

Membership in a kind: Nature, norms, and profound disability

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Abstract

Can rationality serve as the basis of respect for people who do not have this capacity? This paper starts from the assumption that rationality is both the norm for the human species and the basis of respect. The paper considers whether the species norm determines the nature of those profoundly disabled people who do not themselves possess the norm-related characteristics, and if it does, whether this implies that these same individuals are owed respect. The principal conclusion is that, while a positive response to these questions has its merits, it faces hard questions of its own, some of which appear insoluble. If that is what they are, then any attempt to ground respect for profoundly disabled people on an appeal to rationality as the species norm will fail, and those of us who believe that this group of human beings is owed respect will have to come up with an alternative explanation.

KEYWORDS

profound disability, rationality, species membership, species nature, species norms

1 | NATURE AND NORMS

Although not all profoundly disabled human beings have a capacity for rationality, we might regard an individual's nature as determined by the characteristics that constitute the norm for her species, and argue thus: rationality is included in the norm for the human species; therefore, it is in the nature of all human beings to have this capacity, including all people with profound disabilities. "The issue," as Cohen puts it, "is one of kind" (1986, 866), which is how Finnis sees it, since "to be a person is to belong to a kind of being characterised by rational (self-conscious, intelligent) nature" (1995, 48). This view is related to how human beings are to be treated. Scanlon asserts that "the class of beings whom it is possible to wrong will include at least all those beings who are of a kind that is normally capable of judgement-sensitive-attitudes" (1986, 186). And Nozick has profoundly disabled people in mind when he writes: "These people are, after all, human beings, of the same species as we, however retarded or handicapped. Even supposing a particular severely retarded individual turns out to be no more rational or autonomous and to have no richer an internal psychology than a normal member of another mammalian species, he nonetheless is a human being, albeit defective, and must be treated as one" (1997, 307).

It is one claim, that how someone is to be treated is determined by the kind she belongs to, and the norms of that kind, norms that, I shall assume, include a capacity for rationality; another, that it is in someone's nature to be rational because it is in the nature of her species to be rational. I discuss both claims, and I shall further assume

that rationality provides the basis of respect, since I want to explore what this implies for people whose profound impairments deprive them of any such capacity.¹

In what sense is it in an individual's nature to develop rationality, if she is not now rational? We might say that it is in her nature to develop this capacity if she could be, should be, or could have been rational, possibilities suggested by an appeal to the capacities constitutive of the norm for the human species. I assess each of these claims—particularly the last, as to what someone could have been—and consider also whether the appeal can succeed if none of these modal claims is sustainable. There are some hard cases.

I take rational self-governance both as constitutive of the norm for the human species and as the basis of respect, but the arguments I discuss can be advanced with different assumptions, and the central questions remain: whether the norm for the human species, whatever that may be, determines the nature of individuals who do not themselves possess the norm-related characteristics, and if it does, whether this implies that these same individuals are owed respect.

My principal conclusion is that while a positive response to these questions has its merits, it faces hard questions of its own, some of which appear insoluble. If that is what they are, then any attempt to ground respect for profoundly disabled people on an appeal to rationality as the species norm will fail, and those of us who believe that this group of human beings is owed respect will have to come up with an alternative explanation. I reach this sceptical conclusion on the basis of what I present here: an examination of influential accounts of how a species norm is related

¹ I do not assume that all profoundly disabled people are thus deprived; some are not.

to an individual's nature, and an assessment of what these accounts imply for how profoundly disabled people should be treated.

1.1 | Rationality and respect

My principal interest here being the relation between species norms and individual natures, there is little space to discuss the conceptions of rationality and respect I make use of, conceptions commonly found in Kantian accounts of respect for persons. The Kantian conception of rationality I employ comprises two capacities: a capacity on the basis of rational judgement to set ends and to determine that something is valuable and worth seeking; and a capacity for autonomy—for self-legislation and self-governance; that is, the capacity to legislate moral laws that apply to all rational beings, and to act in accordance with these laws because they are commanded by one's own reason (Dillon 2018; Korsgaard 1996; Velleman 1999). This Kantian conception of rationality is related to a Kantian conception of respect, which is owed to all persons just because they are persons—free, rational beings who are ends in themselves. Respect, writes Dillon (2018), is the “acknowledgment in attitude and conduct of the dignity of persons as ends in themselves,” and it is “not only appropriate but also morally and unconditionally required: the status and worth of persons is such that they must always be respected,” so that we treat others and ourselves always as an end, never merely as a means. Kantian respect is sometimes referred to as moral recognition respect, as distinct from appraisal respect (Darwall 1977), and other types of respect that have special relevance to people with disabilities, including care respect, and respect that demands that we refrain from patronising or stigmatising someone (Dillon 1992;

