Moral Status in Virtue Ethics

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Abstract
My contention is that virtue ethics offers an important critique of traditional philosophical conceptions of moral status as well as an alternative view of important moral issues held to depend on moral status. I argue that the scope of entities that deserve consideration depends on our conception of the demands of virtues like justice; which entities deserve consideration emerges from a moral view of a world shaped by that conception. The deepest disputes about moral status depend on conflicting conceptions of justice. I advocate a conception of the virtue of justice that can account for the cases that pose problems for the legalistic views of moral status and discuss what ideal moral debate looks like on this view.

I. Introduction

The problem of moral status, as it is generally understood, is to determine which entities are owed treatment in accordance with moral norms. It is typically assumed that there is at least one property that provides a necessary condition for an entity to be given minimal moral status or moral consideration. Utilitarianism and Kantian ethics each clearly establish a criterion (sentience and moral agency, respectively) specifying a property that creatures must possess for inclusion in the moral community. There have been few attempts by virtue ethicists, however, directly to address the issue of moral status. Unlike its counterparts in normative ethics, virtue ethics does not suggest any clear criterion or set of criteria for moral status. If, for example, virtue ethics defines right action in terms of what a virtuous agent would do, there seems to be nothing built into that principle that would offer guidance as to what kinds of entities the virtuous agent should take into account in deciding how to act. One might wonder, then, whether virtue ethics has anything informative to add to important debates that turn on the issue of moral status.

That question might be given further weight by the seeming evasiveness of some virtue ethicists about the issue. For example, Rosalind Hursthouse, in her treatment of abortion, argues that the moral status of the foetus is 'simply not relevant to the rightness or

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wrongness of abortion'.[1] That is because, according to Hursthouse, the problem of the foetus's moral status is too demanding, and we cannot hold agents to a standard of moral conduct that an ordinary human individual cannot readily achieve. Specifically, in the case of abortion, Hursthouse holds that the question of the foetus's moral status strains the virtue of wisdom. Given the range of human capacities and the need for a diversity of specializations in society, she argues, only a handful of us will be able to immerse ourselves deeply enough in the arguments about moral status really to master the issue, and therefore we cannot expect individuals to make decisions about abortion from a metaphysically informed stance. Wisdom cannot require something that goes so far beyond the capacities of an ordinary human, because if it did, the development of wisdom would not be under the direction of the will, and so wisdom would not be a moral virtue. So, Hursthouse argues, the issue of abortion depends instead on 'basic biological facts' about human reproduction, as well as on our knowledge of what is worthwhile in life; in both areas, everyone can be reasonably expected to attain the relevant knowledge. Our acknowledgment of the importance of birth and death, the good of parenting, and facts about the gestation and rearing of children should guide us in seeing when it would be, for example, light-minded or selfish and therefore wrong to abort.

In spite of her declarations, however, Hursthouse is not setting aside the issue of moral status in her treatment of the issue of abortion, but implicitly pursuing a very different way of thinking about the matter. In this paper, I hope to make explicit an approach to thinking about moral status from within virtue ethics. Whether it would be Hursthouse's own I cannot tell, but I believe it will compliment and expand on her approach to applied issues from a virtue ethical standpoint. My contention is that the issue of moral status has been importantly misconceived by those approaching it within Kantian and utilitarian approaches, as well as within multi-criterial approaches such as that of Mary Anne Warren. This misconception leads to the difficulty in giving a proper account of the serious wrongs committed in the mistreatment of dead bodies, precious inanimate objects, and in the ridicule of animals or severely cognitively disabled people who are

[1] 'Virtue Theory and Abortion', *Philosophy and Public Affairs* 20 (1991), 236. For Hursthouse on the treatment of animals, see her *Ethics, Humans, and Other Animals* (London: Routledge, 2000), especially chapter six.

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incapable of grasping that they are being ridiculed. The virtue-based approach to the question of moral status I will defend here offers a way around this difficulty. In defining right action through the characteristics that an agent must possess to be good, virtue ethics would shift us away from the notion that there is a criterion or set of criteria that define the boundaries of *the* moral community. It turns us toward the question of what would constitute the fulfilment of specific virtues. Further, it will also prove to be the case that the facts that are decisive in guiding our conduct are not necessarily salient from an amoral agent's perspective, as often seems to be assumed under utilitarian and Kantian approaches.

My argument will proceed as follows: I will further describe and criticize the dominant approaches to moral status in section II. I will show in section III that the issue of moral status crucially turns on our conception of the virtues, and so, I lay out, in section IV, an alternative conception of justice that is much more inclusive than the traditional rights-based conception of justice. Finally, in section V, I defend the ability of my view of moral status to negotiate moral conflicts around contentious issues that centrally involve moral status.

II. The Metaphysics of Moral Status

In 'Modern Moral Philosophy', G. E. M. Anscombe criticizes modern moral theories, including Kantian moral theory and utilitarianism, for carrying over a 'law conception of ethics' while dispensing of the notion of a law-giver (i.e., God), a notion that is necessary to make the law conception of ethics intelligible.[2] Whether or not Anscombe is right to regard these theories as unintelligible because of their legalism, it is nevertheless correct to see them as permeated with legal notions, which at least raises the question of whether these notions belong in our conception of morality. Moral status, I contend, is among the legal notions associated with modern moral philosophy. Moral status is thought about in terms that evoke citizenship in a nation. Moral status is, in effect, citizenship in an ideal moral community. Possessing the qualifications for citizenship in the moral community entitles one

[2] *Ethics, Politics, and Religion*: *The Collected Philosophical Papers of G.E.M. Anscombe*, vol. iii (Minneapolis: University of Minnesota Press, 1981), 30.

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to protection from the significant harms prohibited by the moral law or principle.

