

# Capacities, Hierarchies, and the Moral Status of Normal Human Infants and Fetuses

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Normal human infants have serious moral status, the sort of moral status that normal human adults have. Since this will appear utterly uncontroversial to many people, it may appear somewhat strange that a philosopher is spending time defending it. But not everyone shares the intuition that normal human infants have serious moral status, and even people who share the intuition often disagree among themselves over what reasons, if any, can be offered for accepting the intuition.<sup>1</sup> We will consider an argument that does not rely upon the common intuition that normal human infants have serious moral status. The reason given for accepting the common intuition can be put succinctly here and will be further expanded below: normal human infants possess a certain set of capacities, and the fact that something possesses this set of capacities is sufficient for it to have serious moral status. Another motivation for giving an account of why normal human infants have serious moral status is that having such an account may be useful when approaching several more disputed questions about moral status, such as whether serious moral status is possessed by abnormal human infants, severely brain-damaged human adults, normal and abnormal human fetuses, and normal and abnormal non-human animals.

## 1 The Main Argument and Its Two Key Concepts

The main argument we will take up has two steps: first, if an entity has a set of typical human capacities, it has serious moral status; second, normal human infants

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<sup>1</sup> See Michael Tooley, *Abortion and Infanticide* (Oxford: Oxford University Press, 1983).

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have a set of typical human capacities. Before defending these steps, it is important to explain two key concepts: the concept of serious moral status, and the concept of a set of typical human capacities.

The concept of serious moral status is a place-holder for whatever morally salient features normal adult human persons possess. The reason for labeling it serious is to explicitly distinguish it from the many real yet lower-grade sorts of moral status that other things in the universe have, such as works of art, natural landscapes, plants, trees, and at least some non-human animals. The assumption that normal adult human persons have serious moral status will be taken for granted here. But this assumption is not controversial. Each of us firmly believes that we have serious moral status. We believe, for example, that other people owe us a certain amount of respect and that they should not try to harm us unless they have very good reasons to do so.

Serious moral status has many dimensions or aspects besides the two just mentioned, which focus on respect and harm. Arguably, certain natural rights are a part of serious moral status, such as the natural rights to life and liberty. Arguably, serious moral status prescribes a certain sort of aesthetic response on the part of people who encounter it in others. Like love, serious moral status is a many-splendored thing. The nature of serious moral status is something open to debate. The argument we will consider, however, is not about the nature of serious moral status, but about the basis of serious moral status: the argument is that the basis, the feature we have as human beings in virtue of which we have serious moral status, is the possession of a set of typical human capacities.

The concept of a set of typical human capacities is a technical concept that relies upon the simpler concepts of a capacity and a hierarchy of capacities.<sup>2</sup> A capacity is the metaphysical ground or truth-maker of a true conditional statement about a thing. For example, the capacities of sub-atomic particles are what make statements describing what would happen to such particles in different circumstances true. A capacity is the same thing as a power or disposition. Although many philosophers hold the view that a thing's capacities are themselves always reducible to something else, such as the thing's structural properties plus the laws of nature, there is a coherent alternative view that at least some things in the world have capacities that are not reducible in this way. Still, although that view is coherent and defensible, we will adopt the view that capacities are reducible to something else.

A hierarchy of capacities is a group of capacities with three features. First, some members of the group are lower-order capacities. Second, some members of the group are higher-order capacities. Third, the higher-order capacities are just capacities to obtain the lower-order capacities. For example, liquid water has the lower-order capacity to evaporate, while ice has the higher-order capacity to obtain this lower-order capacity; a mature oak tree has the lower-order capacity to support

<sup>2</sup> See C. D. Broad, *Examination of McTaggart's Philosophy*, vol. 1 (Cambridge, England: Cambridge University Press, 1933), pp. 264–278; see also Eric Olson, *The Human Animal: Personal Identity Without Psychology* (Oxford: Oxford University Press, 1997), pp. 85–89; J. P. Moreland and Scott Rae, *Body and Soul: Human Nature and the Crisis in Ethics* (Downers Grove, Ill.: InterVarsity Press, 2000), pp. 71–73; and Martha Nussbaum "Capabilities and Human Rights," *Fordham Law Review* 66 (1997).

a tree house, while a sapling has the higher-order capacity to obtain this lower-order capacity. When it comes to human organisms, we often presuppose such hierarchies even though our ordinary language partially obscures them. For example, some people would say that a monolingual English speaker has the capacity to speak English but does not have the capacity to speak Chinese, because she can speak English right now if she needs to but it would take her a great deal of time and effort to learn to speak Chinese. We can capture what is at issue here by saying that she has a lower-order capacity to speak English, but she does not have a lower-order capacity to speak Chinese. She does, however, have a higher-order capacity to speak Chinese. She has a higher-order capacity to obtain the lower-order capacity to speak Chinese.