Cranor 1983; Cureton 2013.) There is, then, much more to be said about respecting profoundly disabled people than I say here, not only because some of these people have a capacity for rationality on many non-Kantian conceptions, but also because there are non-Kantian ways in which profoundly disabled people might be disrespected. Nevertheless, on the Kantian conception of respect that I deploy, there is a question whether this can possibly apply to someone who is not and never will be rational, and this is one of the principal questions I pursue below.

2 | A SPECIES NORM

Byrne adopts the position I want to look into, that all human beings are members of a rational kind, including those whose nature is impaired: “[E]very human being shares in the nature of humanity and having that nature suffices for being a person. The nature of the substance human being is rational. This is shown by the fact that, overwhelmingly, the typical human being comes to exhibit rational life in the normal course of development, indeed its species-typical life *is* that of a creature with rational agency and consciousness. In some human beings this nature is impaired but these human beings are creatures of a rational kind nonetheless, just as they would be if they had an unimpaired nature but never displayed a rational life because they were deprived of human nurture” (2000, 57).

The claim is that impaired human beings share in the rational nature of humanity because it is typical for members of the human species to do so. The norm appealed to cannot be a statistical norm; if it were, an individual’s nature would change according to changes in the capacities characterising one or more human generations. Suppose a global nuclear war were to extinguish all but three people,

two with profound impairments and one who is cognitively unimpaired. Then, if the reference class is the current human population, the nature of the unimpaired person would be determined by the nature of the two profoundly disabled people, and it would no longer be in her nature to become rational. This is false. Suppose a nuclear catastrophe had the effect of causing a worldwide genetic disorder so that humans were no longer able to develop the capacity for speech. Then, if a statistical norm is to take account of countless future speechless generations of humans, and these generations are sufficiently numerous, it will not be true of current and past generations of humans that it was in their nature to develop the capacity for speech. This too is false. Moreover, before the catastrophe we should say of current and past generations that it *is* in their nature to develop a capacity for speech but that after the catastrophe it is not in their nature to develop a capacity for speech. This is incoherent.

Thought experiments to one side, most human beings over the course of human history have developed a capacity for rationality, and this capacity is a distinguishing (though not unique) characteristic of the human species. Do these facts not suffice to determine the norm for all members of the species? No. Although not all human beings develop rationality, we are asked to accept that rationality is in the nature of those who do not develop rationality just because it is in the nature of the majority who do. But some human beings will never become rational; also, if they never could have been rational there is no sense in which it is in *their* nature to become rational. Whatever the status of rationality as a species norm, we must also establish, of those human beings who are not rational, that they either could become rational or could have been rational, if we are to maintain that rationality is a part of their nature.

Why suppose of some non-rational human being that she could become rational or could have become rational? We can appeal to a non-statistical norm: “[C]laims about species are not statistical generalisations. Rather, what they concern is the essential nature of a living kind, revealing facts about the *normal life-cycle* of that kind of living thing. The use of “normal” here is unashamedly normative. Claims about the life-cycle of a particular kind of living thing, or species, are just constitutive of what it is to be a member of that species” (Kumar 2008, 73).

Profoundly disabled human beings are members of the human species, and since rationality is included in the normal life cycle of human beings, rationality is also included in our conception of their membership. This view is a little obscure: does it follow that, in virtue of membership in the human species, it is in the nature of all non-rational profoundly disabled human beings to develop rationality? If it is not in their individual nature to develop rationality, in what sense can we attribute rationality to them? I return to this below.