The qualifications that entitle one to membership in the moral community are usually either capacities, or at least closely related to capacities. Although the capacities that figure in utilitarian and Kantian accounts follow from the principles they respectively advocate, the problem of moral status has taken on independence in the literature of applied ethics from the principle-based debates in normative ethics. Consequently, a host of features have been suggested as conditions for moral status, including being alive, possessing a human genetic code, having neo-cortical function, being self-aware, possessing a capacity for interpersonal relations, and contributing to an ecological community. Moral status, as it is conceived on any of these views, is seen to be based on an intrinsic property or set of properties of a thing that, when recognized, places us under a moral demand, specifically, the demand to take that entity into account in our moral deliberation. These properties are usually accessible even from the perspective of an amoral agent; one can see that a creature is sentient without grasping the relevance of the creature's sentience to one's behavior toward it. Yet, when coupled with a moral agent's endorsement of the principle of utility, for example, the acknowledged fact that a creature is sentient will carry weight in practical deliberation. Thus, on the legalistic view, if sentience is to be a criterion for minimal moral consideration, our reasoning about dogs' moral status might look something like this:

1 I ought to take all sentient beings into account when I consider doing things that might cause pain.
2 Dogs are sentient beings. So,
3 I ought to take dogs into account when I consider doing things that might cause pain.

(1) looks like an ordinary major premise of a practical syllogism, articulating a general moral rule that links the factual statement in (2) to the more specific demand in (3). In virtue ethical terms, we might think that arguments like the first would help us to define the scope or 'field' of the vice of cruelty;[3] that is, we might think that it would help to determine what behavior would be a candidate for being deemed cruel by pointing out what entities a virtuous agent needs to be concerned with not treating cruelly. But I do not

[3] The term 'field' comes from Christine Swanton *Virtue Ethics: A Pluralistic View* (Oxford: Oxford University Press, 2003), 20.

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think that the argument succeeds in clarifying cruelty, and may in fact distort our perception of cruelty. I hold, for instance, that it is cruel to make fun of a cognitively disabled person, even if the disability is so severe that we can be fully confident the ridicule is not understood. It is similarly wrong to ridicule animals. These cases involve creatures that, on the utilitarian account, do fall within the scope of moral status. Yet the utilitarian account of their moral standing makes it impossible for these forms of treatment to count as wrong, because they cause neither physical nor psychological pain. These are plainly instances of cruel behaviour, and I think we should acknowledge that someone or something that is the subject of cruel behavior has been wronged, rather than basing our notions of the wrongness of cruelty on the infliction of certain kind of harm, namely, harm that involves causing physical or psychological pain. But such an account runs against the grain of the utilitarian account of moral status since on that account only behavior involving creatures capable of sustaining certain kinds of harm can generate a judgment of moral wrongness.

Further, as Cora Diamond has pointed out, such arguments distort our reasons for prohibitions that are crucial to defining our moral lives, for example, not eating people. We do not avoid eating people because eating them might cause distress to persons (as Singer might argue); rather, people are simply 'not something to eat'.[4] When philosophers argue for vegetarianism on the basis of a legalistic approach to moral status, Diamond rightly argues, they miss our actual grounds for not eating people. Instead of our conduct in this instance being based on some feature of the thing in question, our refusal (except in extraordinary circumstances) to eat people is part of what constitutes what a human being is, and constitutes being human as something vested with significance (Diamond refers to it as a 'source of our moral life'[5]). Indeed, the grounds given on the legalistic account make it seem rather odd that we do not eat people who have died accidentally or from natural causes. That we cannot appeal to capacities of the things in question to justify our behavior in these instances does not mean there is no reason not to eat them; our inability to give an argument of a certain form for these practices does not mean that they are irrational.

[4] 'Eating Meat and Eating People', in *The Realistic Spirit* (Cambridge, MA: MIT Press, 1995), 322.

[5] 'Eating Meat and Eating People', 326.

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Another problem with the legalistic approach is that, to account for instances of immoral actions that escape its nets, it invariably sets up an argument showing how the immoral action indirectly impacts actual members of the moral community. Kant employs this strategy in his notorious discussion of animals in the *Lectures on Ethics*.[6] On this view, ridiculing a cognitively disabled person who fails to grasp that she is being abused is wrong because the character that seems to be required by anyone undertaking these actions is blameworthy. Specifically, they claim that it is hard to imagine someone who could do these things without being disposed to abuse the object of mistreatment physically (directly wrong for a utilitarian) or to behave otherwise cruelly toward cognitively able human beings (directly wrong for a Kantian). Thus, these accounts seem to rely on a notion of virtue to make out the wrongness of these cases. Yet it is false that what makes character of this sort bad is that it is potentially harmful to proper members of the moral community. On the legalistic account we condemn the action *as if* it were immoral because it serves as a warning of future immoral deeds. But the actions are themselves wrong, independently of any harm they incur; it is simply insufficient to suggest that we only rebuke them as if they were immoral or as a precursor to genuine immorality. As I will argue below, virtue ethics can account for the wrongs of such actions as the outgrowth of a vicious disposition independently of any harm they might produce, and *a fortiori* independently of whether those harms have a chance of accruing to members of the purported moral community.

Multi-criterial accounts, such as Mary Anne Warren's, might seem to fare somewhat better than the uni-criterial accounts of traditional utilitarianism and Kantianism.[7] The multi-criterial account invokes different criteria that set distinct baselines for our treatment of various ranges of entities. The multi-criterial view creates a sort of moral pyramid wherein moral agents are on top and non-sentient living things are on the bottom; the capacities of moral agents generate the most stringent requirements against mistreatment, whereas the minimal capacities of non-sentient living things generate easily defeasible requirements; there is a spectrum of capacities in between these extremes with corresponding with

[6] *Lectures on Ethics* trans. Peter Heath, ed. Peter Heath and J.B. Schneewind (Cambridge: Cambridge University Press, 1997), 212.

[7] *Moral Status*: *Obligations to Persons and Other Living Things* (Oxford: Clarendon Press, 1997).

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intermediate levels of moral protection. It appears that Warren's account makes an exception for cognitively disabled humans, since on her account they have a moral status that exceeds that of sentient animals, even if those animals possess intellectual capacities exceeding that of the cognitively disabled individual in question. Indeed, on Warren's view they count almost equally with cognitively able moral agents. That is, they should be accorded moral rights, provided that according them those rights doesn't undermine the rights of cognitively able moral agents. But the reason for the special status of cognitively disabled individuals is that in addition to sentience and moral agency, it matters morally that they 'can often love and be loved'.[8] Thus, another capacity enters Warren's account to patch up the divide between traditional accounts and our moral intuitions. Warren's account borrows from care ethicists in whom Warren herself recognizes a problem. She rejects care ethicists' account of moral standing as insufficient for a uni-criterial account because it 'makes moral obligations contingent upon the agent's possession of specific empathic capacities'.[9] This problem does not go away when the care ethics account is embedded within a multi-criterial account of moral status; rather, the problem is simply narrowed to the range of entities that this criterion covers. There is a sense then in which Warren has given firmer support to moral obligations toward animals and 'full blown' moral agents than she has toward cognitively disabled people, since the criteria governing the former do not rely upon our empathic capacities.

