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Are some humans more equal than others?

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Jeff McMahan *The Ethics of Killing: Problems at the Margins of Life* Oxford University Press, (440 pp). ISBN 0-19516-982-4 (paperback) RRP \$55.00.

Every human life has equal intrinsic value. This commitment is what stands between us, and the barbarism that has characterised so much of human history—or so runs the consensus in modern liberal societies. So strong is our conviction about this line between civilisation and barbarity that rarely is it subject to critical scrutiny.

Jeff McMahan is one of America's leading contemporary moral philosophers and perhaps one of its most courageous. McMahan's long awaited and widely acclaimed book, *The Ethics of Killing: Problems at the Margins of Life*, advances a groundbreaking theory of the morality of killing and letting die. McMahan is no barbarian. He is, in many respects, a committed modern liberal. But he is also a philosopher, committed to believing what can be defended by rational argument and to following the arguments where they lead. In this case, the arguments seem to lead somewhere quite disturbing, as McMahan himself acknowledges. It follows from McMahan's theory that some human lives (those of congenitally severely mentally retarded humans, embryos, foetuses, and newborn infants) are less intrinsically valuable than others; and, sometimes, even less intrinsically valuable than the lives of non-human animals. He argues that ending these 'marginal' lives is less wrong than ending yours or mine; and indeed is permissible, wherever their comparatively weak interest in continuing to live is outweighed by the interests of other, greater beings.

McMahan is not the first well-motivated philosopher to seriously entertain views of this sort. English philosopher, John Locke (1632–1704) entertained the possibility that a 'rational parrot' might count as a person. Distinguishing between being a member of the species *Homo sapiens* and being a 'person'—a self-conscious thinking being who conceives of itself as having a past and a future—Locke allowed that there might be non-human beings who were persons, and human beings who were not persons. If we encountered non-human persons (for example, a race of intelligent extra-terrestrials or self-conscious non-human animals) we would owe their lives the same respect we owe the lives of human persons. More recently prominent philosophers including Peter Singer (2002) have advanced similar claims.

Note that the claim that some lives are 'less intrinsically valuable' than others does not necessarily mean they are less valuable, all things considered. Views like McMahan's and Singer's are often badly misunderstood on this point. McMahan thinks there are reasons why it is normally worse to end the life of a severely mentally retarded human, for example, than it is to end the life of a non-human animal with equivalent psychological capacities. But these reasons do not have to do with the value of the victim's life in itself, that is, its intrinsic value. Rather, they derive from the effects that ending the life will have on others—for example, the family and friends of the retarded human being who will be badly affected by its loss.

This softens McMahan's conclusions, but not as much as we might wish. Suppose there was no difference in the effects on others of ending either of these lives. Suppose, as philosophers often put it, that 'all other things are equal'. Then, on McMahan's view, there would be no moral difference between ending the life of a congenitally retarded human and a non-human animal with equivalent psychological capacities. Or suppose that people would be much more badly affected by the loss of a non-human animal (their beloved pet, say) than

they would be by the loss of a mentally retarded human whom neither they nor anyone else cared about. Then, on McMahan's view, if we had to choose it might be preferable to end the life of the retarded human. Many will find this difficult to accept. Care and respect for those most vulnerable in our society is widely thought to be exactly what sets us apart from barbarians.

Why do philosophers such as McMahan risk a conclusion that might seem barbarous? The answer lies in their wish to arrive at a consistent theory of the ethics of killing and letting die that safeguards other conclusions they take to be more fundamental. McMahan's own arguments are numerous, subtle, and detailed. But we can get a sense of some of what motivates McMahan by considering how we might go about defending the modern view that human lives are equally intrinsically valuable and, as a group, much more valuable than the lives of non-human animals.

One obvious and tempting answer is to appeal to 'our humanity'. But exactly what is 'our humanity'? Unfortunately, history shows that membership of 'humanity' has not always been extended to all humans. Arguments for slavery, the disenfranchisement of women, and the genocide of entire races commonly restricted 'humanity' according to gender, race, or creed. Slaves and persecuted races were inhuman or sub-human: like dumb brutes, they lacked rational souls and the capacity for higher intellectual and emotional experience. Similarly the denial of basic rights to women was defended by the claim that women were, by nature, incapable of rational thought.