Benn earlier adopted a variant on Kumar’s view: a human being “deficient in rationality” is “falling short of what, in some sense, he *ought* to have been, given the species to which by nature he belongs.” On the other hand “we do not see the irrationality of the dog as a deficiency or handicap but as normal for the species.” As to respect, “we respect the interests of men and give them priority over dogs not *insofar* as they are rational, but because rationality is the human norm” (Benn 1967, 71).²

² Cf. Wilkes: “[S]ome impaired humans are not able to do what they should naturally be able to do” (1993, 62).

What to make of these normative uses of “normality”? The norms attributed to the human species are a matter of controversy, especially those included in conceptions of health and human functioning.³ Some of the ways in which disabled people function conform to norms very far from what is typical for the species. Members of the deaf community on the island of Martha’s Vineyard were so numerous that a new sign language was developed, becoming the normal means of communication, including amongst hearing members of the population; deaf people were no less likely to function well than anyone else (Groce 1985). Children with autism spectrum disorder can lead high-functioning lives without conforming to the norms for social interaction characteristic of people sometimes described as “neuro-typical” (Gantman et al 2012). We cannot assume that the norms associated with human functioning exclusively conform to those that apply to people with no recognised disabilities; nor that any developmental trajectory that departs from the norms that apply to cognitively unimpaired people amounts to a deficiency or impairment.

Variability in norms of functioning is consistent with the existence of norms that apply to the species as a whole; it may be in the nature of all members of the human species to have the capacity for rationality, however much variation in other functioning we acknowledge. But *is* rationality included in the nature of all human beings? Some individuals never acquire the capacity, and many members of at least one group do not—the group of human beings whose cognitive impairments are profound. Suppose a group of children with profound impairments whose functioning and psychological development are characterised by a set of non-rational norms, and who lead contented lives in a protected environment; in what sense is it in the

³ See Boorse 1976; for criticism see Barnes 2016.

nature of any of these children to possess a capacity which neither they nor many of their peers possess, and which will never form part of their development? We might point instead to other norms, those that reveal emotional and social capacities, and suggest that it is these that characterise the norm for this group of human beings—their capacity to love and care, and to be loved and cared for.⁴ If, however, we insist on relativizing norms to levels of psychological development and we concede that there is a group that does not exhibit rationality, we may have to conclude that respect is not owed to these people.

To avoid this conclusion we either have to propose some alternative ground for respect (not something I do here) or have to show how any norm of rationality applies to individuals who are not rational and will never become so. The central objection to any such attempt is that, while people with profound impairments possess the properties that are essential to being a member of their kind—they are, after all, the children of human parents—this is not the same as possessing the properties that represent the norm for their kind. McMahan has pressed the point that “[p]roperties that are inessential to membership in the kind do not define the nature of the kind, even if they are characteristic or typical” (2005, 358). The argument McMahan objects to is this: “[I]t is in the nature of every human being to have the capacity for rationality because it is in the nature of the typical member of the human species to have it” (358). We certainly cannot accept this argument if we also accept that rationality is not in the nature of a non-rational human being who

⁴ “Philosophers have made much of the importance of rational capacities for the exercise of moral judgements and moral actions but . . . have understated the critical role other capacities play in our moral life . . . such as giving care and responding appropriately to care, empathy and fellow feeling; a sense of what is harmonious and loving; and a capacity for kindness and an appreciation for those who are kind.” (Kittay 2005, 122.). **{Please insert the epigraph here, even if it is longish, and include the original source.}** JV: DONE.

could never have been rational. We might, however, assert a presumption of rationality as a species norm, a presumption overturned only in the case of someone who never could have been rational. Species nature is determined by the distinguishing characteristics of human beings as a species, but whether any one individual *possesses* this nature is determined by what is true of that individual—whether she has acquired or could have acquired the capacities that the species nature consists of. It may turn out that a few human beings do not possess the nature common to all other humans, and it would then follow that a species nature is not constitutive of the nature of all members of the human species.

