redrawn Kantian line seems to be too inclusive. Oxygen is a necessary condition for the existence and exercise of rational nature as we know it. To say that I—you—everybody—ought to respect oxygen on these grounds seems counterintuitive to me, and although I have done no widespread empirical studies, informal surveys of students in my classes indicate that I am not alone in this.

However, these two problems might be less serious than they appear at first blush. For example, the first problem really only scratches the surface of WO, and the rejoinder is as obvious as it is simple: the idea that fragments and necessary conditions of rational nature are deserving of respect stands regardless of whether one can get there by the formulaically neat rejection of the personification principle. The point is to redraw the Kantian line, and logic chopping analysis of the way in which this point is expressed in no way impugns it.

The second problem probably could be addressed in a similar fashion. Wood and O'Neill might begin simply by putting more emphasis on the "fragments" and less on the "conditions" of rational nature. The idea WO really seems to be after is that there are certain mental capacities, like the ability to suffer, that are prerequisites of rationality, and these mental capacities warrant respect even when full-blown rationality is not present. Of course, as one narrows in on where WO is redrawing the Kantian line, it might turn out that it is not quite where one wants it. Moreover, it might be difficult to give an argument starting from anything like self-evident premises to defend the new Kantian line.<sup>xiii</sup> But I doubt that WO would have a hard time responding to objections about whether it is appropriate to prescribe an attitude of respect to the air (it is inappropriate, but they would argue that it is not required by their view).

However, the third problem I want to raise is more serious: it is important to realize that the problem of the Kantian line does not stop with duties of beings within the Kantian line to beings outside it; it extends to duties of beings outside the Kantian line *to those within it*, and not being a person means not being subject to the

moral law.

To put this another way: Rawls, Wood and O'Neill focus on a very important issue. As the Kantian line stands, the theory seems to exclude some beings as *objects* of the moral law contra intuition. But in focusing on this issue, they miss another: these same beings are excluded as *subjects* of the moral law. To make concrete the way in which these two issues come apart, suppose the Kantian line excluded anyone not yet 18 from personhood. Then there is the Rawls/Wood/O'Neill worry that there would be nothing morally awry with using kids for target practice. But there is also the flip-side of this: there would be nothing morally awry with kids using *us* for target practice.<sup>xiii</sup> These are *both* counterintuitive results of the Kantian line, and understanding this can help to explain why WO faces a serious challenge: WO picks up on only half of the problem of the Kantian line. WO picks up on what might be called the problem of value. It does not pick up on what might be called the problem of moral responsibility.<sup>xiv</sup>

Perhaps surprisingly, I think that the solution to the problem of the Kantian line is not to redraw it (*pace* WO). Rather, the solution lies in showing that even when you toe the Kantian line, nonrational beings do not drop off the moral spectrum.<sup>xv</sup> In the remainder of this paper, I shall try to defend this with regard to three subgroups of the nonrational: the very young who are enjoying their first childhoods; the very old who are enjoying their second; and the profoundly intellectually disabled.<sup>xvi</sup>

## **2 Not yet there, but transitioning in**



As noted in the introduction, I am going to begin by considering children: individuals who are not yet within the Kantian line but who are in the process of getting there.<sup>xvii</sup> I shall offer four arguments to defend the idea that toeing the Kantian line with regard to children does not have counterintuitive results.

Argument 1: treating the very young as if they are persons (in at least some respects) is the only way they will learn to be persons. The idea behind this first argument is that there is more to crossing the Kantian line into personhood than mere biology and time; there are also patterns of behavior that can be picked up only by practice. In particular, patterns of taking responsibility, of planning, of being thoughtful, of being sympathetic, of being self-disciplined—patterns that are as much learned as they are anything else. If children do not learn these patterns, they never will become people.

Imagine someone training to be an opera singer. There is a certain age before which a person's vocal chords will not be sufficiently well developed for him/her to be able to be an opera singer. But even once that age has been reached, one does not become an opera singer simply by opening one's mouth and bellowing as loudly as one can. It requires practice and technique—technique that is learned over time. Just so, maturing into personhood cannot be done in one fell swoop, so if we want children to become morally responsible adults, we must begin to treat them as such.

Note the word 'want' in the final sentence of the last paragraph. Consideration about training might generate prudential reasons to treat children as if they are persons in some respects. For example, if one thinks that abuse and neglect are criminogenic and if one would be made unhappy by having one's children grow up

into criminals, then one has a prudential reason not to abuse or neglect one's children.<sup>xviii</sup> Alternatively, if one thinks that violence begets violence and if one does not want to live in a violent society, then one has a prudential reason not to be violent toward children (regardless of whether they are one's own).<sup>xix</sup> In fact, given recent empirical work about the effects of witnessing violence on childhood development, the desire not to live in a violent society might generate a prudential reason not to be violent around children at all (regardless of whether the child is the object of the violence).<sup>xx</sup>

However, these prudential reasons are inapposite for present purposes. I am attempting to show that children do not fall off the moral spectrum, that there are specifically moral reasons to treat them as persons. So showing that there are prudential reasons to train children by treating them like persons in various ways does not help.<sup>xxi</sup> Nonetheless, the prudential reasons described in the previous paragraph can point the way toward moral ones. For example, bringing a child into the world might generate special duties not only of care but also of training and education. Moreover, the duty not to make the world a worse place as well as the duty to make it a better one generate moral reasons to participate in the education and training of children (or at least to avoid disrupting this training) by treating them as persons in various ways, reasons that will be especially weighty for parents insofar as parents generally have a more profound influence on their children than strangers.<sup>xxii</sup> If, as seems plausible, there are moral reasons for ensuring that the world has agents who are virtuous when a difference can be made in this regard without objectionable pa-

ternalism—and precisely because we are dealing with children, the kind of “paternalism” involved in caring for their moral characters would not (necessarily) be objectionable—then there are moral reasons for treating children as persons in various ways so that they will learn to be persons.<sup>xxiii</sup>

Now I think argument 1 is good as far as it goes. It has an important advantage over WO: it justifies not only treating children respectfully to a certain extent; it justifies also treating children as if they are morally responsible to a certain extent. So it addresses both parts of the problem of the Kantian line.

But it is important to realize one of its limitations: argument 1 justifies engaging in a sort of play-acting. Argument 1 enjoins us to act *as if* children were persons *even though we know that they are not*. If this were all that Kant’s ethics could get us, I think we would be warranted in looking elsewhere. But Kant’s ethics can get us more.

Argument 2: we should treat children as people because we cannot tell when the transition is made. The idea here is that the value of persons is so great and the cost of treating children as persons is so small that it simply makes sense (“do the math”) to treat children as persons. In other words, we do not want to risk treating a person wrongly because that would be *really* bad. The argument can be illustrated by analogy.

Suppose someone gives you a basket of indistinguishable white beads, and suppose s/he tells you that exactly one of those beads is a natural (not cultured) pearl. What would you do? Would you throw them away or put them where the cat might get at them? *No.*<sup>xxiv</sup> You would put them away somewhere safe so that you

later could come back to them to try to figure out which is the one that is valuable. In other words, you would treat all of them as if they were valuable so as not to lose the good one.<sup>xxv</sup>

Now this argument, like the last, gets over both parts of the problem of the Kantian line. (Strictly speaking, I think that this argument generates a stronger reason to treat the nonrational as valuable than it does for treating them as responsible. Nonetheless I think it goes some way toward the latter.) But this argument, also like the last, justifies only a sort of simulacrum, a game, an as if. You do not treat the beads as valuable because you really believe that all of them are. You treat them all as if they are valuable because you believe that one of them is but you are not sure which one—and the cost-benefit analysis just makes sense. Just so, you do not treat the nonrational as valuable and responsible because you think that they really are valuable and responsible. You treat them as such (on this argument) because you are worried that one of the individuals in front of you is not nonrational at all. You are worried that maybe one of the individuals in front of you is an actual person, and the cost-benefit analysis just makes sense. So although I do think that there is something to this argument (just as there was something to the first) I think that we need more.

