

On 'Modal Personism'

Shelly Kagan's essay on speciesism has the virtues characteristic of his work in general: insight, originality, clarity, cleverness, wit, intuitive plausibility, argumentative rigor, and modesty about the scope of his conclusions. His aim here is to explain and, at least to a limited extent, defend the nearly universal view that there is something special about human beings that gives each a somewhat higher moral status than a nonhuman animal with comparable psychological capacities. He first observes that the human species is one whose typical or characteristic members are persons – by which he means individuals who are self-conscious and at least minimally rational. Persons, he thinks, have a higher moral status than non-persons, in the sense that their interests matter more than the equivalent interests of individuals whose status is lower. While I have doubts about this way of understanding moral status, I accept that there is a related sense in which persons have a higher moral status and will grant for the purpose of discussion that their status is higher in Kagan's sense. Kagan next suggests that to be a member of a kind whose characteristic members are persons is to have a nature that makes it possible that one could at some time be a person; therefore those human beings who are not and cannot now become persons nevertheless *could have been* persons. And this modal property is itself a source of moral status. Those who have it are 'modal persons'. Of two non-persons with comparable psychological capacities, one of whom is a modal person while the other is not, the modal person has a higher moral status.

Kagan restricts the category of modal persons to those non-persons who could have been but cannot become persons. Yet if the fact that an individual *could have been* a person is status-conferring, it seems that the fact that an individual *could be* a person should also be status-conferring. There seems to be no reason to suppose that a non-person that has lost the potential to become a person has a higher moral status than one that retains it. And Kagan's aim of explaining how membership in the human species matters morally is better served by including potential persons in the category of modal persons. Of course, as anyone familiar with Kagan's work would expect, it is not that he is unaware of this issue. Indeed, he explicitly though parenthetically remarks that we could 'construe the class of modal persons more broadly, so as to include potential persons as well. We would then need to ask how these potential persons count in comparison to "merely" modal persons – modal persons who are not potential ones.' Because I find it hard to believe that they, or their interests, could count *less*, I think they too should be classified as modal persons. I will return to this rather frequently.

In my view, Kagan's arguments provide the best defense to date of the moral significance of membership in the human species. But I remain unpersuaded and will try to explain why. I have several grounds for doubt about his proposal, all of which intersect with the concern just indicated about the restricted scope of

the notion of modal personhood. I begin with a challenge to Kagan's assumptions about the metaphysics of identity and modality.

Kagan's main concern seems to be to explain how the interests of severely cognitively impaired adult human beings could matter more than the comparable interests of certain animals. His claim is that if such human beings' early development had progressed differently (in particular, 'normally'), they could have been persons; whereas, because of their genetic nature, animals could not have developed into persons. (I put aside here the question whether some animals actually *are* persons.) Kagan does wonder, however, whether there might be some members of what he calls a 'person species' that could not have been persons. He considers anencephalic infants and concludes that because their condition arises from contingencies in their development, they could indeed have been persons. He then explores the possibility of a human being of which it is true both (1) that it congenitally lacks the genes that direct the growth of a brain necessary for personhood and (2) that its particular genes are essential to its existence (in that if these genes had been modified prior to this individual's beginning to exist, a different individual would have existed instead). While he is skeptical that a small alteration of the genes would in fact have prevented this same individual from existing, he writes that *if* both conditions were fulfilled, so that this human being could not have been a person, his intuitive reaction would be to deny that this human being's moral status would be higher than that of an animal with comparable psychological capacities.

Whether Kagan's skepticism about the second condition is warranted may depend on precisely which entity we are supposing might or might not have existed if certain of the genes that contributed to its formation had been different. It may be true that a human organism formed without certain genes involved in the growth of the brain could have existed if those genes had been present. Yet I think that an adult human being with normal cognitive capacities could not have existed if some of the genes that directed the growth of his brain had been absent when he was conceived. This person could not have been a *congenitally* severely cognitively impaired human being. If one finds this judgment counterintuitive, that may be because one is thinking about the conditions of identity over time rather than the conditions of identity across possible histories (or 'possible worlds'). Once a person exists, it is certainly possible for him or her to *survive* or continue to exist in a severely cognitively impaired condition. But this is quite different from the idea that a person could have come into existence with an organism congenitally lacking the genes necessary for the growth of a brain capable of supporting the mental life of a person.

The metaphysics of identity over time are also highly relevant to Kagan's argument. One reason for doubting his view derives from a particular view of the metaphysics of personal identity. This view is controversial but since it is my view, I will proceed.¹ Assuming that I am an individual substance, nothing that is not me can literally *become* me – that is, become numerically identical with me.

¹ See Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (New York: Oxford University Press, 2002), chapter I.

That is not controversial (though I recently read an article about a South Korean Zen Buddhist nun celebrated for her vegan cooking who observed that when she prepares a certain dish, ‘cucumber becomes me. I become cucumber’ – a misperception, I fear). What is controversial is what kind of entity I essentially am. If, for example, I am essentially a human organism, then I am not essentially a person; rather, I once existed as a non-person. But the view that we are human organisms is, I believe, refuted by counterexamples (dicephalus, cerebrum transplants).² If, therefore, I were irreversibly to lose the capacity for consciousness, a living human organism might remain, but there would be nothing left that could plausibly be regarded as *me*. I infer that I am essentially a being with that capacity – an embodied mind, or nonderivative subject of consciousness – and that you are as well. On this view, we can exist without being persons but not without the capacity for consciousness; hence nothing that lacks the capacity for consciousness can literally be or become one of us; nor can it be or become a person, in the sense of being numerically identical with a later person. Only individuals that have the capacity for consciousness can be or become persons, or could have been persons.

