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Many contemporary accounts of moral status consider an individual’s status to be grounded in some cognitive capacity, e.g. the capacity to experience certain states, to reason morally, etc. One proposed cognitive capacity significant particularly to killing, i.e. having a status that precludes being killed absent cause, is the capacity to value one’s own life. I argue that considering this a condition for moral status is a mistake, as it would lead to the exclusion of some individuals with mental health problems who are generally considered clear cases.

While a cognitive capacities approach may turn out to be generally feasible, that particular cognitive capacity is not. In the course of this discussion I address two conceptual issues, the first regarding what it means to ‘value one’s life’ and the second regarding what conditions must obtain for something to count as a capacity. These conceptual issues, when resolved pursuant to this account of moral status, lead the account to exclude individuals with major depressive disorder, i.e. deny that it is morally wrong to kill such individuals based on their moral status. I then argue that this is decisive reason to reject this particular cognitive capacity as implicated in moral status.

Keywords: depression; mental illness; personhood; moral status; cognitive capacities; Michael Tooley; abortion; infanticide; congenital insensitivity to pain

**1. Introduction to the problem of mentally ill persons**[[1]](#footnote-1)

Among the persistent issues in contemporary bioethics is moral status, particularly what gives an individual a status that protects that individual from being killed without just cause. One formulation in the literature seems promising; it has been presented prominently in modern discussion of abortion and infanticide. This formulation, by Michael Tooley, states, “having a right to life presupposes that one is capable of desiring to continue existing as a subject of experiences and other mental states.” [1] Tooley presents a set of conditions that an individual must have to possess a right to life. “‘A has a right to X’ is roughly synonymous with ‘A is the sort of thing that is a subject of experiences and other mental states, A is capable of desiring X, and if A does desire X, the others are under a prima facie obligation to refrain from actions that would deprive him of it.’” [1] This view has seen more recent debate on the continued discussion of abortion and infanticide [2].

Though I am sympathetic to Tooley’s approach, considering cognitive capacities and desires, this particular account is deficient because it fails to yield appropriate judgments regarding persons suffering from major depressive disorder, requiring a certain form and level of treatment [3-4]. These are persons whom it is seriously morally wrong to kill, but who do not meet the conditions set forth by Tooley. In the course of this discussion, I argue that some who suffer from major depressive disorder fail to meet these conditions, because they are incapable of “desiring to continue existing as a subject of experiences and other mental states.”

The argument below divides into two parts. The first part argues that some individuals with major depressive disorder are genuinely incapable of valuing their own lives. It begins by staking out what it means to “value one’s life,” addressing a conceptual ambiguity between valuing the life proper and valuing the life instrumentally. It argues the former is the sense relevant to Tooley’s discussion, and that this sense seems to be lacking amongst those with major depressive disorder. It then moves on to argue those with major depressive disorder are incapable of valuing their own lives, rather than merely not disposed to do so. If these two arguments are successful, then they show individuals with major depressive disorder do not meet the criteria presented by Tooley.

The second part argues this implication gives us strong reason to reject this account of moral status. In Section 4, I present the notion that one might accept the implication and bite the bullet, deny the moral status of those with major depressive disorder. I then argue this is a mistake, not based on an appeal to the repugnance of that implication, but because it misunderstands the relationship between an individual’s desires and that individual’s welfare.

**1.1 A Short Aside on Michael Tooley’s Cognitive Capacities Account**

What I describe throughout this paper as “Tooley’s view” is one of a few accounts of cognitive capacities he gives in the course of his writing on moral status and abortion. The view I criticize in this paper is given explicitly in his article “Abortion and Infanticide” [1]. In a later publication, Tooley describes an alternative cognitive capacities account of moral status that makes no mention of a capacity involving attitudes [5]. This alternative is not subject to the objections I offer here.

Philosophers’ views change, but often views they give up are still in use. Whether Tooley still subscribes to the view I criticize in this paper is unclear is unclear, but it lives, and has seen use in a more recent paper by Giubilini and Minerva [2]. Though I will continue to characterize it as “Tooley’s view” throughout, I do not want to discount the fact that he also employs a different view not directly subject to these objections in later writing.

**2. Valuing life, the easy way and the hard way**

In the expansive literature on personhood, Tooley’s account is particularly appealing. Amongst a plethora of complicated views that require combining and prioritizing sets of nested elements, Tooley’s account gives us a straightforward, singular property to deduce the presence of the right to life: “one is capable of desiring to continue existing as a subject of experiences and other mental states.” For that single property, there are two components: (a) being capable of representing one’s own life and (b) being capable of desiring it. Tooley’s view is appealing to philosophers because of its elegance, the decomposability into parts, and its strength in covering the cases about which philosophers share intuitions.