Typical human capacities are possessed at a lower-order level by any normal adult human person. However, for an entity to have a set of typical human capacities, it is enough for the entity to have such capacities either at a lower-order level or at a higher-order level. Given this, it is not hard to believe that normal human infants have a set of typical human capacities. It seems that a normal human infant has a higher-order capacity to do the sorts of things that any normal adult human person can do, just as a sapling has a higher-order capacity to do the sorts of things that a mature oak tree can do. This still leaves unanswered why the possession of such higher-order capacities is sufficient for having serious moral status. To answer this, it is necessary to say more about hierarchies.

A higher-order capacity is the same as the potential to obtain a lower-order capacity. However, it is sometimes more informative to speak in terms of hierarchies of capacities, rather than in terms of potential, because this way of speaking highlights the fact that hierarchies of capacities can have two or more levels. Since this feature will be important in the argument to follow, let us consider an illustration. It seems that if a sapling has a higher-order capacity to support a tree house, then so does an acorn. But the higher-order capacity of the acorn to support a tree house seems to be higher in order than the higher-order capacity of the sapling. A more informative way of describing the difference between the capacities of the acorn and the sapling to support a tree house involves assigning numbers to the orders of capacities before explicitly relating the orders to one another. Let us call the mature oak tree's capacity to support a tree house a first-order capacity. Let us call the sapling's capacity to support a tree house a second-order capacity, recognizing that numbering it second is somewhat arbitrary since there are any number of stages between the sapling and the mature oak. Finally, let us call the capacity of the acorn to support a tree house a third-order capacity, again, recognizing that numbering it third is somewhat arbitrary since there are any number of stages between the acorn and the sapling. Although the exact numbers we assign to the orders are somewhat arbitrary, what is not arbitrary is that we assign a higher number to the order of the sapling than we do to the oak tree and that we assign a higher number to the order of the acorn than we do to the sapling. We can characterize the difference between the sapling and the acorn by saying that while the sapling's second-order capacity is a capacity to obtain the mature oak tree's first-order capacity, the acorn's third-order capacity is a capacity to obtain the sapling's second-order capacity.

Given this understanding of a hierarchy of capacities, where every additional order of the hierarchy includes reference to the orders beneath it, we may call the capacity where a given hierarchy starts a first-order capacity. Finally, we may also make a further important distinction between first-order capacities, on the one hand, and immediate or immediately exercisable capacities, on the other. For example, what a first-order capacity to love amounts to is the neurological base for loving, which one gets from various experiences and which one retains as long as one remains a healthy and functional organism. What an immediate or immediately exercisable capacity to love amounts to, in contrast, is a first-order capacity to love, the exercise of which is not impeded by some transient condition. When someone is awake and free from any physical impediments blocking his ability to love, he has both a first-order capacity to love and an immediate capacity to love. But when the person is asleep, or when he is awake but swelling in a region of his brain that renders the neurological base for loving physically inaccessible to him, he has a first-order capacity to love but not an immediate capacity to love.

The concept of a hierarchy of capacities and the distinction between first-order and immediate capacities help explain the sense in which someone still has a capacity even when he is temporarily incapacitated in various ways. For example, if someone is asleep, under anesthesia, or comatose, he loses the immediate capacity to love but retains the first-order capacity to love. If the person succumbs to certain kinds of reversible brain damage, he loses the first-order capacity to love but retains a second-order capacity to love. If he succumbs to certain other kinds of reversible brain damage, he loses the second-order capacity to love but retains a third-order capacity to love. In general, then, an individual has a higher-order capacity to do some activity whenever it has the ability to obtain the immediate capacity to do that activity. In some cases, obtaining an immediate capacity is relatively easy. For example, a sleeping or anaesthetized person eventually wakes up. In other cases, obtaining an immediate capacity is more difficult: for example, learning Chinese takes time and effort on the part of the learner and on the part of teachers. In still other cases, obtaining an immediate capacity requires extensive medical assistance. For example, recovering from a coma or brain damage requires the help of highly skilled professionals with sophisticated technology.