There is an alternative: we insist that what is typical of all human beings is that they either are, or could be, or could have been rational. If this is true, then we *can* argue that what is typical of the human species both serves as the norm for the human species and is constitutive of the nature of all members of the species. This requires that it be true of all human beings without exception, including those born without any of the distinctive human capacities for cognition, that they could have developed these capacities. When these capacities are congenitally absent, owing to a genetic abnormality, we would have to confirm a biological rule of human development such that these capacities could or ought to have been present, and that the human being in which we suppose them to be present and the human being in which they are now absent are numerically identical. It is not clear that these conditions can be fulfilled.

In any case, it might be said that we can hardly claim rationality as the norm for the species on the grounds that it is typical of the species, if, after all, every member of the species has this capacity; for in this case rationality is not typical of but common to *all* members of the species. There is then no need to appeal to what is

typical of the species; rather, we base any claim about an individual's nature on what we know about *her*. But the appeal to a norm is still doing some work here: when we assert of congenitally non-rational humans that they could have been rational, we are appealing to the norm for the species in order to pick out what it is that they could have been. There are other properties that they could have acquired (and could never have acquired), and rationality is singled out because this is what we judge as typical, in a normative sense, of the human species. It is because it is typical of the human species to develop rationality that we suppose that congenitally non-rational human beings could have been rational, a supposition, however, confirmed of any one human being only if it is true that *she* could have been rational.

I am suggesting that we single out the species as a point of reference because this “normally tells us what we need to know about what the individual member of the species *could have been*” (Kagan 2016, 15). Why refer to the species rather than, say, the genus, another natural grouping, higher up the taxonomic scale? Suppose, to adapt Kagan's example, that rationality is the norm for a genus but not for one of the species which falls under the genus, and we consider a non-rational member of that typically non-rational species: should its interests count for more than non-rational human beings because it belongs to a genus characterised by the norm of rationality? Kagan suggests, and I agree, that this seems the wrong answer: it is irrelevant that members of the genus are typically rational; what is relevant is that members of the species are, typically, not (2016, 16). This is a reason to prefer species over genus, but why species over other groupings? Why not, for example, a grouping much lower down the taxonomic scale—the group whose members have in common profound cognitive impairments? For someone with profound impairments, why not suppose that the most reliable point of reference when determining what she

could have been is the norm for members of the group who, in many respects, share her psychological profile?

There is an answer to this. “Species” and “genus” are biological categories, and it is with reference to the regularities of biological (and associated psychological) development that the norms deemed typical of human beings derive their content; what is statistically true of the typical development of members of the human species is used to inform a judgement about what is normatively true of their typical development, or what is non-normatively and counter-factually true of those members whose development is atypical. The category “profound impairment” is of a different kind, belonging to the taxonomies of clinical diagnosticians. It is true that these involve an appeal to norms of functioning to account for distinctions between states of impairment and non-impairment. But, first, what is classified as distinctively “profound” impairment is sensitive to social and technological developments, while any biological classification is not, or is much less so.⁵ In the past it was commonly assumed that profoundly impaired people were incapable of social interaction: now we know this is not true. How many other judgements about what is normal for this group will go the same way? Judgements about capacity, especially when used as a basis for respect, should be immune from contingencies that encourage under-estimation. Nor, second, should we rule out, from the outset, the possibility that people with profound impairments could not have been capable of rational self-governance. But if we confine attention to all and only profoundly impaired human beings, then this is what we are likely to be doing—if it is true that rational self-

⁵ Or perhaps just less so; see Amundson 2000.

governance is not the norm for this group.⁶ It may be that knowledge about their impairments and likely maturation could tell us all we need to know about their potential—although the historical record is littered with errors. But it cannot tell us all we need to know about what they could have been; for judgements of this kind we have first to take account of, if only to rule out as applicable to this group, what we know about the development of unimpaired infants. Most human infants develop rationality; this at least raises the question whether there is a possible world in which those human infants whose organic infrastructure cannot support rationality could have developed infrastructure that does support it. We may decide that rationality is no part of the nature of some profoundly disabled people, and that what is possible for unimpaired members of the species simply does not apply to them. But this should be the result of an argument, not a stipulation that we confine attention to persons whose impairments fall under a category which rules out any other conclusion, and which, in any case, has shown itself to be unstable.