The view’s implication that infanticide is not morally prohibited because of the moral status of the infant has been extensively defended. Tooley shows that because an infant cannot even represent her own life, it is clear she does not meet the condition (a). My concern is that there is a different counter-intuitive implication of Tooley’s view. It excludes certain depressed individuals because, though they can represent their lives, they are incapable of valuing those lives. If this turns out to be an implication of Tooley’s view, then it represents a serious challenge.

Tooley notes that infants fail to meet the condition because they cannot even represent their futures, and therefore cannot desire them. In the case of individuals with major depressive disorder, the issue is not the cognitive capacity, the ability to represent, but the attitude towards that representation. I want to focus first on what changes in attitude engender the change in valuation. The appearance of the world is tied up in our attitude towards it. Still, the ability to represent *at all* does not condition the attitudes that strongly, and does not entail that representations deserve, or allow, positive attitudes. It is possible that individuals might be able to represent the world, but be incapable of having positive attitudes towards some representations.

**2.1 The weak and strong senses of valuing**

What it means for an individual to value her future is ambiguous. Regina Rini [6] presents two possible characterizations of “valuing the future.” Rini differentiates between a strong sense and weak sense of valuing one’s life. In the strong sense, an individual values her existence directly and in the weak sense she values her existence indirectly. When she evaluates her life, the subject who values her life directly regards the whole thing, taken collectively, as a good; in the weak sense, a subject values her life indirectly by virtue of valuing something (possible or guaranteed) in her future, where living is instrumentally necessary for achieving that something. Only the strong sense seems to work with Tooley’s account.

When Sally values her life in the strong sense, she looks at the life and makes a judgment her life is worth living. She values her life as a positive good, because the collection of events and experiences taken together are good. This is obviously compatible with Tooley’s account, and someone who has the capacity to value her life in this way clearly has a high moral status. Representing an aggregate of the experiences over the course of a life satisfies condition (a) and the desire satisfies condition (b).

On the weak sense, if Sally values her life, she looks at her life and sees at least one event or experience that she values. As long as Sally’s life is necessary for bringing about the event or experience, then she values her life instrumentally. Suppose that Sally does not value her life in the strong sense, but really values eating the sandwich she is going to have for lunch tomorrow. Sally values her life, in the weak sense, because her life is instrumentally necessary for eating the sandwich tomorrow. It is not clear that Sally satisfies either (a) or (b) in this case.

Rini writes, “To [value her life indirectly], she must value *something* and it must be the case that the continuance of her life is instrumentally necessary to her achieving that something.” [6] While one of the characteristic features of major depressive disorder is diminished interest in activities that used to elicit excitement, the loss of a desire to pursue things that brought joy, the weak sense is *really* weak [7-11]. Something as simple as valuing the experience of a good sandwich is sufficient to lend a life value, in that life is instrumentally necessary to enjoying sandwiches.

This observation, though, problematizes the criteria offered by Tooley’s view. If Tooley means valuing one’s life in the weak sense, this would include individuals that Tooley’s view actively excludes. Some individual might not be capable of representing and desiring an aggregated state of affairs, but capable of representing and desiring the experience of eating a sandwich. Valuing one’s life in the weak sense suggests that this individual would meet the description, despite not satisfying part (a).

Consider the following: It might be reasonable to say that my dog Fido has a right to food. After all, Fido is the sort of thing that is the subject of desires and other mental states, he is capable of desiring food, and if Fido does desire food than others are under a *prima facie* obligation to refrain from depriving him of food. However, just by having a desire for food, Fido values his life in the weak sense. If the weak sense is what matters, then Fido also has a right to life. Further, simply by having desires of this kind, any individual would value life in the weak sense. This is inconsistent with Tooley’s view; therefore, Tooley must be talking about valuing life in the strong sense.

**2.2 The capacity and the actualization**

This clarifies what Tooley means by “desiring,” but that does not give us a complete account of his criteria. After all, Tooley writes that a person is “capable of desiring to continue existing,” [1] and so it is not necessary that they actually desire existing. Someone who values their life in the strong sense may have moments where they do not actively desire to continue living, either as a function of their abilities to represent at that moment or as a result of their attitudes. Someone in a particular state of unconsciousness cannot actively represent her life and could not actually have such a desire, but still has the capacity. Someone in excruciating pain may, in that moment, actually want her life to end in order to bring the pain to cessation, but she still has the capacity to desire.