## 2 The Temporary Change Argument

There are times in life when we go through what can be called temporary changes, for example, when we are temporarily unconscious due to being asleep, anesthetized, or comatose. During such times, we have serious moral status, but the only thing we could base this serious moral status on is some present property of ours other than our immediate capacities. Since we do base our serious moral status on something during such times, and since it is not plausible to base our serious moral status on any of our present properties besides our higher-order capacities, it seems that our serious moral status must be based on our higher-order capacities. For the sake of simplicity, this argument, which may be called the temporary change argument, will be formulated in terms of a single capacity, the capacity to love. But since the discussion could be

formulated in terms of any single capacity or any set of capacities, the capacity to love can be understood as a convenient stand-in for the entire set of typical human capacities.

Let us consider what happens to someone's serious moral status and her capacity to love when she goes through an episode of becoming relatively and temporarily incapacitated due to being asleep, anesthetized, or comatose and then recovers from the episode. She has serious moral status before, during, and after the episode. She has a first-order capacity to love before, during, and after the episode. But she has the immediate capacity to love only before and after the episode. From a case like this, someone who accepts the temporary change argument may draw a negative conclusion and make a positive suggestion. The negative conclusion is that the person's possession of the immediate capacity to love at a given time is not what grounds her serious moral status at the time. The positive suggestion is that the person's possession of the first-order capacity to love at a given time is what grounds her serious moral status at the time.

One strategy for replying to someone who accepts the temporary change argument is to ground the person's serious moral status during the episode in the fact that certain things were true of her in her actual past: for example, she actually possessed the immediate capacity to love at times before the episode. According to this backward-looking strategy, serious moral status only exists in the case of the temporary change in virtue of the fact that the temporary change is a change from a previous state of a certain sort. A second strategy is to ground the person's serious moral status during the episode in the fact that certain things will be true of her in her actual future: for example, she actually will possess the immediate capacity to love at times after the episode. According to this forward-looking strategy, serious moral status only exists in the case of the temporary change in virtue of the fact that the temporary change is temporary. If either of these strategies is satisfactory, then it will not be necessary to accept the claim that the person's possession of the first-order capacity to love at a given time is what grounds her serious moral status at the time. Nevertheless, it will now be argued that each of these strategies is unsatisfactory.

The backward-looking strategy for replying to someone who accepts the temporary change argument is to ground a person's serious moral status during the episode in the fact that certain things were true of the person in her actual past. For example, many writers hold that it is crucial whether actual thinking of a special kind has already occurred, self-awareness over time, accompanied by some pro-attitude, such as desire or care, that attaches to what continues over time. To see why the backward-looking strategy is unsatisfactory, let us consider the following case: Alice is a normal, healthy adult with a rich and satisfying life, endowed with the immediate capacity to love and also endowed with self-awareness and the desire to go on living. We may imagine that Alice undergoes a temporary change and is currently asleep, and that during this time, she gets replicated in the sort of replication booth described by Derek Parfit in which Alice is preserved intact and is not destroyed, but her perfect replica Betty is instantly produced across the laboratory.<sup>3</sup> Betty has the same sort of molecular structure that Alice had, and is

<sup>3</sup> See Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), pp. 199–200.

functioning at just the same level as Alice. Furthermore, Betty has exactly the same capacities as Alice. Both Alice and Betty lack the immediate capacity to love, and both Alice and Betty will have the immediate capacity to love, along with self-awareness and the desire to go on living, at the same time if they are just allowed to.

The backward-looking strategy would have us hold that Alice has serious moral status, but Betty does not. But this is hard to believe. Let us suppose that we walk into the lab shortly after the replication had happened, without knowing how it happened. Even though we know that one of the two individuals is a replica, we do not know whether it is Alice or Betty. If a scientist tells us that only one of the two human organisms has serious moral status, we would be perplexed. After all, Alice and Betty will both develop the immediate capacity to love at the same time if they are just allowed to do so. It seems reasonable to think that if Alice has serious moral status, Betty also does. The mere fact that Alice had once possessed the immediate capacity to love, along with actual self-consciousness and pro-attitudes, should not bear the moral weight that the backward-looking strategy insists it bear.