Argument 3: let us return momentarily to the consideration of pearls. Suppose that you are growing some cultured pearls. Freshwater pearls take about 2-7 years before they can be harvested. So suppose you are looking at an oyster from your crop, and suppose that it has about 1 month to go before the harvest. Will you treat that oyster the same way you would treat an oyster you had been cultivating

for only about 1 month or a piece of rock? Presumably not. With only one month to go, that oyster is very near fruition, and it becomes valuable because of its *potential*.<sup>xxvi</sup>

Hopefully the idea as well as its application to the current discussion is clear. Children are almost people. They have not quite reached personhood. But they are as close as anyone can be without being a person. The value of the nonrational here is direct and not based on any sort of “as if” or any risk-averse cost-benefit analysis: the nonrational are valuable because of their potential. I think that this argument is basically as good as it gets on the Kantian picture. I also think that it is as good as it needs to get on any picture. But it is worth noting that this argument only justifies treating the nonrational as valuable; it does not justify treating the nonrational as morally responsible. I shall return to this below. For now, I would like to turn to one last argument about why it is good to treat the nonrational like people.

Argument 4: although children are not yet persons, they share a lot in common with persons. But this provides persons with a self-regarding reason to treat children like persons: if we treat children like things (or simply like non-people) then we run the risk of getting into bad habits and even dulling our own natural sympathies. So we ought to treat children as persons for our own sakes: not only is it bad for us to have our natural sympathies dulled, but also we heighten the risk of infringing on duties to others in the future.<sup>xxvii</sup>

Note that there are two different lines of reasoning in this argument and that they are to some extent independent. The first line of reasoning is based on the duty to promote one’s own moral development (or at least not to impede it), a duty to

oneself.<sup>xxviii</sup> The idea is that causing unnecessary suffering in children or treating them cruelly can make someone less able to sympathize and/or empathize with others' suffering: it can make someone "hard" in a way that should be avoided if possible.<sup>xxix</sup>

The second line of reasoning is based on duties to others. The idea is that causing unnecessary suffering in children or treating them cruelly can make one more likely to cause unnecessary suffering in other persons or to treat other persons cruelly.<sup>xxx</sup> This might be because of the hardening of one's character alluded to in the previous paragraph; alternatively, it might be because one gets into bad habits.<sup>xxxi</sup> Either way, the evident similarities between children and persons render it more likely that one will behave impermissibly toward persons if one abuses children or if one treats them poorly.<sup>xxxii</sup>

Now this argument, like the first two, gets us over both the problem of value and the problem of moral responsibility. But also like the first two, it justifies only a sort of playacting. And the playacting in this case is not even based on the value of the individuals with whom we are interacting: it is based on our own value. The first line of argument is self-regarding rather than other-regarding; the second is other-regarding, but it is other persons rather than the nonrational children with whom we are in immediate contact. Nonetheless, now we have four arguments for treating the nonrational like persons, and I think that all of them pull some weight even though the third remains, to my mind, the strongest and most important.

### **3 Already was, and transitioning out**

The problem that arises now is that not all of these arguments will apply to all of those who fall outside the Kantian line. These arguments were devised with the very young in mind. What about the very old? Obviously not all of the very old are in their second childhoods. But what about those who are? For example, suppose you walk into a dementia ward. You will be surrounded by individuals who once had rational capacities but have them no longer.<sup>xxxiii</sup> These individuals are outside the Kantian line. How can the Kantian avoid the conclusion (which presumably would constitute a *reductio* of the theory) that it is permissible to use the individuals on this ward for target practice or worse?

An argument like the first one made in the previous section will not work here. After someone has (for example) full-on dementia, s/he cannot relearn how to be a person; there is no conditioning or anything of that nature that will bring him/her back. That is not how dementia works. The third argument will not work, either, and for similar reasons. The third argument will not apply here because once someone has dementia, s/he is out to sea: his/her potential is spent, used up in getting over the hill. If this sounds callous, that is because it is supposed to. The point is that individuals with dementia do not have the potential to become persons. That phase of their lives is over, and it is not coming back.

The second argument made in the previous section can pull some weight here. Not only are the bounds of rationality vague and subject to the vagaries of judgment, but also rationality is notoriously difficult to assess. So there very often will be cases in which care for the elderly will be warranted on the grounds that we are (or should be) unsure whether the individual in question is still a person.

The fourth argument made in the previous section also works just as well here as it did in the case of the very young. The same two lines of reasoning imply that we ought not to cause unnecessary suffering in people with dementia. First, we can empathize with them, and insofar as we cause suffering in them, we shall be dulling our own sensibilities. Second, although they lack rational capacities, dementia patients still have a lot in common with people. They still have eyes capable of expression, still smile when fed something they like, still cry out when they fall, still reach for help when they are down. If you do not behave appropriately around them, you run the risk of picking up bad habits that will stick with you when you are not around them. The point here, as in the previous section, is that our abilities to compartmentalize are usually vastly overstated. Dementia patients have enough in common with persons that our abilities to compartmentalize would have to be quite fine-grained to avoid this problem (but they are not).

However, there is another argument that Kantians can make here about our duties to mere humans (nonpersons) in their second childhoods, one that does not seem to apply to the very young. To see how it works, the concept of a Cambridge change is needed. Something undergoes a Cambridge change if (but only if) there is a change in the true statements that can be made about it. The following example will illustrate why this kind of change is given a special name. Suppose that as of yesterday, there had been exactly  $10^{10}$  instances of people shaving themselves since Kant died. Well, I shaved this morning, so it follows that now there have been more than  $10^{10}$  instances of people shaving themselves since Kant died. Thus, the true statements that can be made about Kant have changed since yesterday. That is, the



predicates that can be predicated truly of Kant have changed since yesterday. This is not a result of any backwards causation; there is nothing mysterious going on here. The change occurs *ipso facto*. That is what is special about Cambridge changes: in addition to conventional kinds of alteration, Cambridge changes subsume *ipso facto* changes.<sup>xxxiv</sup>

Now we need a distinction between the post-mortem and the ante-mortem. As this concept is usually used, the post-mortem individual is the cadaver—the body moldering in a grave. The ante-mortem is the person as s/he was at some stage of his/her life, as *living*.<sup>xxxv</sup> Applying this distinction to the current discussion, let us say that the post-mortem is the mere human in his/her second childhood; the ante-mortem is the person as s/he was when s/he still was in full possession of his/her faculties—as s/he was when s/he *was* a person.

Finally, we need to distinguish between a person's interests and his/her states of consciousness with regard to those interests. This is best illustrated by appeal to example. Suppose that Jack is deeply in love with his wife, Jill, and, as such, he has an interest in her reciprocating that love and in her remaining faithful to him. But now let us suppose that Jill leads a double life. On the one side, she puts up the façade of being as devoted a wife as Jack is a husband. On the other, she carries on an affair (or two) and speaks disgustedly of Jack and his love. We need not explore this case in soap opera-esque detail (will Jack ever find out? What will he do if he does and will anyone emerge unscathed?). The point is simply that for as long as Jack remains in (blissful) ignorance, his interests are not satisfied even though he believes that they are. Of course, for as long as Jack remains in ignorance, his states

of consciousness include pleasure and joy. But if Jack *does* find out, then it is not that all of a sudden his interests are not satisfied; his interests were not satisfied all along. Similarly, if he does find out, it is not that the displeasure and pain he feels upon learning the truth were felt all along (perhaps only dimly); he had not felt these things before (in regard to these particular interests) because he had been deceived.