As Tooley and other philosophers have noted, those in these states are still capable of valuing their lives [5, 12-13]. This is uncontroversial. So far, I have only established that some individuals with major depressive disorder are not valuing their lives in the relevant sense, but they might still fall under that category of individuals who are simply not valuing their lives at the moment. I have not established that they lack the capacity to value their lives. In the following section, I turn my attention to theories of capacities, in order to demonstrate that some individuals with major depressive disorder are incapable of valuing their lives, before undergoing treatment.

**3: Medical intervention and genuine incapacitation**

It is obvious that depressed individuals are *not disposed* to desire their own futures; but it is more difficult to establish that they are *incapable* of desiring their own futures. I am not disposed to go running early in the morning; I would much rather put on a sitcom and lie in bed while I edit this paper. But I am capable of going for a run, as some people constantly remind me. The two are not tied particularly closely, and being incapable of something is a strong claim. It means (at least) that even if I desired to *x*, to the point where I would exert significant effort to *x*, I still would not be able to *x*.

Consider the fictional Professor Farnsworth’s chimpanzee Günter.[[2]](#footnote-2) Günter wears a special hat that dramatically improves his mental faculties, making him a genius by human standards. While wearing the hat, Günter is able to go to college, date humans, and even outsmart his human roommate Fry. But when he is deprived of the hat, he returns to being a neuro-typical chimpanzee. It seems odd to say that Günter himself possesses these capacities; rather, the hat gives Günter these cognitive capacities.

It is poignant that Tooley (at least in his more recent writing) seems to agree on this point, as Tooley distinguishes between cognitive capacities and potentiality [5]. Like many philosophers, Tooley is inclined to suppose that chimpanzees like Günter have the potential to be persons, under the right sort of conditions, but they do not have the cognitive capacities that give them this moral status. Even if the hat were capable of permanently giving Günter the cognitive capacities, bringing us close to genetic modifications considered by Tooley or Jeff McMahan, in his pre-hat state Günter would not have that capacity [1, 5, 14].

**3.1 Training and some trouble for capacities**

Cases like Günter create a grey area in what it means to have a capacity. If an individual can be trained to perform a task, then, on some accounts, that individual is capable of performing that task. I cannot bench 300 pounds; I'm 5'8 at my tallest and slight of frame. I could, however, bulk up and eventually train my body to lift that amount of weight. Some philosophers are inclined to say that I am (at present) capable of bench-pressing 300 pounds, but if having a capacity means that an individual could actualize a behavior at some point in the future, that seems to produce certain counter-intuitive results. After all, at some point in the future, I could bench-press 300 pounds as a result of training, or I could undergo major medical interventions that would allow me to lift far more than that.

So, if I could lift 300 pounds after extensive training, am I capable of lifting 300 pounds prior to that training? Would there be a point in the training process where I was close enough that I have the capacity to life 300 pounds? If I could lift *n* pounds only after major medical intervention, am I capable of lifting *n* pounds prior to that intervention? This is the sort of grey area I am concerned about. Training creates a problem, and that problem will become important to understanding cognitive capacities. At the very least, it seems clear I do not have the capacity if major medical intervention is required to help me do the lifting.

Tooley agrees, and says as much in the original article. Tooley asks us to suppose there is a chemical that could be injected into the brain of a kitten to give that kitten all of the cognitive capacities of neuro-typical human persons, and thus establishing moral status. Tooley writes,

“… it would not be seriously wrong to refrain from injecting a newborn kitten with the special chemical, and to kill it instead. The fact that one could initiate a causal process that would transform a kitten into an entity that would eventually possess properties such that anything possessing them ipso facto has a serious right to life does not mean that the kitten has a serious right to life even before it has been subjected to the process of injection and transformation. The possibility of transforming kittens into persons will not make it any more wrong to kill newborn kittens than it is now.” [1]

This settles the question as to whether I have the capacity to lift *n* pounds, prior to medical intervention. However, it does not settle whether or not I have the capacity to lift 300 pounds, because there is something intuitively different about, on the one hand, transformative medical intervention and, on the other hand, training oneself to perform an activity. I leave open whether or not it is correct to say I have a capacity in the training case.