We can admit that there are some morally relevant differences between Alice and Betty without admitting that only Alice has serious moral status. For example, let us imagine that Alice had worked hard and put her earnings into a savings account before falling asleep and getting replicated and that Alice and her replica Betty both wake up and claim to own the money in the savings account. Arguably, Alice has a stronger claim to the money than Betty, since Alice actually saved the money whereas Betty merely has pseudo-memories of saving the money. However, not all morally relevant properties are dependent like this upon the actual history of an individual. In particular, the properties that constitute serious moral status, such as the natural rights to life and liberty, do not seem to be so dependent upon an individual's actual history. The upshot of this case is that a person can still have serious moral status during an episode even if certain things were not true of the person in her actual past. Thus the backward-looking strategy for replying to someone who accepts the temporary change argument is unsatisfactory.

The forward-looking strategy for replying to someone who accepts the temporary change argument is to ground a person's serious moral status during her episode in the fact that certain things will be true of her in her actual future. For example, many writers hold that it is crucial whether something has a valuable future, or a future containing valuable experiences, ahead of it. To see why the forward-looking strategy is unsatisfactory, it is important to see how it is similar to what have been called deprivation accounts of the wrongness of killing.

Deprivation accounts of the wrongness of killing emerge from the combination of three claims. The first claim is that the wrongness of a particular act of killing is solely a function of the misfortune of the particular death caused by that particular act of killing. The second is that the misfortune of a particular death is solely a function of the goods that the particular death deprives the entity that dies of. The third is that the goods that a particular death deprives the entity that dies of are the goods that the entity would have had, if, contrary to fact, the entity had not died the particular death. Deprivation accounts of the wrongness of killing are similar to the forward-looking strategy for replying to someone who accepts the temporary change argument. Proponents of deprivation accounts, when attempting to

articulate the wrongness of particular acts, emphasize the future goods a person would have enjoyed had the acts not been performed. A proponent of the forward-looking strategy, when attempting to articulate the basis of serious moral status, emphasizes the future state a person will be in. An influential statement of killing along these lines has been advanced by Don Marquis, although in his careful statement of the view he does not endorse, and indeed would likely reject, the crucial word “solely” in the first and second claims.<sup>4</sup>

Proponents of deprivation accounts of the wrongness of killing face what has been called a problem of over-determination.<sup>5</sup> The second and third claims of deprivation accounts, taken together, entail something very odd whenever the following conditional holds true: if, contrary to fact, a person did not die the particular death she did die, then she would have died some other way at the same time she actually did die the particular death she did die. The second and third claims, taken together, entail that whenever the conditional holds true, the person’s particular death does not deprive her of anything and is therefore not a misfortune. When this entailment is combined with the first claim, the result is that whenever a person’s death is over-determined, someone can kill her without doing anything wrong.

To see why this is a problem, let us consider the following example. A man lives in a place where racial tensions are at the boiling point, and where race riots are known to lead to lynching that kills innocent people. He is walking down a deserted country road one night. Out of nowhere, a boy runs past him who is being chased by a mob of angry people shouting “Lynch him!” The man realizes that, no matter what he does to try and prevent it, the crowd will catch the boy and lynch him before any help arrives. In the past, the man has tried in vain to stop such crowds by pleas, by arguments, and by the use of force. Nothing ever works. This time, the man decides to join the crowd; he himself catches up to the boy and tackles him to the ground, he himself wraps the noose around the boy’s neck, and he himself pulls on the rope that hangs the boy to death from the limb of a nearby tree. Most of us would say that the man has done something seriously wrong. But proponents of deprivation accounts of the wrongness of killing cannot say this. Even if the man had not killed the boy, the boy would have died at the same time he actually died, because someone else in the crowd would have done the same sort of thing the man did, at the same time the man did it. Therefore, the man’s action did not deprive the boy of any of the goods he would have had if the action had not been performed. According to deprivation accounts of the wrongness of killing, the man did not do anything wrong. This case illustrates how the inevitability of certain sorts of outcomes is irrelevant to the wrongness of certain sorts of actions. It also illustrates the inadequacy of grounding an individual’s serious moral status in the fact that the individual will be in a certain state in the future. But these illustrations are relevant to the problem of the temporary change.