With all of this in place, we now can make another argument for behaving well toward mere humans who are at the upper end of the scale. Mere humans in second childhoods are post-mortem; their personhood capacities have “passed away.” Your behavior cannot change a “deceased” ante-mortem’s state of consciousness, so it follows (*a fortiori*) that your behavior cannot change an ante-mortem’s state of consciousness with regard to any particular interest. For example, you no longer can cause an ante-mortem pain through the belief that his/her interests are unfulfilled. But your behavior can effect whether the ante-mortem’s actual interests are actually fulfilled or disregarded. Moreover, there is reason to believe that acting in total disregard of someone’s interests constitutes treating that person disrespectfully regardless of that person’s states of consciousness with regard to those interests (think of Jack and Jill above).<sup>xxxvi</sup> If this is correct, then acting in complete disregard of an ante-mortem’s interests might be said to be constitutive of treating the ante-mortem disrespectfully.<sup>xxxvii</sup>

Of course, it is not the case that if you infringe on someone’s interests, you are (*ipso facto*) treating that person disrespectfully. There must be (among other things) some intentionality (in the form of a maxim) involved. Moreover, it is not

that disregarding the ante-mortem's interests causes some sort of backward causal change in the way in which you are behaving toward someone no longer in existence. The change is *ipso facto* (like a Cambridge change).

One way of cashing out the idea is to say that you never really treated the person as an end in him/herself while s/he was alive and we merely are seeing the manifestation of that now in your current behavior. It is as if the mask you had been wearing all along suddenly dropped away. It is like when Jill's double life suddenly collapses under discovery. But that is not the direction in which I would like to take this argument.

Here is an example to illustrate the idea. Suppose that you promise your ailing but nonetheless lucid grandmother that you will take care of her. And you do. Until she stops being able to recognize you. Then you stop going to see her. It does not take long; she is no longer able to get out of bed on her own to get to a phone, no longer able to recognize that she would have to dial 911 in an emergency, no longer able to recognize that she needs help, and certainly no longer able to communicate to any dispatcher or first responder that she is in a bad way. She dies, dehydrated and starving in her own filth. And she died not because you did not have time to go over; let us suppose you did not have anything else to do. And she died not because you could not afford to go see her; let us suppose you are independently wealthy.

Notice that in this example, your behavior toward your grandmother was permissible while she was a person. It is only once she clearly and decisively has passed over the Kantian line (let us suppose) that you stop going to see her. Thus, it is not that your behavior was wrong all the time, even when your grandmother was

within the Kantian line, and we are seeing the manifestation of that only now. That certainly would be possible. But it is not the kind of scenario I am envisioning.

The argument above about a self-regarding duty to avoid causing unnecessary suffering might apply here: you can empathize with your grandmother, and although you are not present to witness the suffering you are causing, you still could feel sympathy pangs. But the point is that you also would be wronging your ante-mortem grandmother, for you would be disregarding her interests.<sup>xxxviii</sup> More, you would be disregarding interests of a fairly weighty kind (*viz.*, a promise), and you would be doing so for no reason other than that you cannot be bothered to do otherwise. In this way, you would be behaving disrespectfully to your ante-mortem grandmother and, thus, acting in a way that a Kantian justifiably would condemn.<sup>xxxix</sup>

This argument might be understood as resting on a sort of diffuse duty to the community (a duty to humanity in general).<sup>xl</sup> Sometimes it is argued, for example, that our duties to the dead are like this: there should be laws requiring you to uphold your deceased grandmother's will because you and the rest of the community have an interest in seeing that your own wills will be upheld.<sup>xli</sup> But that, too, is not the direction in which I would like to take this argument. I take it as basic that we can express our respect and love for the dead even though the dead are not around to hear it. It happens all the time.<sup>xlii</sup> The point I am making now is a simple extension of this: you can express respect and love for a person even once that person's body has crossed over the Kantian line, and this informs the normative landscape when we are talking about the nonrational in their second childhoods.<sup>xliii</sup>

Moreover, there is no need to appeal to something as weighty as a promise to make this argument work. Suppose that harm is defined non-hedonically as something that is contrary to someone's important desires or interests.<sup>xliv</sup> Suppose, further, that deliberately harming a person without reason is disrespectful, for it does not assign sufficient value to that person's interests. It follows immediately that an ante-mortem can be harmed and, therefore, disrespected. Given plausible general assumptions about people's interests in (for example) not being abused when in their second childhoods, this argument generates strong presumptive Kantian grounds for refraining from such behavior on the basis of the disrespect that such behavior would show to the ante-mortem person. In the case of children of the post-mortem, these considerations might be expanded by appeal to filial duties to the ante-mortem. For example, children (or grandchildren) might owe the ante-mortem duties of gratitude for all that s/he did and provided for them, or they might be considered as owing the ante-mortem a debt to be repaid.<sup>xlv</sup> In any case, I think (hope) it may be seen that if this argument works, it generates duties in regard to the non-rational in their second childhoods.

#### **4 Never in, no transition in sight**

However, it should be evident that the same problem that prompted the previous section still holds: not all of the arguments rehearsed thus far apply to all of those who fall outside of the Kantian line. In the opening section of this paper, Rawls' main concern in the quotation with which I motivated the problem of the

Kantian line was with the severely handicapped. The profoundly intellectually disabled (PID), in particular, pose a special problem for the Kantian line: unlike children, the PID do not have the potential to become rational (so arguments 1 and 3 from section 2 do not apply), and unlike adults in their second childhoods, the PID do not have former rational selves to which we can appeal (so argument 5 from section 3 does not apply).

Arguments 2 and 4 from section 2 apply every bit as much to the PID as they applied to children and to adults in their second childhoods. The PID are still very much like us and, moreover, intellectual disability comes in varying degrees which are often hard to distinguish. So mistreating the PID can dull our natural sympathies, can infringe on a duty to a wrongly categorized and genuinely rational being, and can encourage patterns of behavior that will result in the abrogation of duties to other rational beings.<sup>xlvi</sup> As before, however, it is important to bear in mind that duties generated from these arguments are not based on the value of the PID in themselves.

One argument that sometimes is made in this context on behalf of the PID appeals to human nature. The idea is that the sense in which the PID lack rational capacities is different from the sense in which a tree or a rock lacks rational capacities.<sup>xlvii</sup> This is because neither a tree nor a rock is a member of the human species and, thus, neither a tree nor a rock participates in human nature. Human nature includes rationality; thus, although the PID are “privated” of rationality, by virtue of participating in this nature they are due the respect of fully rational adults.<sup>xlviii</sup>

If this argument works, then it seems like it should apply to children and to

adults in their second childhoods, too. However, I do not want to defend such an argument here. It seems to me to rest on shaky ideas about human nature, the human species and privation.

One way in which this argument might be modified so as not to appeal to human nature in this way would be to appeal to “species-normality” instead. The idea behind this argument would be that because rationality is generally an attribute of members of the human species and because rationality deserves respect, even non-rational members of the human species should be treated respectfully.<sup>xlix</sup> However, there are a number of problems with this argument.

First, it is unclear why species-normality should be privileged over other levels of generality. This is a problem because although rationality might generally be an attribute of members of the human species, it is not generally an attribute of members of the animal kingdom (moving toward the more inclusive) or of the PID (moving toward the less inclusive). Second, both this argument and the last seem to generate counterintuitive results when we consider individuals with capacities that are far above the norm. For example, if there were a rational mouse (think *Ratatouille*, Mickey Mouse or *An American Tail*), then it seems that these arguments would have the mouse fall outside the Kantian line: the mouse would participate in mouse nature, which does not include rationality, and rationality is not generally an attribute of mice.<sup>l</sup> Third and perhaps most problematic, I do not see why being human, having human DNA, being born of humans or being able to interbreed with other humans to create viable offspring would render one rational in the sense rele-

vant to the Kantian line, and I do not share the intuition that the PID deserve the respect owed to fully rational beings. That does not mean that I think (to borrow an example from section 3 above) that the PID may be used for target practice or worse. On the contrary: I do not think this at all, and it is blocked already by the extension of arguments 2 and 4 from section 2. But I do not think that the PID warrant the respect or the responsibility of the fully rational. In any case, I would like to advance one last argument before wrapping up.