Some cases straddle this intuitive distinction between radical intervention that changes capacities and deliberate changes through training. Suppose that I need to use anabolic steroids and other supplements. The steroids contribute artificially to the modification of my body, expediting muscle recovery in extreme ways, but still require me to put in a great deal of work. Did I have the capacity before using the steroids? It includes both training and medical intervention.

This brings us back to major depressive disorder. Major depressive disorder is like the case of training with steroids, because there is conjunction. Some methods of treatment are drug-based; others are therapy based. It is standard for treatment to include both.[[3]](#footnote-3) Medical treatment for depression is not like transforming kittens into persons; it is also not merely an exercise in will and practice. Pharmacology and exerted effort contribute to realized changes. In the following section, I argue treating depression is like a transformative medical intervention, rather than training, with regard to claims about capacities. As such, Tooley’s criterion of the “capacity to value one’s own life” cannot be applied to persons before treatment.

**3.2 Why treatment for depression is a medical intervention**

Standard treatment for major depressive disorder focuses on two axes; the first is short-term modification of mood through the administration of drugs, including but not limited to selective serotonin reuptake inhibitors, and the second is long-term modification of mood and behavior through therapy [10]. The second gives us reason to prefer understanding treatment for depression as a matter of behavioral training, and this is one of the metaphors used in, for example, cognitive behavioral therapy programs. However, the first pushes the point, because in many cases the short-term prospects for the patient necessitate the administration of some sort of drug-based treatment.

In cases where a pharmacological regimen is necessary for effective treatment, it seems odd to say that the patient’s treatment is really a matter of training analogous to training (sans supplements) in weightlifting. It also seems wrong to say the patient is merely undergoing some sort of intervention, because the process is not passive; the patient has to exert effort and participate in her treatment. The treatment is a complex process, with two conditions that contribute to success, but this gives us reason to prefer grouping it with intervention. Consider a case like Tooley’s super-kitten or Günter, where the kitten or chimpanzee also has to participate actively in the process of learning after modification; in such a case, it would still be a mistake to say they had the capacity prior to the administration of the procedure, despite the fact that they actively participated in the process. The fact that the modification is a condition, even if there are other contributing conditions, undermines the claim that the kitten or chimpanzee would have the capacity prior to the modification. (Perhaps they would have it at some discrete point in the middle of the process, but certainly not prior.)

However, there is another substantive difference that counts in favor of thinking of depression treatment as training, rather than intervention. The intervention analogies given this far have to do with enhancement, while medical treatment is generally regarded as restorative. A change made to Günter or the kitten, or some change that would allow me to lift huge amounts of weight, is regarded as enhancement. By contrast, changes made to individuals with major depressive disorder are regarded as treatment, as restorative. Put another way, the goal in modifying a patient with major depressive disorder is to restore her to a neuro- and psycho-typical state; the goal in modifying the kitten or chimpanzee is to supersede the capacities of a neuro-typical member of the species. Still, while this establishes a relevant normative difference between understanding the difference in treatment and enhancement, it does not seem relevant to the conceptual difference regarding capacities.

A counter-factual version of this observation can be given that explains the difference between depressed Sally and the kitten; an objector can claim, “If Sally were neuro-typical, then Sally would have the capacity to value her life.” That is obviously right. However, the facts in virtue of which Sally is non-neuro-typical are the same facts in virtue of which her capacity is questionable. The fat that Sally is atypical is not relevant to Sally’s moral status. A human being born with a condition that causes the cognitive development of a kitten is neuro-atypical.

Whether the intervention counts as treatment or enhancement is dictated by a statistical notion of normalcy. It is easy enough to imagine the notion of normalcy is different, or simply to ignore it altogether. The question of capacities remains unchanged. Even in a hypothetical world where depression is statistically typical, and therapy and prescription for depression therefore counts as enhancement, the observations about capacities don’t change in response to that. The claim that the capacity is typical correctly acknowledges treatment, rather than enhancement; however, it does not impact the claim that the individual’s capacities are absent prior to treatment.

**4. Biting the bullet on a right to life**

The remaining move, and the one I fine most troubling, is to simply bite the bullet about the moral status of individuals with depression. One might simply say, “Well, these depressed individuals aren’t persons; they don’t have a right to life. It is not seriously morally wrong to kill them.”