<sup>4</sup> See Don Marquis, “Why Abortion is Immoral,” *Journal of Philosophy*, vol. 86, no. 4 (1989).

<sup>5</sup> See Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (Oxford: Oxford University Press, 2002), pp. 117–120.



Let us consider someone undergoing a temporary change in a situation such that she will be killed no matter what we try to do to prevent it, for example, a woman undergoing anesthesia for surgery, where no matter what we do, she is going to be killed while under anesthesia. Perhaps a team of utilitarian transplant surgeons is determined to remove her vital organs in order to save five needy patients elsewhere in the hospital. Even in a case like this, the woman under anesthesia still has serious moral status during her temporary change. The fact that someone is going to kill her does not give us any reason to think that her serious moral status has been diminished in any way. The upshot of this case is that a person can still have serious moral status during her episode even if certain things will not be true of her in her actual future. Thus the forward-looking strategy for replying to someone who accepts the temporary change argument is unsatisfactory.

The temporary change argument shows that a person's possession of the immediate capacity to love at a given time is not the basis for the person's serious moral status at the time. But since the person has serious moral status during the episode, and since her serious moral status must be based upon something, what else can it be based upon? Since the replies given by proponents of the backward-looking and forward-looking strategies are unsatisfactory, and since it is not plausible to focus on superficial present properties of the person such as mass or color, it seems that a natural place to turn is the fact that she possesses a first-order capacity to love during her episode. The fact that she possesses a first-order capacity to love, then, seems to be sufficient for her to have serious moral status. This is the provisional result of the temporary change argument.

### 3 The Temporary Change Argument and Higher-Order Capacities

The temporary change argument can be extended beyond the sort of first-order capacity to love that a person possesses when asleep. If someone succumbs to certain kinds of reversible brain damage, she loses the first-order capacity to love, but retains a second-order capacity to love. Although the structure of the temporary change was originally filled in by referring to the contrast between an immediate capacity and a first-order capacity, this same structure can be filled in by referring to the contrast between a first-order capacity and a second-order capacity.

Let us consider what happens to a person's serious moral status and her capacity to love when she goes through an episode of becoming seriously albeit temporarily incapacitated due to being brain damaged in certain ways and then recovers from the episode. The person has serious moral status before, during, and after the episode. She has a second-order capacity to love before, during, and after the episode. But she has the first-order capacity to love only before and after the episode.

This revised temporary change is structurally isomorphic to the original temporary change. But this means that everything said above about the original temporary change will apply to this revised temporary change as well. The original temporary change showed how the possession of the immediate capacity to love was not necessary for the person to have serious moral status, since the first-order



capacity is enough. This revised temporary change will show how the possession of the first-order capacity to love is not necessary for her to have serious moral status, since the second-order capacity is enough. But there is no reason to stop at the second order. If a person succumbs to certain other kinds of reversible brain damage, she loses the second-order capacity to love, but retains a third-order capacity to love, as in an episode in which she loses and regains her second-order capacity to love, while retaining her third-order capacity to love and her serious moral status. This shows how the possession of the second-order capacity to love is not necessary for someone to have serious moral status, since the third-order capacity is enough.

The structure of a temporary change can be utilized on any two adjacent capacities in a hierarchy of capacities. Thus the structure of the temporary change argument can be repeated, or iterated, as long as there is a higher-order capacity to love. It would seem, then, that the temporary change argument can be used to show that the fact that a person possesses some higher-order capacity to love is sufficient for the person to have serious moral status. In addition, there is no reason to think this pattern is unique to a person; the temporary change argument could apply to any entity. Also, inasmuch as the capacity to love was chosen merely for the sake of simplicity, the temporary change argument could be set in terms of the entire set of immediate capacities possessed by any normal adult human person. It would seem, then, that the temporary change argument can be used to show that the fact that an entity possesses a set of typical human capacities, at some level or other, is sufficient for that entity to have serious moral status. This is the first step of the main argument that if an entity has a set of typical human capacities, it has serious moral status.

#### **4 The Temporary Change Argument and Normal Human Infants**

There is another extension of the temporary change argument. For the sake of simplicity we may again focus on the capacity to love. Another extension of the temporary change argument concerns the times of a person's life before the person has the immediate capacity to love for the first time. What follows from the fact that a person's possession of some higher-order capacity to love is sufficient for her to have serious moral status is that as long as she already has some higher-order capacity to love, she already has serious moral status, even before her very first moment of possessing the immediate capacity to love. This is just a natural upshot of the failure of the backward-looking strategy for replying to someone who accepts the temporary change argument.