Further, her account makes no genuine place for the moral status of entities like the dead and precious inanimate objects. Though she recognizes that some people accord such entities moral status, the only way they enter her theory is through the 'transitivity of respect principle', which requires us to seek to avoid harming things to which other people ascribe moral status, provided it does not entail transgressing against the things that do have moral status to us.[10] It also permits us to accord moral status to entities that we otherwise might not. Yet this is a dodge. Rather than directly confront cases that don't square with her moral principles, she creates a permission to consider granting moral status to cases for which she clearly sees no real reason to grant moral status. The only foundation for granting such 'moral status' is that according respect

[8] *Moral Status*, 143.
[9] *Ibid*.
[10] *Moral Status*, 170–172.

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to entities that other persons respect avoids inflicting psychological harm on moral agents; this approach, therefore, involves an indirection similar to Kant's thinking concerning animals.

I hold that the failure of these moral status arguments to accommodate an important range of cases indicates a fundamental flaw in the way that the issue is ordinarily conceived, within the legalistic view. The legalistic view of moral status joins up with what John McDowell calls 'the deductive paradigm' of moral thinking.[11] Under the deductive paradigm, moral thinking can be conveyed in syllogisms, like the one above, with moral commitments contained in the major premises. The minor premises (such as (2) above) contain 'straightforward facts'. Moral principles ought then to be applicable to factual matters that are, by themselves, non-moral, to generate consistently sound arguments and rational moral judgments. McDowell holds that this view contains a prejudice about rationality, namely, that rationality involves acting in view of a formulable universal principle. This prejudice leads us to deny what should be obvious: that any 'reasonably adult moral outlook' can be contained in rules that hold only for the most part. Resisting this prejudice means embracing some form of particularism or non-codifiability. Instead of our moral outlook being contained in watertight moral principles that give of algorithmic application, advocates of non-codifiability hold that moral rationality is to be identified with practical wisdom; that is, holding a correct view of what is worthwhile in life and having knowledge of the basic means of enacting those values.[12] We act rationally when we intend to act in a way that does in fact advance that correct conception of what is worthwhile in life, regardless of whether that conception can be contained in principles that can serve as premises in a deductive argument. The appeal of the deductive argument, McDowell argues, is that it helps us avoid confronting the terror that many are subject to upon realizing that our moral conceptions depend on a fragile, contingent transmission from one generation to the next of a form of life, and that morality is not imposed on us by a formulable dictate of reason. In the case of moral status, the hope is that we moral agents will be rationally compelled to acknowledge membership in the moral community,

[11] 'Virtue and Reason' in *Mind, Value, and Reality* (Oxford: Oxford University Press, 1998), 58.

[12] I draw this formulation of practical wisdom from Philippa Foot 'Virtues and Vices' in *Virtues and Vices and Other Essays in Moral Philosophy* (Berkeley: University of California Press, 1978), 5.

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and that henceforth we will be immune from the long history of faults in moral consideration that resulted in the worst moral tragedies (slavery, sexist oppression, racist genocide, and the exploitation of non-human animals). But this is a dangerous illusion that overlooks the moral necessity of sustained attention to our conduct and our constant susceptibility to distorted moral perception.

The advocate of the legalistic view could respond to my examples by generating *ad hoc* special standing for those cases not covered by the universal criteria. But, I hold that we are better served by embracing a conception of moral status that acknowledges the central contribution of the virtuous person's judgment as to what satisfies the requirements of virtue. What we get in return is a coherent view that is much more accommodating to highly important moral issues like those that I've set forth in this section. This strategy does not mean there is nothing to say about moral status, but it does mean that what there is to say about moral status must be spelled out in terms of the relevant virtues. That is, we will move from discussing factual properties of things that are supposedly identifiable independently from our moral commitments, to features that are important to us because of our commitment to (a certain conception of) justice.

III. Facts and Reality in Virtue Ethics

As mentioned above, in her treatment of abortion Hursthouse appeals to 'basic biological facts' about reproduction, contrasting that appeal with a concern for the moral status of the foetus, which she deems irrelevant to the morality of abortion. This appeal to the facts may seem to mark a similarity with the legalistic approach. After all, the legalistic approach always features an appeal to a fact, namely, an intrinsic property of the entity that is a candidate for membership in the moral community. Yet, Hursthouse's appeal to 'the facts' is quite different from what we saw with the legalistic view. First, she is not concerned with intrinsic properties of the foetus, but rather with facts about human lives. The task, for Hursthouse, is not to determine whether the foetus is a member of a purported moral community, but rather to help orient us in our thinking about what goods might be at stake in the practice of abortion. The fact that human pregnancy typically lasts nine months, involves great physical change, and ends, typically, with a painful labour and birth, among other facts about pregnancy and birth, renders it intelligible that a young girl who has become

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pregnant might be terrified. Appreciating the impact of that terror on the future life of a young girl is one of the facts that is essential to any sound judgment over whether she ought to carry the child to term. Another essential fact here is that pregnancy is the way, for now, that human persons come to be. This fact lies behind Hursthouse's claim that 'motherhood and childbearing in particular, are intrinsically worthwhile, are among the things that can be correctly thought to be partially constitutive of a flourishing human life'.[13] The problem of abortion then becomes, 'is this instance of abortion compatible with acknowledging the intrinsic value of parenting?' And that is a highly contextual matter. Thus, the facts that Hursthouse appeals to do not generate rules of the sort that those approaching the issue from the legalistic approach are seeking.