3 | ON WHAT COULD HAVE BEEN

I henceforth assume that, unlike norms that apply to groupings higher up and lower down the taxonomic scale, a species norm tells us what all, or almost all, human beings could have been.⁷ How should we construe the idea of what someone could

⁶ It may not be true on a non-Kantian conception of rationality; see Jaworska 2007.

⁷ I have not discussed one obvious alternative, that only facts about the individual are to be included in judgements about what she could have been capable of; see Vorhaus 2021.

have been? We might be thinking of someone's potential—the idea that, irrespective of actual capacity, a human being has the potential to become a rational agent. This is not the approach taken here: not all profoundly disabled people have the potential to become rational agents (Vorhaus 2021), but it may be true of all profoundly disabled people that they could have become rational (if they are not already rational), and I want to see if there are grounds for the view that *all* members of this group are owed respect in virtue of their rational nature.

3.1 | Identity

When is it true that a profoundly impaired human being could have had a capacity for rationality? Perhaps, as with anencephalic infants, the neural tube fails to close properly during foetal development or the action of the genes that code for the development of the brain is blocked or suppressed. Any subsequent impairment is then not the inevitable consequence of genetic disorder; had we intervened to ensure closure of the neural tube or to allow for the unimpeded action of genes, the infant would have become a human being capable of a rational and autonomous life. And she could have had this capacity despite the fact that she cannot acquire it now.

On the other hand: suppose that nothing that is not essentially me can become numerically identical with me, and suppose that what a person is, essentially, is a being with a capacity for consciousness. Then no being that lacks the capacity for consciousness can become a person, and if anencephalic infants lack the capacity for consciousness then they could not have become persons (McMahan 2016, 28).

Do anencephalic infants lack the capacity for consciousness? They do in the sense that its lack is an ineliminable feature of anencephaly; if a being is anencephalic, then it has no capacity for consciousness. But had we intervened earlier (preventing closure of the neural tube or any suppression of the genes), then the condition of anencephaly would not have occurred, and the capacity for consciousness would have been present. The question is whether the foetus we operated on, or to whom we administered gene therapy, would have been numerically the same individual as the infant born with anencephaly? Only if she would have been numerically the same can we claim that the infant who is now anencephalic could have been someone with a capacity for consciousness; and it is only if the infant could have been someone with a capacity for consciousness that we can claim that she could have been someone with a capacity for rationality.

The absence of the growth of an infant's brain may be due to defects in the genes themselves, rather than to the action of the genes having been blocked or suppressed; the genes do not carry the instructions necessary to support brain development. Suppose that genes are essential to our existence in the sense that had our genes been different then a different individual would have existed. In this case it looks as if a foetus with a genetic disorder such that it lacks the genetic information required to support the development of the capacity for rationality simply does not have this capacity; any being with that capacity would have been a different individual, with a different genetic profile. On the other hand, perhaps our genetic endowment is not essential to us: the infant could be one and the same individual even if the genetic profile is slightly different to what it actually is. A slight alteration in the genetic profile could have prevented anencephaly, and the infant who would

have been born without anencephaly is one and the same as the infant who is actually born with it.

Claims of this kind are controversial (Kagan 2016; McMahan 2016). If McMahan's view of personal identity is correct, then the class of human beings who could have been rational in the sense that I have taken up will be much smaller than otherwise: it will include only those profoundly disabled human beings who have or who have had the potential to acquire consciousness; it will not include those who have no such potential. This position rules out possibilities for rationality and personhood that some writers want to leave open (Kagan 2016) and others insist upon (Kittay 2005). And it rests on the view that what each of us is, essentially, is a being with a capacity for consciousness, which implies that what most human beings essentially are is different in kind from what anencephalic infants are and what any other human beings are who never had, or who have irreversibly lost the capacity for, consciousness. Against this is the view that what we essentially are is a human being, a member of the human species, something which does not require the capacity to support consciousness, and which includes anyone with a profound cognitive impairment, irrespective of its nature and severity.

I shall assume that a substantial genetic alteration to a foetus will cause a different individual to exist, an individual numerically distinct from the individual who would have existed were the genes unaltered. I leave open how "substantial" is to be construed in this context, but I take it that it includes any modification that has the effect of creating a capacity for rationality when otherwise that capacity could not have existed.