Ghandi famously is credited with having said, “The greatness of a nation and its moral progress can be judged by the way its animals are treated.” I would like to extend these remarks to the PID. As noted above (in argument 1 from section 2): it seems plausible to assert that we have a duty to promote the moral progress and cultural values of our society. And it also seems plausible (to me, anyway) to assert that one of the ways in which we can promote the moral progress and cultural values of our society is by treating the PID with care and by avoiding causing them unnecessary suffering. This argument, of course, also will generate reasons to treat other nonrational beings with care: it is not an argument that only generates reasons to treat the PID with care. But it is not meant to be such an argument, nor is there any reason why it should be.

## **5 Conclusion**

I argued in the introduction of this paper that even if you toe the Kantian line, the problems raised about duties to the nonrational can be dissolved. There is sig-



nificantly more work to be done, of course, but I hope that the arguments in the previous three sections of this paper have gone some way toward satisfying this claim, at least in regard to those in their first and second childhoods and the PID.<sup>li</sup>

However, I also argued that it is *only* by toeing the Kantian line that intuitions about the nonrational will conform with theory. This is a strong claim, and I would like to conclude by saying a bit more about it. As noted above, the challenge that I think we face is that we must make sense of both the problem of value and the problem of moral responsibility. When it comes to some groups of the nonrational, like children, my intuition, which roughly conforms to current American legal code, is that there is real and deep value grounding real and important duties there, and there is also a sort of training wheels version of responsibility more attenuated than the duties—which is exactly the fallout of the arguments in section 2 above. When it comes to other groups of the nonrational, like dementia patients and the PID, my intuition, which again roughly conforms to current American legal code, is that there are duties to and responsibility, but the duties owed are not as strict as those owed to children, and the responsibility borne by members of this group is almost completely attenuated—again, exactly what falls out from the theory if the arguments from sections 3 and 4 above stand. I suspect that similar results on the sides of both intuition and theory will be generated for other groups of the nonrational.<sup>lii</sup> The basic point is that attitudes of respect generally go together with attitudes of moral responsibility, and if you toe the Kantian line, then it may be seen that this is exactly where you wind up regarding both the rational and the nonrational alike.<sup>liii</sup>



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<sup>i</sup> In the context of discussions of the moral status of nonhuman animals, this is sometimes referred to as the problem of marginal cases. See, e.g., (Gruen 2017, 1.3.1) or (Rogers 2012, 504-505).

<sup>ii</sup> Along the same lines, Doğan maintains that a theory like Kant's "implies that basic interests of beings who are not capable of choice might easily be harmed and not respected, especially when they come in conflict with legal claims of right holders" (Doğan 2011, 482).

<sup>iii</sup> Consider:

...there is no question that we human beings are aware of our location in mental space in a very important way—we are, or can be, aware of the grounds of our beliefs and choices, of our reasons for thinking and acting as we do. When I am aware, not just that I have a certain desire or fear, say, but that I am tempted to do something on the basis of that desire or fear, then it becomes open to me to step back from that connection and evaluate it: to ask whether my desire or fear provides me with a good reason to perform the action in question. And this enables me to take responsibility for what I do. This form of self-consciousness, I think, is what makes human beings rational and moral animals... (Korsgaard 2009b, 5)

<sup>iv</sup> I am not attempting to give an exhaustive list here.

<sup>v</sup> I am drawing here upon the excellent work in (Buchanan and Brock 1989, esp. chapter 1.2). I should note that it is not my purpose (and I do not take myself) to be offering a novel contribution to debates about these issues.

<sup>vi</sup> For example, brain imaging studies indicate that humans more successful at delayed gratification, which arguably is tied to the capacity for self-control, tend to have more active prefrontal cortices (Casey et al. 2011). One advantage of tying rationality to neurological function is that it offers a straightforward way to ground the idea that we do not exit the community of rational beings every night when our mental capacities melt off in sleep (without appeal to souls).

<sup>vii</sup> After raising the question of whether "infants...the very old and demented...the severely retarded and the incurably insane" fall outside the Kantian line, Korsgaard answers in the negative. She concedes that some of these beings "are...unable to reason well; some of them are at stages of their lives when reason is undeveloped, inert, or non-functional." Nonetheless, she asserts that these conditions "do not affect their standing as rational beings" (Korsgaard 2004, 82-83).

The closest thing to an argument for this assertion in (Korsgaard 2004) can be found in 96n49: "I think it is important not to confuse life-stages with types of beings." However, Korsgaard reaffirms this position in (Korsgaard 2011, 116n47), where she seems to have two main arguments: (1) "a right is held by a person, and a person is not a mere time-slice of a person," and (2) "there is a difference, morally as well as metaphysically, between being a defective [or undeveloped] being of a certain kind and being a different kind."

I would like to say two things about this. First, Korsgaard is inconsistent on this front: elsewhere she writes that "embryos and fetuses" are not "entities to which we could plausibly assign both rights and obligations" (Korsgaard 2013a, 3n3). This contradicts what I have labeled as Korsgaard's first argument in the previous paragraph. Second, I do not think Korsgaard's first argument is sustainable; my rights and duties change significantly (depending on the ways in which I change and the ways in which my relations to others change) through time. If I am blinded in an accident, I no longer shall have (or should have) the right to drive; if I am denaturalized, I no longer shall have (or should have) the right to vote; etc. I shall return to what I have labeled as Korsgaard's second argument in the main text of the paper (at the beginning of section 4).

<sup>viii</sup> Kantians have reasons for rejecting the utilitarian focus on pleasure and pain, and these reasons, which are beyond the scope of this paper, come at the level of theory and at the level of intuition. The problem of the Kantian line is downstream from this: the point is that Kantian ethics must come up with a way to make sense of the seemingly widespread intuitions about duties to beings outside the Kantian line. For a (justly) famous discussion of one of the arguments (at the level of theory) for the value of the capacity to reason (rather than the capacity to suffer), see (Wood 1999, chapter 4). Discussions of why pain and suffering are sometimes good (i.e., a response to utilitarianism at the level of intuition) can be found in many attempts to reply to the problem of evil. For evidence of the widespread intuitions about duties to beings outside the Kantian line see, for example, the 2003 Gallup Poll on animal testing, according to which 96% of those polled thought that animals deserve at least some protection in the eyes of the law if not the very same rights as people.

<sup>ix</sup> Korsgaard suggests that Kant's humanity formulation of the categorical imperative should be understood in terms of informed consent:

According to Kant, what makes the difference between exploiting someone as a "mere" means, and using him as a means in a way that is morally permissible, is whether you have his informed and uncoerced consent. (Korsgaard 2009a, 15)

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She repeats a slightly modified version of this claim in a subsequent publication:

According to Kant, speaking a bit roughly, what makes the difference between using someone as a “mere” means, and using him as a means in a way that is morally permissible, is whether you have his (informed and uncoerced) consent...Speaking a little more strictly, as I have argued elsewhere, Kant’s principle requires that when we enter into an interaction with another, we must act in a way that makes it possible for him to consent. (Korsgaard 2011, 109-110)

I would like to say three things about this.

First, the modern doctrine of informed consent is usually traced to a series of medical malpractice suits beginning in the 1950s, notable because prior to the 20th century conventional Western medical ethics seemed to require neither that a patient be informed of alternatives nor that s/he consent to the physician’s decision regarding treatment for any but pragmatic grounds (e.g., to ensure compliance). Informed consent requirements are distinctly modern and legalistic. It is true that these requirements are often justified by appeal to autonomy, the same value underwriting Kant’s ethics (Eyal 2012, §2.2). But Kant never claims that informed consent marks the difference between exploiting someone as a “mere” means and using him/her as a means in a way that is morally permissible.

Second, in (mis)ascribing this claim to Kant, Korsgaard saddles him with a counterintuitive view. On the one side, there are clinical settings when informed consent is unnecessary (e.g., in the emergency room, securing it might moot treatment; in quarantine; or, more controversially, when patients have dependents) (Eyal 2012, §7). On the other side, there are also clinical settings when informed consent is insufficient (e.g., commercial transactions for organ transplants; more mundanely, a clinician might view his/her patients as mere means to profits, nudging them in the direction of costly procedures and tests while nonetheless securing informed consent for liability purposes).