Second, the facts to which Hursthouse appeals are the facts that have salience for the virtuous agent, not the facts that interest the moral theorist from an allegedly detached perspective. Hursthouse accuses the majority of philosophical writers on abortion of being 'badly out of touch with reality', because their writings contain no mention of the basic biological facts of human reproduction.[14] This criticism is not merely intellectual; in fact, it is only secondarily so. Surely the philosophers she has in mind are not actually unaware of basic facts of human reproduction she enumerates; it is rather that the facts do not have for them the weight that these facts ought to carry in their reasoning about abortion, and that is because, it appears, they are seeking metaphysical grounds for an artificial moral clarity; they shove aside the many basic facts of human biology that matter to Hursthouse and instead focus on the criterion or criteria of moral status in order 'to solve the problem of abortion by getting it to fall under some general rule, either (something like) "Taking human life is wrong" or (something like) "Killing things that do not have the right to life is permissible"...'[15] Even if abortion is not as complex a moral issue as Hursthouse suggests it is, the fact that our moral theories do not leave room for it to be complex should be troubling to moral philosophers. Although it is not clear to me what to call the vice involved, the pursuit of artificial clarity about matters of such practical importance cannot be admirable; it indeed puts us out of touch with moral reality.

I am emphasizing Hursthouse's use of 'being out of touch with reality' as a term of moral criticism, because it brings out that for a

[13] 'Virtue Theory and Abortion', 241.
[14] 'Virtue Theory and Abortion', 237.
[15] 'Virtue Theory and Abortion', 236.

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full-blooded virtue ethicist, 'reality' is a thoroughly moral concept.[16] What we will not find in a virtue-ethical account of moral status is an appeal to a set of facts fully salient prior to the adoption of a moral perspective that grounds our moral judgments. Rather, our moral commitments, what McDowell calls 'our conception of how to live' informs which facts have salience, and makes some facts more or less easily accessible to us.[17] Indeed, central to Hursthouse's treatment of abortion is the claim that parenting is intrinsically worthwhile. Debating abortion with someone who did not share this commitment would prove fruitless; it is hard to imagine someone who would take the view that childrearing and parenting are of merely instrumental value and yet give the foetus some degree of consideration above the advancement of his interests. We might say, someone who does not share this commitment does not *see* in the foetus the same being as one who does. This may explain why appeals to 'facts' make so little headway in this area. Appealing, as does Hursthouse, to the fact that aborting a foetus is 'cutting off a new human life' presumably has salience only for one who shares her view of parenting as intrinsically valuable. Yet, acknowledging the truth of Hursthouse's claim by no means puts an end to controversy about abortion; it turns the moral question to individual cases.

We do moral as well as philosophical disservice to those with whom we disagree about issues such as abortion in approaching their views through the lens of 'moral status' as it is ordinarily conceived in the philosophical literature. Instead of sifting through their arguments to determine what criterion their arguments or assertions imply for membership in the moral community, we might rather ask, 'what conception of how to live must they hold, such that *this* is the course of action that should be pursued in this case?' Much more progress would be made in the face of serious conflict, I think, by making those conceptions as explicit as possible.

In summary, then, here are the problems I see in the legalistic view of moral status:

[16] Cf. Iris Murdoch, *The Sovereignty of Good* (New York: Routledge, 1970), 59.

[17] Accessing those facts may require entering the moral perspective of another. The fact that this nervous looking individual would take enormous fright at being threatened with a beating and readily hand over his money at such a threat is a fact that is relatively out of reach to a virtuous person; we are aware of it via contact, albeit often indirect, with the vicious perspective of a criminal.

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1 It assumes a single moral community that stands under a moral law or principle.
2 Membership in the moral community is determined by a thing's having certain capacities.
3 To the extent that anything beyond the moral community is given any consideration, it is always subordinate to the consideration due to members of the moral community, e.g., the indirection approach of Kant, or the hierarchical structure of consideration in Mary Anne Warren's account.
4 It operates with a fact-value dichotomy, failing to acknowledge the crucial contribution of the virtues to the saliency of facts.

By contrast, under virtue ethics:

1 Each virtue will have a field of entities that are of concern when considering whether an agent's conduct is virtuous.
2 Our moral relationships to things are generally not defined in terms of their capacities.
3 Different virtues are important in different situations; an agent's conduct may be seriously wrong in expressing many different vices, not only in inflicting pain or violating something's rights.
4 The character of the agent is recognized as ineliminable in picking out facts as they figure in our moral deliberation.

To fill in the picture of how virtue ethics handles 'difficult cases' involving moral status, I will sketch an account of the virtue of justice; this conception of justice is part of an overall picture of how to live, a conception operative behind my claim that corpses deserve respectful treatment, that the severely cognitively disabled and animals deserve not to be ridiculed, and that precious inanimate objects deserve not be mistreated. Through developing this account of justice, I will illustrate the points I have just put forward on behalf of virtue ethics in grappling with issues of moral status.

IV. An Alternative Conception of Justice and Its Scope

The cases (corpses, inanimate objects, ridicule of severely cognitively human beings and animals) can be accounted for, at least in an important part, through a largely neglected conception of justice. I will argue that this conception of justice is justifiable via virtue

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ethics, but not readily justifiable under other moral theories. This conception of justice is *not* based on resolving the conflicting claims of rights-bearing agents who engage in reciprocal contractual relations.[18] Unlike the dominant, rights-based conception of justice, this alternative conception of justice applies to non-reciprocal relations among unequally situated creatures, as between strong and weak, eloquent and stammering, wealthy and poor. The demands of justice, in this sense, fall exclusively on the former of each pair. The latter of each pair are defined by their vulnerability; they are, in a given situation, powerless and in the thrall of the former of each pair. Vulnerability is not a stand-in for sentience, since I am not talking only about susceptibility to physical or psychological pain. It is a susceptibility to being damaged or wronged, as well as possible being harmed. Rare natural formations, an endangered plant, or a work of art can be properly called vulnerable even though they can be damaged and wronged, but not harmed. To be damaged, by contrast with being harmed, a thing need not be aware of that damage. To be wronged, no damage need accrue to a thing; rather, being wronged need involve only being the target of a vicious action. Nor need there be awareness or potential awareness or possibility of objecting to the vicious action for something to be wronged.[19] In each case, there is something of value in the vulnerable thing; that value need not be correlated to any of the capacities that ordinarily underwrite something's moral status on the legalistic view. That value makes a claim, sometimes a very powerful claim, on the virtuous individual. The demand of justice is that this value be attended to, cared for, or in some manner respected. There is therefore, I contend, no capacity that a thing need possess to be considered vulnerable. Vulnerability does not confer a right, and yet clearly an injustice is

[18] The first treatment of this conception of justice occurs in Simone Weil's 'Human Personality' in *Simone Weil: An Anthology*, ed. Siân Miles (New York: Grove Press, 1986), 49–78. Cora Diamond explicates and elaborates on Weil in 'Animals and Injustice' in *Slow Cures and Bad Philosophers*, ed. Carl Elliott (Durham: North Carolina Press, 2001). Finally, Mary Midgley has also put forward a version of this conception of justice (without reference to Weil) in 'Duties Concerning Islands' in *Ethics*, ed. Peter Singer (Oxford: Oxford University Press, 1994), 374–387.