McMahan joins a long tradition of philosophers who have sought to oppose such barbarity with reasoned principled argument. They argue that assigning less moral worth to some beings simply on the basis of their sex or their skin-colour is morally indefensible. In themselves, these things are no more relevant to the worth of a being's life than is the length of their big toe. What matters is the degree to which a being possesses certain cognitive and emotional capacities such as self-consciousness, reason, and reflection. These capacities define what it is to be a 'person' in the technical sense Locke introduced. These capacities are morally significant because they make it possible for us to desire to go on living; to choose and act autonomously; to pursue complex, long-term projects and goals; to form deep inter-personal relationships; to experience aesthetic appreciation, spiritual joy, intellectual achievement; and so on. They make us beings capable of moral deliberation and of acting as responsible moral agents. They are also for many of us, a precondition for the activities and experiences that make our lives worth living; and without which our lives would be seriously impoverished.

In fact, implicitly, many of the defenders of slavery, racism and sexism already agreed with this. Their arguments typically assumed that capacities for reason and reflection were morally important. Their justification for restricting basic human rights and privileges to a small class of white, property-owning men was precisely that only this class of human beings was capable of rational, intelligent thought. This is the claim reformist philosophers have challenged. They have argued—successfully, in the end—that women, slaves, and people of different races possess the same morally relevant cognitive and emotional capacities as did white, property-owning men. They should therefore have the same rights as these men and their lives should be accorded the same degree of dignity and respect.

This argument provides a principled answer to the challenge to explain why human lives in general are more intrinsically valuable than the lives of non-human animals. Unlike slaves and women, most non-human animals do not possess (or possess only to a limited degree) the sophisticated cognitive and emotional capacities that would enable them to live lives as comparably rich and meaningful. The amount of good their lives can contain, and the extent to which they can identify that good as being their own, is restricted by cognitive limits imposed by their biological make-up. Most non-human animals, though conscious, are not *self*-conscious: they lack the

ability to conceive of themselves as an ongoing entity with a past and a future, and so are incapable of forming and pursuing many of the complex long-term projects and deep attachments that we can. They live their lives only in the moment—or so the evidence suggests, anyway. Of course, as McMahan stresses, this doesn't mean they have no interest in continuing to live. As conscious creatures their lives may still contain goods (pleasurable experiences, emotional attachments) of which death deprives them. Indeed, McMahan argues, their interest in continuing to live may be strong enough to make it morally indefensible for us to kill them to satisfy only comparatively trivial interests of ours, such as eating their meat in preference to available vegetarian alternatives. But the interest non-human animals have in continuing to live is not as strong as the interest persons have in going on living and most human beings are persons. It is thus considerably worse to end the life of a person, all other things being equal, than it is to end the life of a non-person because of the sophisticated cognitive and emotional capacities persons possess.

But if we follow this line of argument through consistently, we arrive at some further conclusions that may seem as deeply counter-intuitive to us as arguments for racial and sexual equality appeared to slave-owners, racists, and sexists. If the possession of certain capacities makes a life intrinsically worthy of respect then we must be open to a possibility Locke noted: these characteristics do not necessarily coincide exactly with the boundary of our species. There may be some non-human animals (such as the higher primates) who possess these capacities and so who are 'persons' in Locke's sense. If so, our failure to accord the lives and well-being of these animals the same intrinsic moral significance as we accord humans with equivalent capacities may amount to barbarism of the same order as slavery or genocide. It would amount to 'speciesism', akin to racism or sexism.

Conversely, we must be open to the possibility that there may be some human beings that lack these sophisticated cognitive and emotional capacities, have yet to develop them, or will never develop them: for example, humans born with severe mental retardation, anencephalic infants, embryos, foetuses, and newborn infants. If so, practices such as abortion, infanticide, and euthanasia—practices some currently believe are barbaric—may well turn out to be defensible under certain circumstances. It may be, as McMahan argues, that our 'vague, intuitive commitment to a fundamental moral equality among all human beings—all members of the species *Homo sapiens*—has to be abandoned' (p. 233).