While one extension of the temporary change argument concerns the change from the first-order capacity to love to some higher-order capacity to love, another extension concerns the times of a person's life before she possesses the immediate capacity to love for the first time. When these two extensions are combined, they seem to provide a promising way of reasoning with philosophers who do not begin with the intuition that normal human infants have serious moral status. What the two extensions show, when combined, is that as long as we have some higher-order

capacity to love during the time of our infancy, then we have serious moral status during the time of our infancy. However, the argument up to this point still leaves at least two important questions unanswered. The first is a strongly skeptical question: Why should someone believe that a normal human infant actually has any higher-order capacity to love? The second is a moderately skeptical question: Why should someone believe that a normal human infant possesses the sort of higher-order capacity to love that generates serious moral status?

Philosophers asking the strongly skeptical question could agree with the claim that a person's possession of a higher-order capacity to love is sufficient for her to have serious moral status, even before her very first moment of possessing the immediate capacity to love. But they could disagree with the claim that she possessed this higher-order capacity when she was an infant, on the grounds that she never was an infant. Perhaps the commonsense idea that she once was a human infant is simply false. After all, this commonsense idea is flatly incompatible with certain accounts of what constitutes a person's identity over time. Philosophers asking the strongly skeptical question might doubt that the infant from which a person developed had her set of higher-order capacities because they doubt that the infant from which she developed was her.

Philosophers asking the moderately skeptical question could agree with the claim that a person's possession of a higher-order capacity to love is sufficient for her to have serious moral status, even before her very first moment of possessing the immediate capacity to love. But they could disagree with the claim that she possessed this higher-order capacity when she was an infant, on the grounds that the order of this capacity when she was an infant was too high to generate serious moral status. Perhaps there is an order in the hierarchy of capacities related to loving where serious moral status is no longer generated. After all, even if it is true that someone once was an infant, and even if it is true that her serious moral status when sleeping is generated by the higher-order capacity to love that she possesses when sleeping, it still needs to be established that she had serious moral status when an infant because of the higher-order capacity to love she possessed when an infant. The capacity to love she possessed when an infant is of a different and indeed much higher order than the capacity to love she possesses when sleeping. Philosophers asking the moderately skeptical question might believe that some higher-order capacities to love generate serious moral status, while other higher-order capacities to love do not.

## 5 The Comparison Argument

The temporary change argument showed that for an entity to have serious moral status, it is sufficient for the entity to possess a first-order capacity to love. Previous possession of the immediate capacity to love was seen to be irrelevant. But as we imagine the temporary change getting more and more serious, the order of the capacities we must appeal to gets higher and higher. Since previous possession of the immediate capacity to love is irrelevant, it follows that as we heighten the order of capacities sufficient to generate serious moral status for an individual who has possessed but then lost the immediate capacity to love, we thereby heighten the order

of capacities sufficient to generate serious moral status for an individual who has not already possessed the immediate capacity to love. Eventually, we reach a point where the order of the capacity to love possessed by the individual in the middle of a temporary change is the same as the order of the capacity to love possessed by an infant. For example, just as an infant only has, say, a fourth-order capacity to love, so too we can envisage an adult in the middle of a temporary change who only has a fourth-order capacity to love. But since possession of this capacity is enough to generate serious moral status for the adult, possession of this capacity is also enough to generate serious moral status for the infant. Put another way, what may be called the comparison argument may be set out as follows. As the first premise, some adults are the same, in terms of the order of their capacity to love, as some infants. As the second premise, for the adults mentioned in the first premise, having their particular order of the capacity to love is sufficient to generate serious moral status. As the third premise, for any two individuals and any activity, and for any particular higher order of the capacity to perform the activity, if having the particular higher-order capacity to perform the activity is sufficient to generate serious moral status for one of the individuals, then having the particular higher-order capacity to perform the activity is sufficient to generate serious moral status for the other individual. Therefore, for the infants mentioned in the first premise, having their particular order of the capacity to love is sufficient to generate serious moral status.