Korsgaard might respond by shifting to informed consent to maxims or, perhaps, to possible consent. This leads me to the third and final thing I would like to say. Appealing to informed consent to maxims would be a significant departure from the modern doctrine of informed consent, rendering questionable the use of the term. Moreover, with all due respect to Korsgaard, possible consent is not a stricter or more precise version of informed consent. Possible consent, which has not been precisified in numerous court cases, requires neither actual consent nor information provision. Informed consent, which has been so precisified (although more work plainly remains to be done), requires both.

<sup>x</sup> NOTE REDACTED

<sup>xi</sup> It still would not do the work that WO take it to do (*viz.*, generate duties of respect for nonrational beings). But it would do something.

<sup>xii</sup> NOTE REDACTED

<sup>xiii</sup> Nor would there be anything wrong with kids using each other for target practice, a disturbing thought in the wake of recent school shootings in America.

<sup>xiv</sup> Interestingly, Kant is well aware of the distinction between these two aspects of the problem of the Kantian line; this can be seen in his appeal to the distinction between “active” and “passive” obligation when he discusses our duties to animals (Kant 1996, 563). I am indebted to (Kain 2009) for this point.

<sup>xv</sup> One way in which this might be done would be to appeal to the idea of degrees of moral status along the lines of a proposal made by David DeGrazia. DeGrazia distinguishes moral personhood from moral status and argues that the idea of degrees of moral status must be taken seriously (DeGrazia 2008). I agree (at least with the minimal claim that “we must reject dogmatic assumptions to the effect that moral status is all-or-nothing” (DeGrazia 2008, 195)) and I think that some (if not all) of the arguments I advance below are consistent with assigning degrees of moral status to some nonpersons (depending, of course, on how “moral status” is understood). However, I find both of the models of degrees of moral status DeGrazia offers problematic.

According to the first model DeGrazia advances, differences in degrees of moral status are understood as tracking the different moral importance assigned to the interests of different beings. To use DeGrazia’s words, on this model “it is generally worse to kill persons because they are due full moral consideration, whereas mice are due some, but less, consideration” (DeGrazia 2008, 186-187). According to the second model DeGrazia advances, equal moral importance is assigned to the interests of different beings; instead, differences in moral status track unequal interests. To use DeGrazia’s words again, on this model “the reason for the stronger presumption against killing mice than persons is simply that doing so harms them more, ordinarily, than killing mice harms mice” (DeGrazia 2008, 188).

The problem with the first model is that if moral status tracks the consideration individuals give to others’ interests, then sons and daughters (in a happy family) will have higher moral status than strangers. Thus,



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moral status becomes a matter of relation (X could have high moral status in relation to Y but not to Z). Note that this is so regardless of whether DeGrazia's model tracks the consideration that individuals *ought* to give to others' interests (i.e., what they are "due") or the consideration that individuals *as a matter of fact* give to others' interests, and it also is so regardless of whether DeGrazia's model tracks tokens or types. The problem with the second model is that if moral status tracks the strength of an individual's interests, then chronically depressed humans might wind up having the same moral status as mice.

I do not suppose that my objections are knockdown objections. For one thing, DeGrazia simply might agree with them, might say that moral status *is* a matter of relation or that chronically depressed humans *do* have the same moral status as mice. I find these ideas counterintuitive, but perhaps others do not. For another thing, DeGrazia is quite explicit about the fact that he is breaking new ground here, so I imagine he would welcome the opportunity to refine his models.

<sup>xvi</sup> Patrick Kain has argued recently that Kant correctly thought that the conjunction of his ethical with his extra-ethical commitments at the level of theory entails that all humans fall within the Kantian line (Kain 2009, 62). Kain's argument hinges on four claims that he ascribes to Kant: (1) there are fixed species (Kain 2009, 87); (2) all members of the human species are free (Kain 2009, 96); (3) freedom begins at conception and does not end before death (Kain 2009, 86n86 and 97); and (4) if a being is free and embodied, then it has moral status (falls within the Kantian line) (Kain 2009, 96). Given these four claims, it follows immediately from the fact that all humans are embodied that they all have moral status from conception until death. Kain evidently does not think that many would adopt this four-step argument today (Kain 2009, 62). Kain's goal is to show that Kant is (wittingly) committed to it. However, I am unconvinced. I think that each of these claims could be challenged on exegetical grounds. To illustrate this, I shall focus on (4).

The problem that arises with (4) is that, as Kain admits, Kant thinks that an infant comes into the world "unable to exercise his or her own freedom" (Kain 2009, 97). There is, I suppose, some sense in which an infant who is unable to exercise freedom might be considered free. The point is that it is not the relevant sense (i.e., it is not the sense that goes along with personhood) on Kant's account. To see why, consider, for example, part III of the *Groundwork for a Metaphysics of Morals*, where Kant seems unambiguously to tie moral standing to the ability to exercise freedom (freedom, in the sense of being "efficient independently of alien causes," must be "pre-supposed as a property of the will of all rational beings" (Kant 2006, 94-5, special typescripts removed)). From this and the fact that an infant is unable to exercise his or her own freedom it follows immediately that an infant is not free in the relevant sense and (by Kant's own lights) falls outside the Kantian line.

To be fair to Kain, he is aware of and tries to defend himself from this problem: he argues that Kant's epistemological and metaphysical constraints commit him to the claim that (5) "the empirical manifestation of freedom cannot be a prerequisite for the moral status of anyone" (Kain 2009, 68). But this defense does not work. The point is not that because infants have not *actually* manifested their freedom, they fall outside the Kantian line. The point is that on Kant's account they *cannot* manifest their freedom (as Kain admits, they are "unable" to exercise their freedom (Kain 2009, 97)) and the *ability* to manifest freedom (regardless of whether one does) is what gets one over the Kantian line. So although I am indebted to Kain's article and found it quite helpful in forming my own views, I remain unconvinced of his thesis.

<sup>xvii</sup> Tamar Shapiro articulates what she calls a Kantian approach to children, but her approach is very different from mine. Shapiro maintains that to be a child is to be in a predicament in which one does not have stable values to which to appeal in making a decision, and she explains what this means in terms of self-unification: "the undeveloped agent has to *become herself*" (Shapiro 1999, 732). On the basis of this account, Shapiro argues that children face an obstacle to morality: "[t]he condition of childhood poses an obstacle to morality insofar as it prevents people from being agents in the full sense" (Shapiro 1999, 737). Shapiro then argues that this entails both negative and positive duties for those of us who are not children: negatively, we ought not to hinder children in overcoming this obstacle; positively, we ought to help them to do so.

I would like to say four things about this. First, I think that Shapiro's focus on having stable values is misleading. It is true that having stable values is necessary for rationality and that children do not have stable values. But as noted at the beginning of section 1 of this paper, there are also other capacities necessary for rationality which children lack, including understanding, self-control, imagination and instrumental reason. To focus on just one of these capacities as Shapiro does risks giving the wrong idea.

Second, I do not think that the appeal to self-unification is helpful. On the contrary, I find such accounts paradoxical: if the agent is the one doing the unifying, then the job seems to be done; if not, then it is not *self*-unification. Moreover, Shapiro is drawing on Korsgaard here, and Korsgaard has a strong tendency to take self-unification to be coincident with moral goodness, whence it would follow from Shapiro's account that (a) children are uniformly evil and (b) morally evil agents should be treated as children. I find both of these results counterintuitive.