Claims about what we are, essentially, rest on judgements in the domain of the metaphysics of identity. The dependency makes for some vulnerability; but this

applies to anyone, McMahan included, and not only to those of us pursuing ambitious claims about what could have been in the way of human capacity.

3.2 | Functional explanation

How is rationality a part of the nature of a profoundly cognitively impaired non-rational human being? It is not enough simply to assert that rationality is the norm for the human species; if someone could never have developed this capacity, it is not in *her* nature to be rational. To suppose otherwise is to engage in the moral alchemy McMahan complains of, conflating norms and natures. If it is in her nature to be rational, and she neither has this capacity nor has any potential to acquire it, then it must also be true that she could have been rational. What would make this true? One answer rests on functional explanation.

There is a view that every creature is designed to function naturally, and that what we understand as natural functioning is given by norms that apply to the kind she belongs to. But functional explanation of this neo-Aristotelian kind is especially controversial, requiring more discussion than I can provide here; even assuming that its credentials are intact, there is a question about what this implies for profoundly impaired human beings. If organic structures are present, and these support the development of rationality, we might infer that the structures are functional for rationality—that they developed just because their development supports the development of rationality. But if organic structures do not develop in the first place, we cannot explain their existence by appeal to the fact that they are functional for rationality; since they do not exist, there is nothing to which to attribute any function.

We must then say that although the structures are not present, they *should* have been present, because it is in the nature of human beings that they should have been present. This requires a commitment not only to a conception of human nature that all human beings should conform to but also to a rule of biological development that explains why a non-rational human being should have developed structures that she does not have and can never acquire. One point is clear: there is no such account that does not require a commitment to the view that she could have possessed these structures; if she could never have developed them, it is trivially true that there can be no law of development to explain why they could have developed in her.

3.3 | Avoiding teleology

The expression “what she could have been” is an ellipsis: “she could have been rational” means that she would have been rational if some counterfactual conditions had obtained. A non-rational individual would have had the capacity for rationality if, say, we had administered genetic therapy to a foetus that was numerically identical to her. She would have been someone with this capacity because we assume that, following genetic therapy, she would have had the organic infrastructure necessary to support the development of a rational capacity. Rationality is then in her nature, in the sense that she belongs to a species whose norms include rationality, and she would have developed this capacity herself were it not for impediments that prevented the presence of infrastructure whose function it is to support the development of this capacity.

This is not to offer a functional explanation of the presence of organic infrastructure: there is a distinction between explaining the function of *x* and explaining *x* by reference to its function. The assertion that organic infrastructure has a function does not entail the claim that the infrastructure exists because it performs that function. By extension, the assertion that the function of infrastructure is to support the development of rationality does not entail that the infrastructure exists because it supports that capacity. The assertion goes no further than explaining what the function of the infrastructure is.

If we now assume that modal rationality—henceforth understood as applying only to cases in which someone could have been rational—*is* a part of the fundamental nature of non-rational human beings, can this property function as a condition of respect?

We might object: we value someone for who she is, here and now, not only or primarily for what she could have been had things turned out differently.

This is a misrepresentation. While the fact that someone could have been rational is not a categorical property, as in “being rational” (being a person, and so on), it is an actual property of a human being, a property she actually has. What someone could have been, as determined by the norm for her species, is a part of what she is; as a member of the human species (a categorical property) she is someone who could have been rational (an actual property). When we value this profoundly disabled child for who she is, we include in our conception her profound impairments (categorical properties) and the actual property of being someone who could have been a rational, autonomous human being.

Assuming that the fact that someone could have been rational is an actual property, and is a part of who she is, is this sufficient for respect? If it is sufficient, it

implies that any creature, human or otherwise, is owed respect, so long as it is true that she either has or could have had the capacity for rationality: chimpanzees, intelligent Martians, and, supposing rationality is included in the norm for Martians, those cognitively impaired Martians who do not have this capacity. What matters, fundamentally, is the modal property, the fact about what the individual could have been (Kagan 2016, 16). This avoids any commitment to the view that membership of the human species is, of itself, necessary for respect. If it were necessary, then in the case of creatures with cognitive characteristics equivalent to those possessed by unimpaired humans—high-functioning animals, intelligent Martians—respect would not be owed to them, for no other reason than that they are not human beings. To many people, and to me, this is indefensible.