[19] In saying this, I am disagreeing with T.M. Scanlon, who objects that one can only speak of wronging a creature to which one can justify one's behavior. 'Justifiability to' is thus an important moral criterion for him. See *What We Owe Each Other* (Harvard University Press: 1998), 180. I address this issue below.

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committed against the vulnerable when their powerlessness is exploited for its own sake or for the sake of some further benefit, as when fun is had at the expense of uncomprehending persons with cognitive disabilities.[20] Mary Midgley argues that it is proper to speak of duties in this context, and indeed, duties towards the creatures that are wronged. Duties, on her account, need not be correlated with rights; as she points out this is not such an unusual notion, since widely recognized duties toward oneself lack correlated rights. She writes:

> Duties need *not* be quasi-contractual relations between symmetrical pairs of rational human agents. There are all kinds of other obligations holding between asymmetrical pairs, or … no outside being at all. To speak of duties *to* things [such as plants and countries] … is not necessarily to personify them surreptitiously, or to indulge in chatter about 'the secret life of plants'.[21]

In other words, duties have a place within this conception of justice, and a serious wrong is committed when these duties are violated. Yet, under this conception, we are not required to make out a case for the victim of injustice as having such and such features that would qualify them as bearers of rights. Part of the value of this alternative conception of justice, then, is that it recognizes the moral seriousness of a range of wrongs without requiring that we make out a case for how the victims of the wrongs can be understood as bearers of rights.[22]

It should be evident that this conception of justice would not be easily justifiable under Kantian or utilitarian principles based on my discussion of their approaches to moral status above. I will not

[20] This does not represent any hostility of virtue ethics towards rights. Simone Weil noted, rightly I think, the absurdity of talking about rights in the context of such an unequal relation. As she puts it 'rights are always asserted in a tone of contention; and when this tone is adopted, it must rely upon force in the background, or else it will be laughed at' ('Human Personality', 61).

[21] 'Duties Concerning Islands', 385.

[22] Care ethicists, of course, have criticized conceptions of morality taking such a concept of justice to be the central moral concept, suggesting care as a crucial alternative to justice. Yet the idea that justice and care are competing alternatives assumes that the only conception of justice is the traditional rights-based notion. But it is important to expand our conception of justice rather than look for alternatives to it. In 'Duties Concerning Islands', Midgley points out '[i]f we are told that a certain set of … cases does not involve injustice, our natural thought is that these cases must be *trivial*' (380).

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argue that this conception of justice definitively cannot be justified under those principles, but rather argue that it can be justified within virtue ethics. That is, I contend that this conception of justice is a virtue and its absence in a person is a vice. Exploitation of weakness and vulnerability make one bad; being disposed to scrupulous protection and preservation of the weak and vulnerable are praiseworthy traits.[23] Take, for example, a case involving a rare natural formation made of fragile sandstone, the Delicate Arch in Arches National Park, Utah. A recent scaling of the Delicate Arch has become controversial because it jeopardized the integrity of the fragile structure. Dean Potter, the main climber, arguably did something wrong involving the arch (though there is a question about whether it was in fact damaged).[24] Dispute over whether this was wrong turned in part on his motives; Potter claimed that his motive was to more fully appreciate the formation, and to 'join nature', while others claim his climb was solely for the sake of notoriety. Though less blameworthy than acting for mere self-aggrandizement, acting from the motive of joining nature unchecked with a concern for vulnerable objects in nature would still be vicious. I contend that there is a real issue of justice here, and, very likely the formation has been treated unjustly, without due concern for its vulnerability. Indeed, I think the arch itself has been wronged.

I take it that the exploitation of vulnerability is uncontroversially vicious in the case of people; in the Potter case, one might object that there are surely bits of fragile rock that could be climbed that it would not be an injustice to climb. And that is correct; the vulnerability to which I refer is not to be equated with the fragility of the rock. It is the formation as a whole that is vulnerable, due to the fragility of the rock that composes it; and it is the formation that is treated unjustly. It merits being an object of moral concern, I think, because of such things as its form and rarity, and these are qualities that make it valuable. Such things matter to a virtuous moral agent because she will find intrinsic value in the appreciation of natural beauty. Some might object to my claim that a wrong is

[23] The danger of paternalism is palpable here; a fully virtuous agent would strive, where relevant, to promote the autonomy of a weak and vulnerable creature, even to the point of its ability to refuse care. Obviously this does not apply in the case of corpses or precious inanimate objects.

[24] *Outside Online*. 22 June 2006. <http://outside.away.com/outside/features/200606/dean-potter-delicate-arch-climb-1.html/>

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perpetrated *against* the Delicate Arch. There are two reasons that support talking in this way, rather than merely saying a wrong was done involving the arch. First, the wrong is not predicated on depriving other moral agents of the opportunity of appreciating the beauty of the object. The viciousness of mistreating objects of natural beauty stems from the place of appreciation for such objects as a part of a characteristic human life. Once that is established, it does not matter whether anyone will ever again appreciate this beautiful natural object; it is vicious to be disposed to do things that reflect an inadequate grasp of the role of natural beauty in human life, even if there are not likely to be humans around to appreciate the object. The wrong involves an inadequate appreciation of the value of that thing itself, and so that wrong is independent of any effect my action has on the balance of pleasure and pain or whether my action violates another's rights. Second, and more importantly for my argument, the virtuous agent is concerned for the integrity of the object itself. Its valuable qualities can be damaged, both by agents and non-agents. A virtuous agent will be concerned to protect it from possible damage. From the virtuous agent's perspective, then, it appears that I have done *it* a wrong when I have, through bravado, pursuit of gain, or even to join nature, jeopardized the integrity of a beautiful natural object. A virtuous Potter would lament having risked the potential damage to the arch itself; it is the arch itself that would figure in his thoughts.