Third, I think that treating the condition of childhood as an obstacle is misguided. An obstacle is something one faces, something external to oneself. There can be obstacles to morality (in the form of temptations) and there also can be obstacles to the exercise of rational judgment (as when a patient feels overwhelmed and

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unable to think clearly in the helter-skelter of a hospital). But childhood is not, I think, conceived correctly as one of these: a child is not (*qua* child) a rational being held back by something external to him/her, and there is no change in the environment that will result in a child's being able to exercise rational judgment at that time. To suggest otherwise gives an erroneous picture of childhood development.

Fourth and finally, it is because Shapiro takes childhood to be a predicament external to a rational agent that she is able to assume, without argument, that there are (Kantian) duties to children: these duties on Shapiro's account fall out of nonideal theory, which tells us what we ought to do in situations that seem to deviate from the best of all possible worlds. In rejecting the idea that childhood is an obstacle, I reject also the idea that childhood is a subject for nonideal theory: nonideal theory might help us to understand what to do when interacting with bad people or when attempting to rectify a previous wrong, but I do not see childhood as falling within its purview. And precisely because I reject Shapiro's conception of children as fully rational in themselves but facing an obstacle to the exercise of that rationality, it is not open to me simply to assume that we have duties to them.

<sup>xviii</sup> The idea that abuse and neglect are criminogenic was popularized by Steven Levitt and Stephen Dubner, who use it in their argument for the thesis that the legalization of abortion in the US with *Roe v. Wade* was responsible for more than 30% of the crime drop in the 90s (Levitt and Dubner 2005, chapter 4).

<sup>xix</sup> Interestingly enough, proponents of the children's rights movement in the 19th century sometimes argued that when adults abuse children, the children go on to abuse others (Pearson 2011, chapter 1, esp. 47).

More straightforwardly, if the child is sufficiently aware of what is going and might revenge him/herself on one later, one might think twice about how one behaves toward him/her. This line of thought also might generate prudential reasons to be kind to non-children: think of Ilyusha's determination to revenge his father's humiliation on Dmitri Karamazov when he grows up. But this is not really an issue of training.

<sup>xx</sup> See, e.g., (Black *et al.* 2010).

<sup>xxi</sup> I actually think that, given my project, there might be room for prudence to play a role given that the etiology of dictates of prudence and dictates of morality are sometimes swapped in people's minds. But pursuing this line of thought is probably too much for current purposes.

<sup>xxii</sup> There is now a substantial body of research on intergenerational transmission of violence. See, e.g., (Widom and Wilson 2015).

<sup>xxiii</sup> This argument also can generate moral reasons for adults not to engage in violent behavior toward other adults due to the negative effects that exposure to such behavior can have on children (see, e.g., Scarpa 2003). More conjecturally, it might be able to generate moral reasons for aiding children in their development by appealing to ideas about the future interests of these children. I shall exploit this kind of idea in the next section of this paper in the discussion of individuals in their second childhoods.

<sup>xxiv</sup> An audience member once objected that pearls are not sufficiently valuable to justify taking good care of the basket of beads. A cursory google search indicates that a string of pearls can be worth more than 100k, which seems like a lot of money to me. In any case, my (uneducated) impression is that diamonds are uncontroversially expensive. So if a pearl is insufficiently valuable for this thought experiment, please substitute a diamond concealed in a basket of glass crystals. If that is still not sufficient, substitute a tranquilized person in a pile of very lifelike mannequins.

<sup>xxv</sup> I do not mean to suggest that in this analogy there is a moral reason (as opposed to a prudential one) to treat all the beads as if they are valuable (although I think it would be possible to come up with a scenario in which there was a moral reason to do so). The moral reason is generated by the fact that it could be persons who are mistreated.

<sup>xxvi</sup> Perhaps another analogy will make the idea clearer. Consider bonds issued by a municipality. It does not matter why the bonds were issued; let us simply suppose that they are 30-year bonds. As those bonds come closer and closer to maturation they become more and more valuable (assuming that the municipality is not in danger of defaulting): that is, people are willing to pay more and more money for them because of their potential. Or consider the dissertation writing process. The further along a student is, the greater the loss if s/he gives up.

<sup>xxvii</sup> Kant himself makes an argument like this in the second half of his *Metaphysics of Morals* (Kant 1999, 563-4). For a thorough discussion of the exegetical issues surrounding this argument, see (Kain 2010). For a thorough discussion of the philosophical issues surrounding this argument, see (Denis 2000). I am indebted to both of these works in developing my own views (see n32 below).

<sup>xxviii</sup> From this it may be seen that this first line of reasoning is not based on the consequentialist idea that dulling our moral sensibilities would render us more prone to violate duties in the future (*pace* DeGrazia 1996, 42). The idea is that there is something bad about dulling our moral sensibilities regardless of the impact that this

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might have on future actions. It follows immediately (based on this first consideration) that even if I were the last rational being in the universe, there would be something bad about causing unnecessary suffering to a child.

<sup>xxix</sup> The term ‘unnecessary’ in this context indicates that there has to be some sort of weighing of benefits and costs. Presumably the desire to beat up a child would not give sufficient reason to do so: any suffering caused in that way would be unnecessary. But how do we give a principled account of this? If it is dulling of sensibilities that is at stake, then presumably one would dull them just as much if one caused suffering to one individual as one would to another. So perhaps the underlying idea is that we should avoid causing suffering when and insofar as we can. For a similar account of “unnecessary suffering,” see (Bruers 2015, 274): “the loss of well-being of the victim is an ‘unnecessary suffering’ when it is smaller compared to the loss of well-being of the other individuals.” It also might be useful to import distinctions often made in discussions of utilitarianism such as those based on the reason why someone is suffering and his/her context or those based on whether the sufferer’s interests can be classified as “crucial,” “important,” “replaceable” or “trivial” (Gruen 2017, §2).

<sup>xxx</sup> Nozick and DeGrazia question the empirical basis for this claim. For example, DeGrazia reproduces approvingly the following passage from Nozick:

Do butchers commit more murders?...If I enjoy hitting a baseball squarely with a bat, does this significantly increase the danger of my doing the same to someone’s head? Am I not capable of understanding that people differ from baseballs, and doesn’t this understanding stop the spillover? Why should things be different in the case of animals? (Nozick 1974, 36; quoted in DeGrazia 1996, 42)

I think these are intended to be rhetorical questions, but I do not see them as posing a significant challenge: one reason why things are different in the case of animals (or, as in the text above, in the case of children) as opposed to baseballs or cuts of meat is that neither baseballs nor cuts of meat engage in recognizable pain behavior. There are interesting empirical questions to be asked here, but I think Nozick and DeGrazia have missed them. The empirical questions have to do with the connection between the abuse of animals and/or children (and/or mentally compromised adults) and the abuse of rational beings—and, problematically for Nozick and DeGrazia, recent empirical psychology seems to support the existence of such a connection (Lockwood and Ascione 1998). I owe the reference here to (Denis 2008, 129n26). Another useful source on this is (Holdier 2016), who refers to “the recent identification of a link between slaughterhouse employment and arrest rates for violent crimes, especially sexually violent crimes” (Holdier 2016, 638). Holdier calls this the “Sinclair Effect,” following (Fitzgerald *et al.* 2009), who find that “slaughterhouse employment increases total arrest rates, arrests for violent crimes, arrests for rape, and arrests for other sex offenses in comparison with other industries.”

<sup>xxxi</sup> DeGrazia thinks that this kind of argument cannot work because it attempts to derive a moral claim that is “quite clear” from an empirical claim that “while not unreasonable is less than certain” (DeGrazia 1996, 55; it should be noted that DeGrazia is discussing the case for duties to *nonhuman* animals—but presumably he would make the point more (rather than less or even equally) vehemently in regard to children).