If modal rationality is sufficient for respect, we avoid any suggestion that respect is confined to human beings; but *is* it sufficient? The modal property is backward looking, to something that could have happened in the past such that the human being who now cannot develop rationality would otherwise have been able to. But if we take backward-looking counterfactual possibility seriously, why not forward-looking possibility as well, in the form of potential? Just as it is important that someone could have developed rationality, so, equally, is it important that she has the potential to develop rationality. Any requirement that potential should suffice for respect raises problems of its own (Vorhaus 2021). Supposing these are resolved, we might claim that potential should take precedence over modal rationality, since, if someone has the potential for rationality it is still possible that she should develop this capacity, whereas the modal possibility presupposes that there is no longer any potential. If potential rationality takes precedence over modal rationality, we have the beginnings of a hierarchy and we might then further suppose that actual possession

of rationality should sit at the top. This begins to look complicated: we face a requirement to show respect to human beings who could have been rational, but a requirement that is less stringent than it is for human beings with the potential to be rational, and less stringent again than it is for human beings who actually have this capacity. And the hierarchy is more complicated still, since, as Kagan points out, the modal property may come in degrees: of two human beings, one may be closer than the other to being someone who could have had the capacity for rationality (2016, 19). Is the first owed more respect than the second? If we allow for degrees of respect, would this not apply across species, so that if a high-functioning animal is much closer to being a creature that could have developed rationality than some profoundly cognitively impaired human being, we are required to show more respect to the animal than to the human? There is reason, anyway, to look across species so long as we allow that some high-functioning animals either have the potential to develop rationality or are such that they could have developed this capacity. But then we can no longer appeal to modal rationality as a basis for the view that we have a special reason to respect anyone who is a member of the human species.

This aside, where do the complications leave us? We cannot assume that the best account of moral standing will not be complicated in this way. There is no reason, in principle, why we should not conclude that the interests of a rational human being count for more than the interests of a human being who only had the potential for rationality, and whose interests, in turn, count for more than someone who did not have this potential but could have developed rationality. But we may balk at saying something similar about respect: that the requirement to show respect is most stringent when applied to human beings who have the capacity for rationality, less stringent when applied to human beings who only had the potential to develop

this capacity, and less stringent again when applied to human beings who never had this potential but could have developed rationality. A morality of respect is often thought to be distinguished by the requirement that those to whom it applies are owed respect *equally*; that we do not owe more or less according to variations in capacity. There are, however, familiar difficulties with treating respect like this—as a range property—and these come out if we consider modal rationality as necessary for respect. Consider two human beings, both of whom lack the potential for rationality, the first owing to an irreparable congenital genetic disorder, the second owing to complications during pregnancy. On the assumption that genes are essential to existence, only the second is owed respect, because it is true of the second, but not the first, that she could have developed the capacity for rationality. Can the modal property really make all the difference between the two cases? This is Kagan’s intuition (2016, 18), but it is not mine.⁸

Is there a categorical distinction between the anencephalic infant who could have been rational and the anencephalic infant who could not have been rational? Are we prepared to say of the second that she is to be excluded from the morality of respect because her non-rationality has an ineliminable rather than eliminable source? This strikes me as implausible. One reason is that the modal property admits of degrees: of two human beings, both of whom are congenitally non-rational, one could be closer to having had the capacity for rationality than the other. Somewhere along the spectrum there will be a point, or a band, on one side of which lie those individuals who marginally have what it takes to make it true that they could

⁸ Kagan is discussing modal persons, not modal rationality, but this is immaterial here.

have been rational, and on the other side individuals who marginally lack what is required to make this true. Here, a difference in degree in nature warrants a difference in kind in treatment: we owe respect to one but not to the other. This is what I find implausible. This problem arises with any natural capacity offered as a condition of moral status, if we consider that capacity as a range property: wherever we set the threshold of moral status, it will apply at a point where there is a marginal difference in capacity between those who are just below and those who are just above the threshold.