If this is right, no anencephalic infant could have been a person, for no anencephalic infant ever has the capacity for consciousness. Nor, it seems, could any *congenitally* severely cognitively impaired human adult have been a person. Only those severely cognitively impaired adult human beings who, as conscious beings, had the potential to become persons but subsequently lost it could have been persons, in the sense that they could have been numerically identical with a later person. But there seem to be comparatively few such cases, for in the case of most severely cognitively impaired human beings, the physical bases for personhood are lost prior to the development of the capacity for consciousness. Hence the account of our identity that I have sketched greatly restricts the extension of the class of modal persons, especially when that class is construed to exclude non-persons that have the potential to become persons.

Let us, however, grant Kagan’s more familiar metaphysical assumptions, according to which at least most anencephalic infants and severely cognitively impaired adults once had the potential to become persons. They are thus modal persons and therefore at least presumptively have a higher moral status than other non-persons that are not modal persons. Kagan’s official definition of modal personhood excludes potential persons. Yet the category of potential persons includes, according to his understanding of personhood, together with his metaphysics, not only fetuses that lack the capacity for consciousness but also conscious fetuses and even newborn infants. These are all non-persons that are not modal persons. It is, however, impossible to believe that anencephalic infants have a higher moral status than cognitively normal infants.

² *Ibid.*, pp. 24-39; Tim Campbell and Jeff McMahan, ‘Animalism and the Varieties of Conjoined Twinning’, *Theoretical Medicine and Bioethics* 31 (2010): 285-301; and Mark Reid, ‘A Case in Which Two Persons Exist in One Animal’, in Stephan Blatti and Paul Snowdon, eds., *Essays on Animalism: Persons, Animals, and Identity* (Oxford: Oxford University Press, forthcoming).

Kagan is of course not committed to accepting that they do. He concedes that if a non-person that is not a modal person 'is actually at a sufficiently higher cognitive level' than a modal person, the former's pain or death may matter more than the latter's. Yet, as I suggested earlier, it seems that what is morally significant about modal personhood is that a modal person's nature is such that it (or her or she) could at some time be, or could in some alternative possible life have been, a person. Future possibility seems no less significant than counterfactual possibility. But if that is correct, it seems more consistent to adopt the option that Kagan recognizes as a possibility – namely, broadening the category of modal persons to include potential persons – while conceding that there can be differences of status even among modal persons. Indeed, Kagan explicitly suggests that 'an adequate account of modal personism would presumably also want to make use of the idea that modal personhood comes in *degrees*: given two beings, both of whom could have been a person but neither of whom is a person, it might still be the case that one had been 'closer' to being a person than the other. And so it might well be that ... the degree of closeness is relevant to the ways in which, or the amount by which, a modal person counts more.'

According to this understanding of modal personism, both non-persons that once had the potential to become persons and non-persons that actually have the potential to become persons are modal persons and presumptively have a higher moral status than non-persons that have never had the potential to become persons. Yet within the category of modal persons, those that either are or were closer to being persons may have a higher moral status than those that are or were less close to being persons. The problem with this understanding, however, is that its implications are considerably less congenial to common sense intuition than those of Kagan's original version. It seems to imply, for example, that the interests of a mature human fetus matter more than the comparable interests of a severely cognitively impaired adult, provided that the latter's actual psychological capacities are not significantly higher than those of the fetus. For the fetus's actual potential to become a person within a relatively short time would seem to make it relevantly closer than the adult to actually being a person. This in turn might suggest that a late abortion would be more seriously objectionable morally than the killing of a severely cognitively impaired adult whose care had become onerous to his or her caregivers. Most people, I think, would find this highly counterintuitive.

Once potential persons are admitted into the category of modal persons, another problem arises. This is that there is a clear sense in which at least some nonhuman animals are potential persons. Just as it is not unrealistic to expect that it will soon be possible to make genetic modifications in both cognitively impaired and cognitively normal human beings that will enhance their cognitive capacities, so it is not unrealistic to expect that comparable methods of cognitive enhancement will be possible in the case of animals. Suppose it were possible to insert a certain gene sequence into a dog that would cause new tissues gradually to grow in its brain, so that its cognitive capacities would increase to a noticeable degree each month. Over several years, this dog could become a person in a way that parallels the incremental development of a human fetus's cognitive powers –

that is, in a way that is consistent with its own continued existence. Whether the fact that it is in principle possible for a dog to become a person in this way is sufficient to make existing dogs modal persons, or whether that must await the actual development of the necessary technique for cognitive enhancement, is a question I will not pursue. But at a minimum the scientific possibility of an identity-preserving method of cognitive enhancement for dogs (or chimpanzees or other higher animals) shows that it is possible that there could be dogs that were modal persons in the broad sense. But then of course the doctrine of modal personism would not support the view that there is something special about membership in the human species.

I have suggested elsewhere that one might attempt to resist this and other unappealing implications by invoking a distinction between 'intrinsic' and 'extrinsic' potential, according to which the potential of a fetus or infant is intrinsic, while the potential I have described in dogs is extrinsic, in the sense that it cannot be elicited without substantial external augmentation.³ But I also argue that this distinction is really only a matter of degree, so that it is unlikely to solve the problem.

Kagan can of course avoid all these complications by insisting on preserving the original narrow understanding of a modal person, according to which potential persons are not modal persons. But if the only rationale for this option is to avoid the problems that arise when the category is broadened, it would seem to be arbitrary, given that actual potential seems, if anything, morally more significant than past potential. I therefore continue to suspect that speciesism is a mere prejudice, despite Kagan's ingenious efforts to rehabilitate it.

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³ *The Ethics of Killing*, pp. 152-53.