I think I see the point he is trying to make: the core idea here seems to be that it is irrational for one to be more confident of a conclusion than one is of the premises from which the conclusion is derived. However, it seems to me that even if one accepts this idea—and (to coin a phrase) while the idea is not unreasonable, it is less than certain—DeGrazia’s objection faces some serious problems. First, as I try to make clear in the main text of this paper, moral duties to or in regard to those outside the Kantian line are often based on a variety of different arguments. So even if the clarity of the moral claim and the incertitude of the empirical claim are granted, DeGrazia’s objection can be skirted provided the cumulative weight of the different arguments is taken into account. Second, DeGrazia seems to overlook the fact that one need not cleave to the moral claim: even granting the incertitude of the empirical claim, the Kantian might respond that DeGrazia is simply overconfident in the clarity of his moral intuitions. Third, I suspect that the purported clarity and uncertainty of these claims will not stand up to critical scrutiny: I am fairly confident that interrogation will not reveal anything approaching universal consensus. In sum, it seems to me that not much can be drawn from DeGrazia’s intuitions about the clarity and certainty of these claims.

<sup>xxxii</sup> Korsgaard maintains that “Kant...sometimes suggests that the reason we owe humane treatment to the other animals is that our treatment of other human beings is likely to be influenced by our treatment of the animals (MM 6:443; LE 27:459).” However, she objects that “the suggestion is a peculiar one for Kant to make. After all, if reason really did tell us the animal suffering does not matter in the way that human suffering does, why would we be tempted to treat humans in the same way we treat animals” (Korsgaard 2012a, 18n20).

I would like to say two things about this. First, at MM 6:443 Kant refers to a duty to oneself that requires us to treat nonrational animals humanely, which suggests that his argument there is not based on the idea that our treatment of persons is likely to be influenced by our treatment of the nonrational (*pace* Korsgaard). Rather, it is based on the fact that treating nonrational beings inhumanely will destroy one’s moral character,

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something which is bad in itself regardless of whether it will have further negative consequences (as suggested in the line of reasoning in the paragraph prior to the one to which this note is appended). So I disagree with Korsgaard's reading of the passage at MM 6:443.

Second, the suggestion that our treatment of nonrational beings is likely to be influenced by our treatment of the animals, which could be read onto the passage at LE 27:459 (which speaks of a "duty to humanity"), would not be a peculiar one for Kant to make. On the contrary, Kant's recognition that moral behavior rests not only on our rational faculties but also on our nonrational faculties and that these nonrational faculties can be influenced by our behavior toward nonrational beings seems to me to be entirely apropos. There are four reasons why I say this: (1) there is an abundance of empirical evidence that suggests he was correct (see n30 above); (2) there is a long history of ethicists making claims like this (for example, although Aquinas claims to "refute the error of those who claim that it is a sin for man to kill brute animals," he nonetheless asserts that cruelty toward brute animals might be discouraged "lest a person through practicing cruelty on brutes might go on to do the same to men" (Aquinas 1955-1957, 3.2.122.13); I owe the reference to (Pluhar 1992, 191)); (3) such claims are common in the modern period (for example, Locke argues that "they who delight in the Suffering and Destruction of inferior Creatures, will not be apt to be very compassionate or benign to those of their own kind" (Locke 2000, §116)); and (4) there is nothing in Kant's ethics to preclude such claims and everything to recommend them (as perhaps evidenced by neoKantians' espousal of them).

xxxiii Dementia can have different etiologies, but it is generally characterized (e.g., in the DSM) by disturbed executive functioning.

xxxiv NOTE REDACTED

xxxv This is how the distinction is explained in (Pitcher 1984, 184).

xxxvi In a workshop discussion of this argument, someone objected to this claim on the grounds that if you break the rules without anybody knowing, you have not done anything wrong; you have done wrong only if you get caught. Applying this general principle to the argument at hand, the idea was that Jill has not wronged Jack (e.g., by disrespectful behavior) unless (or until) she is caught.

I find the specific application of this principle to the case of Jack and Jill counterintuitive. Moreover, I think that the principle itself is at least questionable: after all, if the wrong action were being-caught-for-X rather than X, then it is unclear why one is being caught in the first place.

xxxvii It is perhaps worth pointing out that this part of the argument incorporates a (very) slight departure from Pitcher's version of the argument: Pitcher speaks of misfortunes and of harms rather than of disrespect (Pitcher 1984).

xxxviii DeGrazia argues that proponents of the conjunction of psychological continuity as a theory of personal identity with what he calls "person essentialism" are unable to make sense of advance directives. This is because of what he calls the "someone else problem." But if the argument in this section works, then this is incorrect. Let me explain, beginning with the "someone else problem."

DeGrazia characterizes psychological continuity as a theory of personal identity as the conjunction of two claims: (1) persons are beings with the capacity for certain complex forms of consciousness (DeGrazia 1999, 377-378) and (2) two people are numerically identical if and only if they are psychologically continuous (DeGrazia 1999, 378). Personhood essentialism is the claim that all human persons are essentially persons (DeGrazia 1999, 380).

An advance directive is a legal document that enables you to detail what kinds of care you would like to receive in various cases (e.g., severe dementia). The someone else problem arises because, if the conjunction of psychological continuity with person essentialism is true, then an advance directive would be specifying how you would like *something else* (not you and not a person but a living organism) to be treated (DeGrazia 1999, 278-279). A similar argument seems to be endorsed by Rebecca Dresser (Dresser 1986, 380).

I am not going to take a stand on either psychological continuity or person essentialism here: to engage with those positions is far beyond the scope of my current purposes. As pointed out at the beginning of this note, I bring this up only to point out that the argument I give in the main text of this paper offers DeGrazia's foil (the proponent of the conjunction of psychological continuity with person essentialism) an easy way to make sense of the authority of advance directives notwithstanding the "someone else problem." To be clear: I am not arguing for or against psychological continuity or person essentialism. I am arguing only that there is a ready reply to DeGrazia.

xxxix This might provide some grounds for regarding as specious Kant's own claim that his promise to King Wilhelm II not to lecture or publish texts on religious topics no longer was binding once Wilhelm II died.

xl See, e.g., (Partridge 1981) or (DeGrazia 2005). DeGrazia argues that in the case of literal death (death of an individual rather than "mere" death of an individual's rational faculties) this is the only way to make sense of such duties (DeGrazia 2005, 185). His argument for this hinges on what is sometimes called "the problem of the

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subject" (Feinberg 1984, 80): there is no subject in existence that can have interests and (absent backward causation, which DeGrazia evidently rejects) *a fortiori* no subject that can be harmed by having his/her interests thwarted. However, I think the basic answer to this is straightforward. It is true that the subject is no longer in existence, and it is true (because of this) that the subject cannot experience an unpleasant state of mind. But this does not impugn the fact that there *was* a subject that *had* interests, and the duties that we bear are to him/her: to the person who did exist. There are interesting and complex questions that arise here about not only deceased subjects but also fictional subjects and especially fictional subjects about whom one has false beliefs. Unfortunately, I cannot pursue these questions here.

<sup>xli</sup> There is intersection here with the arguments from the previous section: we have an interest in being taken care of when we are older, and this interest seems to generate reasons not only for taking care of our own elderly but also for training our young to take care of us when they are in our position (the best way to train them might be by having them cooperate with us in taking care of our elderly).

<sup>xlii</sup> One vivid portrayal of this is in a religious setting when prayers are said for the dead, although I concede that, given the religious backdrop of beliefs about immortality of the soul, it is unclear whether this would fall under the rubric of respect for the deceased *qua* (earthly)-person-that-was rather than respect for the deceased *qua* (non-terrestrial)-person-that-still-is.

<sup>xliii</sup> This last argument provides a rationale for the so-called "substituted judgment standard" in legal discussions of decisions regarding previously competent persons. Absent further argumentation at the level of theory, I therefore would resist those, like (Dresser 1986), who push for the use of the "best interests standard" in these cases. (Dresser 1986) endorses the "best interests standard" on the basis of practical concerns; she argues that the substituted judgment standard is subject to abuse. But it seems to me that any standard is subject to abuse. For example, in appealing to an individual's "best interests," a histocompatible relation in need of a kidney might maintain that if one of the individual's kidneys is not removed for transplant to him/her, the individual will lose an irreplaceable emotional bond (*Strunk v. Strunk*, 445 S.W.2d 145 (1969)). Of course, in some cases, this might be true and the transplant might be warranted (that is what the judge decided in the Strunk case). But the point is simply that this kind of argument is subject to abuse. So I do not think that the mere fact that the substituted judgment standard is subject to abuse is a good reason for abandoning it, especially if there are deep (logically prior) theoretical considerations that militate in its favor.