This example illustrates the importance of this conception of justice within virtue ethics; it stems from recognition that valuable things and persons are fragile, and that human beings are susceptible to overlooking that fragility in pursuing a false conception of the good. A proper appreciation of the importance of this virtue would bring to the foreground many kinds of things that are shoved into the background when we look at the world through the lenses of traditionally dominant normative moral theories.

Now, with this conception of justice in mind, I want to return to the prejudice that prevents us from acknowledging the gravity of wrongs that cannot, in principle, result in harms, as in the ridicule of a person with a severe cognitive disability. The treatment of issues involving cognitive disability is always a bugbear in the philosophical literature, precisely because the issue of moral standing is always centered on the capacities a thing possesses.[25]

[25] For a trenchant, in depth critique of capacity-based notions of moral status focused on cognitive disability, see Eva Feder Kittay 'At the Margins of Moral Personhood' *Ethics* 116 (2005), 100–131.

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But there is no reason to think that the morally significant categories will line up neatly with capacities. The category 'human', as Diamond has argued, is a fundamental moral category, and that is because we make something of the being human through practices like naming, celebrating birthdays, and burying our dead. They are not things it would be proper to call 'morally wrong' not to do; they define a human being as a kind of thing deserving of moral treatment. We make decisions about how to behave towards people, for instance, against a background of behaviours that determine what it is to be a human being. This background is part of what nearly anyone who is brought up by human beings is exposed to and comes to take for granted; yet, it is so often forgotten in philosophical arguments, with the consequence that we become disconnected from what Diamond calls 'the sources of our moral life', or, as Hursthouse might say, we become 'detached from reality'.

Is it not obvious that a wrong is done to Charly in *Flowers for Algernon* when his co-workers ridicule him even though he is not aware of it and even though (or perhaps especially because) he laughs uncomprehendingly along with them? On the conception of justice I am working with here, an important intuitive moral conviction of virtuous agents is restored: we can embrace the view that I have a duty *to* the individual not to ridicule him, regardless of whether the victim would be aware of the act. The wrongness of the act is in no way indirect, because the ridicule involves an exploitation of the powerlessness of the cognitively disabled individual, and that is a vicious deed targeted at him. Further, requirements to avoid inflicting such harms do not rest on our capacity to love or on the capacity of the individual to love us back, as some care ethicists suggest. Rather, there is a connection between justice in the sense I have been discussing and caring relations; but this connection generates virtues and vices that apply to me as a human moral agent, regardless of whether I as an individual happen to have such concern or not. The virtue of justice requires me to have due concern for vulnerable things and creatures. Of course, if I am unable to care for others for psychological reasons, that may impede me from acting virtuously, acting with ease on the basis of proper reasons, but it need not prevent me from acting in accordance with virtue. The requirement does not depend on my possessing the relevant emphatic capacities, as it does under Warren's care ethics account. Thus, I think that my account yields very strong moral requirements on us toward cognitively disabled individuals, including upholding an important rule against ridiculing them. To use Christine Swanton's language,

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the cognitively disabled fall firmly within the field of the virtues of justice and caring.[26]

With respect to the dead, Hursthouse has argued that birth and death are very important matters in human life; the virtuous person must approach them with a serious attitude, meaning in part, a duly reflective concern for appropriate behavior with regard to them. The reason is that careful treatment of the dead, including funereal practices, fit with the practices identified by Diamond as important to constituting what it is to lead a human life.[27] That is, these practices form the background against which a human life is taken to be something that matters. Again, other such practices include giving proper names and celebrating birthdays. Nazis carried out part of their de-humanizing effort through assigning numbers to prisoners in their concentration camps and using these exclusively en lieu of names. It sounds somewhat strange to say that we are *owed* a name, but perhaps that is because it is not a generally difficult thing to provide. Yet, no doubt it was part of the injustice committed by the Nazis that they deprived their prisoners of their names. Hegel hinted that the funereal rite might play a similar role to proper names in being part of the background against which human lives have significance. Hegel points out that the dead individual is 'at the mercy of every lower irrational individuality and the forces of abstract material elements'[28]; in other words, the dead individual is vulnerable to insults, particularly for Hegel from natural forces. The funereal rite, for him, is a duty that serves to commemorate the individual and treat the body so as to remove it, in some fashion, from its vulnerability.

It follows from any version of the legalistic conception of moral status that, after death, there can be no moral standing, since the entity in question will have lost any of the relevant capacities that may have provided the basis for that standing. Yet, I think it is clear that we have an obligation to the dead to treat them justly and respectfully. To defile a corpse involves injustice in the sense I have outlined here, since the corpse is utterly vulnerable, having no capacity for any response to the mistreatment. Properly dealing with the vulnerability of the corpse involves some commemoration, wherein we in some way take care of the body. Despite the

[26] *Virtue Ethics: A Pluralistic View* (Oxford: Oxford University Press, 2003), 20.

[27] 'Eating Meat and Eating People', 324–326.

[28] *Phenomenology of Spirit*, trans. A.V. Miller (Oxford: Oxford Univeristy Press, 1977), 271.

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enormous cultural variability in respectful treatment of the dead, it is clear that they are owed some kind of respectful treatment. Each of the various modes of taking care of the dead provides some way of acknowledging their value, and a virtuous person will undertake to carry through with the culturally relevant way of acknowledging that value unless there is an important reason to do otherwise. My culture sets certain limits on which of my actions can be construed as a mode of acknowledging the value of the dead individual, and a virtuous agent will defer to that unless there is an important reason not to.[29] Most U.S. citizens would be unable to manage it so that putting a corpse out to be devoured by vultures would count as a mode of respect, even though that may be a generally accepted mode of acknowledging the value of the dead in other cultures.[30] Generally, we think it our obligation is to treat the dead individual in accordance with his living wishes, so far as they can be discerned and provided that they are not out of all proportion with available means, but we may also need to ignore those wishes if they demand disrespectful treatment. Our obligation toward the dead is not on this account dependent on there being any surviving relations or on anyone actually knowing or caring about the person. Rather, the obligation is part of justice, and it is part of what we owe to the dead.