McMahan's long book is one of the most comprehensive, rigorous, and illuminating discussions of the morality of ending marginal lives, brimming with thought-provoking observations and arguments that will shape the course of future debate. The careful attention to detail may, in McMahan's own words, 'require some effort from general readers' (p. viii) but is amply rewarded. However, McMahan's own account, for all its ingenuity and innovation, is not without difficulties of its own. Drawing distinctively on a theory of the nature of personal identity and of what matters in survival, McMahan argues that the wrongness of ending a being's life is proportional, other things being equal, to their 'time-relative interest' in going on living. This time-relative interest varies with the net amount of good the individual's future would hold if she were to continue to live; and with the extent to which there is psychological unity between the individual now and herself later when the goods of her future life would occur. Since there is less psychological unity in the lives of beings with substantially diminished psychological capacities (for example foetuses, non-human animals and humans suffering from congenital mental retardation, brain damage, or dementia) their time-relative interest in going on living is comparatively weak, and can be outweighed by other interests.

But, as McMahan acknowledges, this account has a (yet more) disturbing consequence (p. 233ff.) It implies that the lives of some persons (the young, well-educated, and intelligent, for example) are more intrinsically valuable than the lives of others (the old or the dull), because the former lives can reasonably be expected to contain more net good. It follows that it is less wrong, other things being equal, to kill an old person than a young

person; less wrong to end the life of an intelligent person than a dull one; and so on. Some might agree. If we had to choose, ending Einstein's life in its prime really would be worse, other things being equal, than ending the life of a lazy, old, cantankerous dullard.

But McMahan is not willing to countenance this. While the lives of persons are more intrinsically valuable than the lives of non-persons, McMahan is not willing to accept what would follow from a consistent, whole-hearted application of the time-relative interest account: it might be less wrong to kill some persons than others, other things being equal. The 'vague, intuitive commitment to a fundamental moral equality among all *human beings* ... has to be abandoned' (emphasis added), but McMahan insists on retaining the intuitive modern liberal commitment to the fundamental moral equality of all *persons*.

His solution is to move to a 'two-tiered' theory of the wrongness of killing. Above a threshold are autonomous persons, whose lives have equal intrinsic worth—regardless of age, intelligence, or the like—simply in virtue of being persons. Their lives are governed by the 'morality of respect': all killings of being above the threshold count equally as offences against utmost worth. Below this threshold fall beings (foetuses, non-human animals, severely mentally retarded humans and so on) who fail to meet the requirement for respect of persons. The morality of killing these beings is governed by the time-relative interest account.

It makes a vast moral difference to a being whether its life falls above or below the threshold of respect: whether its life counts as equally inviolable, or whether it can be sacrificed at the altar of the more significant interests of those beings with a greater capacity for wellbeing. But, as McMahan himself honestly acknowledges, the threshold is disturbingly vague: not only because the relevant abilities such as self-consciousness and rationality can come in varying degrees, but also because the development of these abilities is itself a gradual process. Developed foetuses and newborn infants clearly lack these capacities, McMahan thinks, while teenagers clearly possess them. But, in between, there is a broad band of indeterminacy. We might decide that the moral 'chasm' is crossed in a single leap at some particular point: say, at two years of age. But this looks arbitrary. It's not as if the child goes to sleep, aged one year and three hundred and sixty-four days, lacking any capacity for rationality and self-consciousness and wakes up the next morning, aged two, suddenly possessing them.

McMahan suggests that we shouldn't attempt to draw such a sharp, arbitrary boundary, or even decide to err on the side of caution (which might well lead to the inclusion of marginal lives within the sphere of respect). Instead, we should give beings in the indeterminate band correspondingly intermediate respect: more respect than the beings who clearly fall below it, but less respect than the beings who clearly fall above. This lesser respect is a little puzzling, given that the distinguishing feature of respect is supposed to be precisely that it is not a matter of degree. But since McMahan's main concern is with the moral status of those marginal beings he thinks clearly fall below the threshold, he is happy to rest with this admittedly somewhat 'inconclusive' conclusion.

Others may not be so happy. For history has shown the danger of positing such thresholds, especially where they are vague and vulnerable to interpretation. Reason's hold over prejudice and self-interest is fragile, and the temptation to put those we like above the line and those we dislike below it has frequently proven all too great, even for philosophers.

REFERENCES

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