4 | WHAT ARE WE LEFT WITH?

Can we provide an account of species membership, one which makes an appeal to modal rationality, that explains why all profoundly impaired people are owed respect? Some of the difficulties raised here might be resolved. For example, it may be true of all profoundly disabled people that they could have been rational. The exceptions, if they are exceptions, are anencephalic infants, and a case can be made that anencephalic infants are not profoundly disabled; that profoundly disabled people with low levels of intellectual and adaptive functioning are quite distinct from infants who are incapable of any such functioning at all. And what I have claimed as implausible may nevertheless be true: that there *is* a point along a spectrum at which a slight difference in natural capacity, and in how close individuals are to being people who could have been rational, will justify a difference in kind as to what is owed to these human beings. There is, after all, a (slight but) significant difference between a human being who could have been rational and a creature who could not,

and there may be a good explanation for why this distinction is vitally important from a moral point of view.

On the other hand, some difficulties may prove insoluble. No one has yet explained just why the fact that someone could have been rational matters so much that it qualifies her for inclusion within the morality of respect. Even if this modal property applies to all profoundly disabled people, this does no more than begin to account for the moral importance claimed for it. For the fact that an individual only could have possessed a property appears less important than the fact that she could yet possess that property and certainly less important than the fact that she actually possesses it. And there remains the task of demonstrating that rationality is a species norm that applies to human beings who will never be rational and to those who never could have been rational. Nor has anyone shown how to accommodate the fact—if it is a fact—that a human being with no capacity for rationality cannot be numerically the same as a human being who is supposed to possess this capacity following genetic therapy.

Perhaps all attempts to solve these problems will fail; what other options are there?

We could give up on the idea that all people with profound impairments are owed respect. But it would be premature, to say the least, to give up on an idea that many people (myself included) believe to be true.

We might, instead, assert with Kumar that “the principles [governing the morality of respect] . . . are for the general regulation of how humans interact with one another” and that all individuals fall within the domain regulated by these principles simply in virtue of being human born (2008, 79). Kumar is appealing to a form of rule consequentialism: to the value of the importance of being able to lead a

rationally self-governed life, and to the claim that this value should serve to regulate how human beings interact with one another, including those human beings who do not themselves have the capacities that warrant respect. This approach may enable us to bring all profoundly disabled human beings within the morality of respect, but it does so at the price of giving up on the claim that it is in the nature of all members of this group that they could have been rational. For the approach does not insist that we owe respect to all non-rational human beings because they could have been rational; it insists, rather, that we should treat all members of this group as *if* they are rational, or as if they could have been rational, and we do this because this treatment is a feature of the general regulation of human interaction as required by the demand that we respect the value of all human life (Kumar 2008).

This may prove the only defensible approach to including all profoundly disabled people within the morality of respect, but it is an almost grudging inclusion: these people have an honorary status as deserving of respect, in virtue of the nature of moral rules, and not in their own right. There is an alternative, which places emphasis on what could have been generally, rather than only on whether someone could have acquired rationality. The central idea is that the special significance human beings have for each other rests on a disposition to an identification with and loyalty to members of our own species (see Williams 2006). When we identify with a profoundly disabled child, we see her as one of us, and it is because we see her as one of us that the thought of what she could have been has the moral force that it does. We see others, and identify with them, not only as a repository of psychological capacities, but also as subject to a human condition that includes multifarious goods and ills which occur, or which could have occurred, to anyone. It

is to see someone who is profoundly impaired as a fellow creature, of whom we can say, “This could have been me” (see Mulhall 2002).

It is hardly necessary to add that this view entails ambitious claims about personal identity (could this really have been me?), and about the moral importance of relational properties and co-membership in the human species. But those of us who find this view attractive may have to make good these claims, and more, if the approach adopted here—to finding a basis for respect as owed to all human beings, irrespective of disability—cannot overcome the difficulties I have been unable to resolve.

ACKNOWLEDGMENTS

I should like to express grateful thanks to Adam Cureton for insightful comments on a previous draft.

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