My views should no doubt be able to generate details about what follows from this view when choices are forced, for example, between the life of a cognitively abled and the life of a cognitively disabled individual, or between a cognitively disabled person and an animal, or between persons and precious inanimate objects. There is only room to hint at how virtue ethics might approach such matters. In the first case, I can see no basis in virtue for making the choice in one direction or another; it is a tragic dilemma. In the second case, I do think that justice would permit and perhaps even require choosing the human over an animal though not without regretting that the choice had to be made. If correct, this choice has nothing to do with our greater capacity for empathic connection with humans or with the greater rational capacities of humans. Rather, it has to do with the more expansive role played by humans in the characteristic human life, in realizing

[29] Ecological or hygienic reasons may be important enough to withhold from a given mode of acknowledgment, but convenience would certainly not provide sufficient reason.

[30] Being ceremoniously offered to the vultures counts as 'removing the corpse from vulnerability' since the corpse will no longer be vulnerable to disrespectful treatment, such as being thrown to the pigs.

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human goals. It is proper, for this reason, that the virtuous person would generally choose human lives when there is no available recourse but to choose between a human and an animal. This does not mean that virtue ethics is inherently anthropocentric; the judgment I am suggesting here follows from filling in a picture of the characteristically human life, not from the structure of the theory itself. One might fill in a picture in which it is characteristic of human beings to sacrifice their own to the benefit of other species, but I can see no reason to advocate such a view.

V. Moral Debate and Moral Attention

One clear merit of the legalistic view of moral status is that it promises clear-cut, decisive criteria for settling disputes about controversies concerning moral status. Yet I have argued that there is at least as much reason to worry that the legalistic view fails to leave room for the possible complexity of our moral situations. According to the virtue theoretic view of moral status that I have been proposing, we should not expect that these issues would receive such a clean resolution, because there is no criterion that definitively delimits the scope of beings with moral status. There may be a concern here that this view would result in disputes about moral status boiling down 'to impugn[ing] the character of the other rather than listen[ing] to the other's case'.[31] I will attempt to show here that this worry is unmotivated. No doubt disputes about moral status are some of the most difficult and intractable that we face. The virtue-based account I am advocating here would not make these disputes resolvable via the straightforward application of a rule. Instead, it shows what the disputes are actually about: conflicting conceptions of justice and other virtues. Such disputes are, on this view, disputes about how properly to respond to a certain range of entities, such as foetuses. But there is more than one virtue that is relevant in appropriate conduct to almost any entity, and further, appropriateness will depend heavily on context. I am suggesting that the 'problem of moral status' be replaced with 'the problem of what is appropriate to do here and now, given that these creatures and things will possibly be affected by my actions'. If McDowell is correct that the deductive paradigm is to be rejected and non-codifiability embraced, then ideal moral discussion would look quite different from what it is assumed to look like by many

[31] J.B. Schneewind 'The Misfortunes of Virtue' *Ethics*, 101 (1990), 63.

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philosophers; no appeal to principle would occur, but rather, we would share our moral perspective with others through descriptions that could possibly be compelling to others who do not initially share our conception.

As an example of what might be involved in ideal moral discussion on this view, I would turn to Alice Walker's account of relating to animals in her essay 'Am I Blue?' This essay describes Walker's encounter with a horse while she was living at a house in the country. The experience reawakened for her the responsiveness to animals that she claims to have experienced in her childhood, but had then forgotten, perhaps because she had a horse riding accident that brought about her estrangement from horses. Here is how she describes her encounter with Blue:

> It was quite wonderful to pick a few apples, or collect those that had fallen to the ground overnight, and patiently hold them, one by one, up to his large, toothy mouth. I remained as thrilled as a child by his flexible dark lips, huge, cubelike teeth that crunched the apples, core and all, with such finality, and his high, broad-breasted *enormity*; beside which, I felt small indeed...I had forgotten the depth of feeling one could see in horses' eyes. I was therefore unprepared for the expression in Blue's. Blue was lonely. Blue was horribly lonely and bored.[32]

The appreciation of animals and life with animals on offer in Walker's account could certainly serve as a corrective to *facts* that someone who denied that animals deserve our moral attention might deny, fail to recognize, or have forgotten (e.g., that animals can communicate or suffer). Yet one would miss the moral force of the story to pin the weight of Walker's account on reminding us of those facts. For the point of the story is not, I think, to say 'because horses can communicate, you ought to take them into account' or even 'because horses can be lonely, you ought to make sure they have companions'. Rather, she shows a detailed attentiveness to Blue's condition, to the point where she becomes aware of the horse's powerlessness against his loneliness and deracination brought about at human hands. Also, she offers a convincing account of how she came to lose her moral responsiveness to animals, an account that is situated in the context of a more fundamental perversion of character that she likens to racism and sexism. This comparison is, of course, not at all unusual—Peter Singer would also draw this comparison—yet Walker's account is unique. There is not, on

[32] *Living By The Word* (San Diego: Harvest Books, 1989), 4.

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Walker's account, some underlying common feature that makes all of us deserve equal consideration. For Walker elsewhere includes trees among the things we should acknowledge morally, directly and as individuals. Though she describes having a conversation with them, I do not think her claim is based on a literal thought that they can converse.[33] Rather, her reports of conversation with them are a way of describing (perhaps the best and most appropriate way of describing) her deep appreciation of trees.

Walker suggests that what has led to the radical injustices involved in racism, sexism, and in the case of animals is a kind of alienation, wherein we lose appreciation of elements of our environment, whether people, animals, or plants. For Walker, that responsiveness includes noting Blue's 'inalienable *horseness*' and, in another essay, becoming absorbed in the individuality and family life of a Balinese chicken.[34] Likewise, she feels deep remorse over the fact that she caused a common garden snake to be killed by a neighbour, because she responded to it with fear. She attributes the killing of the snake to her cowardice, a cowardice in turn partly attributable to deeply ingrained training about the fearfulness of snakes, including, as she claims, her 'ladylike nervousness' about snakes. Walker gives us an account of a moral struggle to retain and deepen her appreciation of, among other things, animals, a struggle linked for her to an ongoing effort to abstain from eating meat.