It seems that the comparison argument is valid; acceptance of the premises requires acceptance of the conclusion. But is this argument sound? Are its premises true? The first premise is perhaps the most difficult premise to defend. But a defense of this first premise will provide an answer to the strongly skeptical question above, since if an individual could become one of the adults in the first premise, then the individual could have been one of the infants in the first premise. The second premise, since it depends on the first premise, inherits any of the difficulties of the first. But a defense of the second premise will provide an answer to the moderately skeptical question above, since if the sort of higher-order capacity possessed by the adults generates serious moral status for the adults, then, as long as the third premise is true, the same sort of higher-order capacity will generate serious moral status for the infants. The third premise, if somewhat technical, is carefully formulated to be as uncontroversial as possible. Hence a separate defense of it will not be given.

A natural objection can be raised against the first premise. It can be put as follows. Admittedly, it is not hard to think of cases involving adults who do not have the immediate capacity to love: for example, a sleeping adult must first wake up before she can truly be said to have this immediate capacity. But in our world most adults who lack this immediate capacity need very little in order to regain it, and are fully equipped in the meantime with a first-order capacity to love. Comparable things can be said if the adults without the immediate capacity to love are anesthetized, comatose, or temporarily brain damaged; at most, such adults have perhaps a second-order or third-order capacity to love. Nevertheless, it is much more difficult to think of cases involving an adult whose order of the capacity to love is even remotely comparable to, much less the same as, the order of the capacity to love possessed by a human infant. The conclusion is that the first premise must be a long reach at best and simply mistaken at worst.

But this natural objection can be answered by focusing on cases of human adults whose present inability to love is more serious than the sort of inability to love brought on by sleep, anesthesia, or coma. Let us consider, for example, the case of a normal human adult, Carl, who suffers such a severe form of brain damage that he must go through a long period of rehabilitation in order to regain the immediate capacity to love. To fix ideas, let us suppose that Carl is almost exactly like the individual in Thomas Nagel's example of "an intelligent person [who] receives a brain injury that reduces him to the mental condition of a contented infant...[for whom] happiness consists in a full stomach and a dry diaper."<sup>6</sup> The only difference between Carl and the individual in Nagel's example is that, while it is an open question whether the brain-damaged adult in Nagel's example can ever outgrow his unfortunate condition, it is certain that Carl can. Carl can be fully rehabilitated over time. To grasp how much time it will take for Carl to recover, let us imagine that at the time of his brain damage, Carl was the parent of an infant Dan. Carl's brain damage is so severe that it will take Carl the same amount of time to regain his immediate capacity to love as it takes Dan to obtain that immediate capacity for the first time. It seems that the order of Carl's capacity to love is as high as the order of Dan's capacity to love. Carl's case therefore supports the first premise in the comparison argument.

The most promising objection to this case of Carl and his infant offspring Dan is to insist that it is not possible for Carl to become one of the adults in the first premise, since the changes involved in the relevant temporary change would undercut Carl's personal identity through time. According to this objection, personal identity through time is psychological: for a person at one time to be identical with some entity at a second time, there must be certain sorts of causal links between the person's mental states at the first time and the mental states of the entity at the second time. Thus, if Carl really has been reduced to the mental level of an infant, Carl no longer exists. If there would be a possibility of further mental development that would parallel the development of the mental life of an infant, that would not be the rehabilitation of Carl but the development of a new and different person.<sup>7</sup>

This objection illustrates the counterintuitive implications of certain psychological accounts of personal identity and thus shows why temporary change cases give us excellent reasons for rejecting such accounts. Let us imagine that a normal adult human organism suffers an accident that causes brain damage so serious that the supposedly relevant causal links for personal identity through time are severed. However, we may imagine further that the organism eventually comes to possess the very same types of brain states as it possessed before: the organism's favorite symphony before the accident eventually becomes its favorite symphony after the recovery; the scent of chocolate which the organism found so exhilarating before the accident eventually becomes just as exhilarating after the recovery; the friendships, the religious commitments, the idiosyncrasies of belief and behavior all eventually become the same after the recovery as they were before the accident. The organism, as it were, lives the same bits of its life over again, but experiences them as though it were experiencing them for the very first time.

<sup>6</sup> Thomas Nagel, *Mortal Questions* (Cambridge, England: Cambridge University Press, 1979), p. 6.

<sup>7</sup> See Tooley, *op. cit.*, pp. 203–205.