If it could be shown that abuse is in some way endemic to the substituted judgment standard, such an argument would carry more weight in my eyes than an argument that shows only that abuse sometimes takes place when people put a substituted judgment standard into practice. But Dresser does not seem to pursue this route. Further discussion is beyond the scope of the present investigation (see (Cantor 2007, esp. 157-8) for a more detailed discussion)).

<sup>xliv</sup> I take this definition from (Pitcher 1984, 184).

<sup>xlv</sup> Keller argues that filial duties should not be understood in terms of owing a debt, gratitude or friendship. Instead, he maintains that filial duties should be understood in accordance with his own "special goods" theory. According to Keller,

There are important goods that you can provide only to your parents, and that your parents can receive only from no one but you. My suggestion is that the reason why you have special [filial] duties to your parents is that you are uniquely placed to provide them with these goods, and find yourself in a relationship in which they have provided (and perhaps continue to provide) special goods to you. (Keller 2006, 268)

I would like to say four things about this.

First, I am not heavily invested in appealing to specifically filial duties here. If it should turn out that the debt or gratitude one owes one's parents for the goods they have bestowed upon one do not generate specifically filial duties, that would not be a deep problem for me. Second, I see no reason to give a monistic account of filial duties; it seems to me that some filial duties might be generated from the debt one owes one's parents, some from gratitude, some from friendship, etc. Indeed, Keller's own account seems to me to be reducible to duties of debt and gratitude on the one side (e.g., duties owed for the special goods provided in the past when one was unable to reciprocate) and duties of friendship on the other (the special goods he describes seem to me to be the kinds of goods found in the deepest friendships). Third and relatedly, I find many of Keller's attacks on other accounts of filial duties unpersuasive. For example, Keller maintains that (a) what I owe to my parents depends on my abilities, but (b) duties of debt do not depend on ability to repay. For example, Keller argues that if I am very poor, then I owe my parents less in terms of money toward their nursing home bills or whatever than I would if I were very rich (Keller 2006, 256). I agree with this example and with (a), but I disagree with (b). Fourth and finally, I think that Keller's defense of his positive account of filial duties is problematic. Keller rests his positive account on the principle that "when you are uniquely placed to provide someone with an important

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good, you have a moral reason to do so" (Keller 2006, 273). I find this counterintuitive. The Louvre is uniquely situated to provide me with the Mona Lisa; Jeff Bezos is uniquely situated to provide me with tens of billions of dollars' worth of Amazon stock; my neighbor is uniquely situated to provide me with the house next to mine; etc. Nonetheless, I do not think that there is even a *prima facie* moral reason for the Louvre, Jeff Bezos or my neighbor to provide me with these important goods on the basis of the fact that they are uniquely situated to provide them to me.

<sup>xlvi</sup> Bruers refers to the idea that "if we start using mentally disabled humans, we might end up using mentally abled humans" as the slippery slope argument (Bruers 2015, 277n25).

<sup>xlvii</sup> This sentence is taken (loosely) from the following passage:

An entity, certainly a living entity, is not a mere collection of properties or capacities: it is a functional unity, and the idea of a species is important to the extent that it involves the idea of a certain way of functioning. An infant, or a severely insane person, is helpless or poorly functioning in part because his or her natural way of functioning, which essentially involves reason, is as yet undeveloped or defective. These are rational beings in whom reason is in an undeveloped or defective condition. The sense in which such people "lack reason" is entirely different from the sense in which a nonhuman animal "lacks reason," for the nonhuman animal functions perfectly well in his own way without it. (Korsgaard 2016, 116n47)

I find the implication of Korsgaard's last sentence in this quotation (*viz.*, that infants do not function well in their own way) counterintuitive. The argument in the paragraph to which this note is appended—an argument that I do not defend—is not based on this implication but rather on Korsgaard's claim that "the idea of a species is important."

<sup>xlviii</sup> This argument can be found in (Tuohey and Ma 1992, 87-88).

<sup>xlix</sup> This argument is taken from (Bruers 2015, 276n11).

<sup>l</sup> I owe this objection to (Bruers 2015, 276n11).

<sup>li</sup> In addition to the future rational (children), the former rational (second children) and the never rational (PID), one might want to formulate arguments about the temporarily nonrational. Psychiatric patients who become noncompliant with treatment and eventually spiral out of control and lose hold of their rational faculties might fall into this category. There are difficult questions here about the permissibility of forced hospitalization and forced treatment. In court cases dealing with these issues, the so-called dangerousness standard is sometimes appealed to. But one might ask whether this standard is defensible and, if so, how it should be understood: must the threat be immanent? Must the harm be physical? Must the harm be to others? Etc. For a helpful discussion of these issues, see (Buchanan and Brock 1989, chapter 7). Along the same lines, I have not said anything here about nonhuman animals or nature (although it is worth noting that recent empirical work suggests that many nonhuman animals might fall within the Kantian line (for a helpful discussion see Pierce and Bekoff 2012), and it is also worth noting that some think that argument 4 from section 2 of this paper can be extended to cover nature (e.g., Locke 2000, §116)). Finally, I should note that I do not take the arguments given here to come anywhere close to exhausting everything that needs to be said about children, adults in their second childhoods or the PID. For example, a more detailed account would need to address questions regarding emancipated minor and mature minor doctrines as well as questions about why parents (as opposed to anyone else) have defeasible but nonetheless presumptive decisional authority over minors' education, medical treatment, etc.

<sup>lii</sup> Korsgaard argues that (i) nonhuman animals fall outside the Kantian line (Korsgaard 2011, 103) but that (ii) there are strict duties governing our interaction with them: "We may interact with the other animals as long as we do so in ways to which we think it is plausible to think they would consent if they could—that is, in ways that are mutually beneficial and fair, and allow them to live something reasonably like their own sort of life" (Korsgaard 2011, 110). I would like to say three things about this.

First, I am not sure that I agree with Korsgaard on (i). I am not saying that I think all nonhuman animals fall within the Kantian line. Rather, I am saying that I am unsure where I stand on this; perhaps some nonhuman animals fall within the Kantian line (see n51 above). Second, Korsgaard's assertion of (ii) is based on an extension of her famous regress argument, an extension that I think is problematic (see n12 above). Third, earlier in the same article Korsgaard suggests that our duties should be cashed out in terms of informed and uncoerced consent, which she then glosses as acting in a way that makes it possible for our interlocutors to consent (Korsgaard 2011, 109-110). In n9 above I pointed out that an informed and uncoerced consent standard is not equivalent to a possible consent standard. I point out here that a hypothetical consent standard (what someone "would consent to if they could") is not equivalent to either of these. Neither is a standard of mutual beneficence and fairness or a standard of allowing an individual "to live something reasonably like their own sort of life." To illustrate how these three *new* standards come apart, note that to figure out what a piraña would consent to, we

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presumably must appeal to what (we take to be) the starting points of its preferences, and I find it *prima facie* implausible that something mutually beneficial and fair would fall out from this (rather than that we would be eaten). (I take this idea of appealing to the starting points of preferences from Jaworska 2017, §2.)

<sup>liii</sup> A line of reasoning somewhat similar to this one can be found in the opinion given by the New York third appellate division court when the Nonhuman Rights Project petitioned to have the common law status of “person” extended to Tommy the chimp (*The People of the State of New York ex rel. The Nonhuman Rights Project, Inc., on Behalf of Tommy, Appellant, v. Patrick C. Lavery, Individually and as an Officer of Circle L Trailer Sales, Inc., et al.*, 518336, Dec 4 2014, NY Sup. Ct. 3rd App. Div.).