The picture that emerges from Walker's narratives is this: at the depth of our character is our responsiveness to various elements of the world, including other people, animals, and the inanimate environment; this responsiveness is a result of our upbringing and our effort or lack of effort to deepen our appreciation of the world. This responsiveness is crucial to our moral success or failure, as it can lead to the sorts of tragic injustice found in the worst cases of racism and sexism. Indeed, there seems to be a reciprocal relation between our moral responsiveness and other virtues. Being cowardly may lead us to isolate ourselves from say, snakes, and thus lose or fail to develop any appreciation of them. The effort to deepen our appreciation of our environment I will call, following Iris Murdoch, 'moral attention'.[35] Moral attention is a crucial moral component of our character because in order to manifest

[33] *Living By The Word*, 140.
[34] *Living By The Word*, 171.
[35] Iris Murdoch, *The Sovereignty of Good* (New York: Routledge, 1970), 17.

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justice or caring, or appropriate courage, we must attend to the individuality of those around us, properly perceiving their needs and interests.[36] Further, as I have argued elsewhere, moral attention can bring about an important form of transcendence that I call sensibility-transcendence.[37] Through moral attention, we may come to grasp what 'courage' really means through attending to another individual and finding that her actions merit being called 'courageous'. We thereby transcend our preceding moral sensibility. This effort is crucial to being a genuinely good person. Thus, I believe, we can only have confidence in the moral outlook of others and ourselves if we exhibit moral attention. It is not incidental, then, to Walker's moral perspective that her essays describe a moral struggle; some might wish that Walker's resolve to follow through with her vegetarianism were more firm, but even if Walker were to find that resolve, I think that she would still describe her moral life as a struggle, and that this struggle would be a positive feature of her moral life, an outgrowth of exerting her attention. This point does not contradict Aristotle's view that the fully virtuous agent will act without hesitation or struggle. Often, a morally attentive person will act without hesitation, especially in emergencies. Further, the struggle of a morally attentive person will not necessarily be a struggle with temptation, but, rather, a struggle against settled dispositions, particularly dispositions that shape what we find morally salient in a given situation. And even if our struggle is with temptation, the type of struggle I am highlighting is not a struggle to overcome temptation in a single instance, but to reshape our perspective such that the issue of temptation drops out.

Since attention may lead to transcending our prior views, a deficit of this trait qualifies our claim to virtue. In fact, the extreme state of the absence of moral attention means that one has no claim to virtue at all. After all, if one is oblivious to the actual needs and interests of others, and puts no effort into working out how properly to describe them, virtuous action is impossible. Further, one will mirror one's upbringing identically, and develop no individuality in one's character. Aristotle himself seems to have exhibited a deficit of moral attention, since he wholly absorbed conventional ancient Greek judgments of women, non-aristocrats, and non-Greeks. It is not that one must reject some conventional

[36] Seyla Benhabib, 'The Generalized and Concrete Other' in *Situating the Self* (New York: Routledge, 1992).

[37] 'Transcendence without Reality', *Philosophy* 80 (2005), 361-384.

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judgments in order to be credited with attentiveness, but it is surely a sign of trouble that one wholly absorbs those judgments, since it would seem that no society has ever held uniformly wise views. My claim is then, of course, that moral attention is an element of a characteristic human life. Unlike the metaphysical issues surrounding abortion that Hursthouse labels as 'recondite' and therefore irrelevant to wisdom, we are each certainly responsible for sustaining our moral attention.

Let us return to the issue of moral status, to see what bearing this claim would have here. I think it is clear that Walker is an exemplar of moral attention, that is, she exhibits it in a high degree, and that the attention she exerts leads her to distinctive views on the demands of the virtues of courage and justice. If I am right about that, it does not mean that we need to defer to each of Walker's judgments, but probably we do have something to learn from her about virtue. In particular, it seems that Walker exhibits a fully appropriate caring attitude towards Blue and a concern for treating him justly. Looking through Walker's eyes, it is clear that a wrong was done to Blue when his companion was taken away, since it was an unjust act, causing Blue (apparently) needless suffering. A wrong, likewise, was done to the snake in Walker's garden, although she did not recognize it at the time. Evidently, it is not obvious to many that separating a horse from a mate would be a wrong in the way that separating human mates is wrong, or that killing a garden snake is, as Walker puts it, the 'murder of [a] snake person'. I think it would be a mistake to pretend that it is obvious, that it is a simple matter of assessing the facts and being consistent. Such a view would ignore the achievement behind Walker's moral perspective. It is, in fact, her *creativity* and *artistry* that leads her and us to see the matter properly.[38] And, that is part of what makes Walker's case compelling: we can see that her appreciation of the object, her sensibility, is an outgrowth of her concern for justly describing the animals and of the developed talents she brings to the task. She is, arguably, more in touch with the reality of animals

[38] Walker herself recognizes this combination of receptivity and creativity, when she compares the writer's pen to a microphone (*Living By The Word*, 170). The microphone is an invention that allows us to isolate a bit of sound and record it. There should then be no oddity about the idea that creativity could be involved in finding out how things are; we need only note that attention is active and perhaps remind ourselves of the creativity involved in scientific experimentation.

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than many of us are, or than are many scientists putatively concerned with studying animal life.

Of course, it is always possible to impugn the character of one's opponent in discussion of controversial moral issues. And one could certainly charge one's opponent with a deficit of moral attention. Yet, such a move itself shows a lack of intellectual virtue, which includes an open-minded readiness to reconsider one's views and to hear out the other side. What I hope to have highlighted with my discussion of Walker is the way in which another's moral perspective can be compelling, not through the rigors of a syllogism anchored in an appeal to a first principle, but through demonstrating an attentiveness to objects of moral concern.

The accepted philosophical picture of moral status that I outlined above can now be seen, I think, as having a dangerous potential to shut down our moral attention. The legalistic view of moral status, which would have us seek out a fundamental criterion of moral consideration, results in looking for harms and benefits of a certain sort in the kinds of creatures who are susceptible to those harms and benefits. I have already enumerated cases for which this view yields unsatisfactory answers. We should be careful, then, about artificially delimited criteria for something figuring directly in our moral deliberation, or artificially delimited kinds of harms and benefits that can make actions right and wrong. Our focus, instead, should be on working out appropriate standards of behaviour toward the entities our actions affect through reflection on those objects and the virtues.

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