In a case such as this, is the most natural interpretation that the original person, Carl, let us say, ceases to exist, and that a new person, indistinguishable in every way from Carl, has come to be associated with the same organism that Carl was associated with, or is the most natural interpretation that the same person, Carl, has recovered his original personality traits? It seems that the interpretation that Carl has recovered his original personality traits is preferable, and thus the causal links that some philosophers think are necessary for personal identity through time turn out to be unnecessary. The case was described in such a way that even though it is the causal links that some philosophers think are necessary that have been severed, the same person nevertheless remains. Once we realize that the causal links are not necessary for personal identity, in situations where the memories, beliefs, attitudes, and personality traits after the recovery are the same as before the accident, we also realize that these causal links are not necessary for personal identity, even in situations where the memories, beliefs, attitudes, personality traits, and so on after the recovery are different than before the accident. It might be objected that a significant similarity of personality traits are necessary for personal identity through time, even if causal links are not necessary. But this is not true. Even if it takes ten years for Carl to recover his personality traits, Carl himself exists during the recovery period: after all, it is his recovery. But during the recovery period, Carl's organism does not have most of the personality traits it had before the accident. Hence, Carl still exists even when the personality traits do not. Therefore the personality traits are not necessary for Carl's personal identity. Since Carl can still exist during a recovery phase without the personality traits, why should we doubt that Carl can still exist after a recovery phase without these personality traits?

Once the first premise of the comparison argument has been defended, it is not hard to see that the second premise can be defended as well. Carl still has serious moral status during the period of his temporary change, otherwise, certain sorts of temporary injuries or setbacks can cause your serious moral status to disappear. Furthermore, it can be shown that Carl's serious moral status is generated by Carl's possession of his higher-order capacity to love, and not, for example, by the fact that Carl once possessed the immediate capacity to love. Carl's case therefore supports the second premise in the comparison argument.

## 6 Beyond Normal Human Infants

The arguments can be extended to human organisms less developed than human infants. Although there might be concerns parallel to the concerns exhibited by the strongly and moderately skeptical questions above, the comparison argument would still be sound even if it was amended by replacing the word "infants" with the word "fetuses." The basic idea is that, as we imaginatively alter the temporary changes of the adult organisms, we eventually reach a point where the order of the capacity to love possessed by the organism in the middle of a temporary change is the same as the order of the capacity to love possessed by a human fetus. For example, just as a fetus only has, say, a ninth-order capacity to love, so too we can envisage an adult in the middle of a temporary change who only has a ninth-order capacity to love. But

since possession of this capacity is enough to generate serious moral status for the adult, possession of this capacity is also enough to generate serious moral status for the fetus.

A defense of an amended first premise can be offered along the same lines as the defense of the original first premise. Let us consider the case of a normal human adult organism Ed that suffers such a severe form of brain damage that he must go through a long period of rehabilitation in order to regain the immediate capacity to love. Just as Carl could be fully rehabilitated over time, so too Ed can be fully rehabilitated over time. To grasp how much time it will take for Ed to recover, we may imagine that at the time of his brain damage, Ed was the parent of a fetus Fred. Ed's brain damage is so severe that it will take Ed the same amount of time to regain his immediate capacity to love as it takes Fred to obtain the immediate capacity for the first time. It seems that the order of Ed's capacity to love is as high as the order of Fred's capacity to love. The case of Ed therefore supports the amended first premise in the comparison argument, even when that argument is amended to refer to fetuses.

Once the amended first premise has been defended, it is not hard to see that the second premise can be defended as well. Ed still retains his serious moral status during the period of his temporary change, otherwise, certain sorts of temporary injuries or setbacks can cause someone's serious moral status to disappear. Furthermore, it can be shown that Ed's serious moral status is generated by Ed's possession of his higher-order capacity to love, and not, for example, by the fact that Ed once possessed the immediate capacity to love. The case of Ed therefore supports the second premise in the comparison argument, even when that argument is amended to refer to fetuses.

Normal human infants have serious moral status. The thrust of the argument we have considered is that normal human infants possess the same morally relevant property that adult human beings possess when adults go through certain sorts of temporary changes. The morally relevant property in both cases is possession of a certain set of typical human capacities, which can be possessed at either the immediate level, or at the first-order level, or at some higher-order level. As we have seen, the argument might be extended to apply to normal human fetuses as well.<sup>8</sup>

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