The first response to this move is visceral; it is just intuitively repugnant. Of course, that is not a philosophical argument, but an expression of discomfort. The exclusion of depressed individuals is troubling enough to fuel my skepticism about the plausibility of Tooley’s view, and I suspect that there are many others who share this reaction. However, for those whose intuitions do not have that effect, or are simply interested in an argument to suppose this claim, I advance such an argument below.

**4.1 Faring worse, and the inadequacy of desiring**

There are certain things that people may not desire, but would nonetheless be harmed if deprived of them. I do not desire to feel physical pain; in fact I believe I would be quite happy if I never had to experience physical pain ever again. However, the consequences of being unable to feel pain are problematic; patients who are insensitive to pain fare worse on account of that insensitivity, chewing at their own lips, having issues with the internal regulation of body temperature, and various other physical problems [15-16]. It strikes me, on that basis, as wrong to deprive me of the capacity to feel pain in spite of my desire not to feel pain or my ambivalence towards my pain states.[[4]](#footnote-4)

Surely, the response goes, if I knew what it meant to be insensitive to pain then I would appropriately value the capacity and therefore desire to keep it. If I knew all the facts, I would not be ambivalent about this capacity. When I do not value the capacity to feel pain, I am actually just wrong. I must be making a mistake. I must not be correctly representing what it is like to feel pain; I must not be considering all of the implications. But this is presumptuous.

Such statements are often direct towards depressed individuals. It is quite common for those around a person suffering from major depressive disorder to say something like, “Well, if you really understood how good your life is, then you wouldn’t be ambivalent about it.” This, too, is presumptuous. In full recognition of the problems with insensitivity to pain, I might still value the loss of painful experiences as better than the various risks, all things considered. I might correctly represent all of the consequences and risks associated with insensitivity to pain and still prefer that circumstance to a life with pain.

The physical problems that insensitivity to pain would cause are serious, and to indirectly cause me to suffer from them is to cause serious harm. Even though I do not personally value my capacity to feel pain, I fare worse for not having such a capacity. Causing the indirect effects, the undesirable things brought about instrumentally by insensitivity to feel pain, can still be morally wrong. Similarly, even though an individual does not value her life, it is wrong to kill her. Sally may not have the capacity to directly value her life, to value it in the strong sense, but it is still morally wrong to kill her in lieu of various other considerations, e.g. indirect effects.

**5: The value of the ambivalents**

I argue above there is a mistake in Tooley’s account, that the capacity for valuing one’s life excludes individuals with major depressive disorder, and that those individuals are persons in the morally salient sense. These two claims, taken together, give a reason to reject Tooley’s view of moral status.

In the course of advancing this argument, I make three central moves. The first, in section (2), is to resolve the ambiguity of what it means to “value life” made by Rini, and show that the strong sense is the only sense relevant to Tooley’s account. The second, in section (3), is to argue that the relevant depressed individuals are actually incapable of valuing their own lives; it is not that they are merely “not disposed” to do so, but even if they exerted effort to do so, they would not be able to without medical intervention. The dependence on medical intervention evidences the lack of capacity. This second move establishes that certain depressed individuals are not persons on Tooley’s account. The third, in section (4), is to argue that the exclusion of certain depressed individuals from Tooley’s account is reason to reject the account.

Cognitive capacities accounts of moral status are often regarded as one of the most promising and philosophically rich approaches to an important problem in moral philosophy. As Tooley and many other philosophers have advanced, and continue to develop, various accounts of personhood based on the cognitive capacities of individuals, this argument is a critical and decisive objection to a valued member of those cognitive capacities approaches to moral status.

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1. I am deeply grateful to Regina Rini and an anonymous reviewer for comments on various drafts of this paper, and to Neil Levy for his role as Editor-in-Chief of *Neuroethics*. [↑](#footnote-ref-1)
2. This is borrowed from Futurama season one, episode eleven. Philosophical discussions have discussed similar cases, e.g. McMahan’s superchimp [7]. [↑](#footnote-ref-2)
3. Some readers may be inclined to argue that therapy is, itself, a form of medical intervention, and therefore more like intervention than training. If this is so, it makes my case much easier, as standard treatment for depression would actually be the conjunction of two medical interventions. This may be right, but I have chosen to argue the more conservative line. [↑](#footnote-ref-3)
4. My point is not something broad like, “attitudes never matter to normative reasons.” I do not want to fall prey to objections put forward by Street [17], among other critics of attitude-independence claims. However, I do presuppose that attitudes, in and of themselves, are not enough to ground normative reasons. This is a commitment, but a moderate and accessible one. [↑](#footnote-ref-4)