

The Argument from Marginal Cases and the Slippery Slope Objection

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ABSTRACT

Rationality (or something similar) is usually given as *the* relevant difference between all humans and animals; the reason humans do but animals do not deserve moral consideration. But according to the Argument from Marginal Cases not all humans are rational, yet if such (marginal) humans are morally considerable despite lacking rationality it would be arbitrary to deny animals with similar capacities a similar level of moral consideration. The slippery slope objection has it that although marginal humans are not strictly speaking morally considerable, we should give them moral consideration because if we do not we will slide down a slippery slope where we end up by not giving normal humans due consideration. I argue that this objection fails to show that marginal humans have the kind of direct moral status proponents of the slippery slope argument have in mind.

KEYWORDS

Rationality, moral standing, humans, animals

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INTRODUCTION

Those who think moral considerability depends on rationality, the ability to use language, moral agency or something similar are faced with a problem: some humans, marginal humans, are not rational etc. If marginal humans are morally considerable, despite lacking rationality etc., moral consideration cannot consistently be denied to animals with similar capacities. Therefore, either marginal humans are not morally considerable, or if they are, animals are too. This is the argument from marginal cases (hereafter AMC). The point of AMC is to demand consistency in our thinking about animals.¹

In this paper I will consider an important objection to AMC: the slippery slope argument (hereafter SSA).² In section one I outline AMC. In section two I consider SSA. In section three I outline four objections to SSA: first, that it is possible to draw a line between normal and marginal humans; second, that SSA is self-defeating; third, that there are societies that have drawn a line between normal and marginal humans without slipping down the slope; and finally, that proponents of SSA cannot show that marginal humans have the kind of direct moral status they want to ascribe to them.

I. THE ARGUMENT FROM MARGINAL CASES OUTLINED

The argument from marginal cases is a challenge to those who argue that marginal humans are morally considerable but animals are not.³ Support for this crucial difference is drawn from the supposed fact that *all* humans possess some capacity that *no* animals do, such as: rationality, autonomy, moral agency, language, the ability to reciprocate, etc. But not all humans are rational etc., and some animals are more rational etc. than some marginal humans. Those who think that rationality etc. is what makes humans morally considerable must, if they are to be consistent, admit either that marginal humans have as little moral status as animals, or that animals have as much as marginal humans. AMC is a powerful challenge.⁴ It has therefore received a great deal of attention recently.⁵

Most who think animals are morally considerable think AMC is a powerful argument (I count myself among these).⁶ But not all concerned about animals are in favour of AMC.⁷ AMC has many critics.⁸ I will now outline AMC in more detail, starting by saying which humans are marginal.⁹

Whether any given human is marginal will depend on which characteristic/characteristics are required for moral status. Typically, however, marginal humans are those who lack the mental capacities of 'normal' adult humans.

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There are three broad categories: pre-rational (not yet fully rational but if allowed to develop normally will become so, i.e. children); post-rational (were rational but no longer are); non-rational (are not, never have been or will be rational).¹⁰

There are numerous versions of AMC.¹¹ I will outline some of the most important and then give my own version. Peter Singer's is one of the earliest modern formulations:

human beings are not equal ... if we seek some characteristic that all of them possess ... [it] must be a kind of lowest common denominator, pitched so low that no human being lacks it. The catch is that any such characteristic ... possessed by all human beings will not be possessed only by human beings. (1995: 237)¹²

Another version that is often quoted is given by Andrew Linzey:¹³

If we accord moral rights on the basis of rationality, what of the status of newly born children, 'low grade' mental patients, 'intellectual cabbages' and so on? Logically, accepting this criterion, they must have no, or diminished, moral rights. (1976: 24)

Two versions are distinguished by Tom Regan:

(1) certain animals *have* certain rights because these [marginal] humans *have* these rights *or* that (2) *if* these [marginal] humans have certain rights, *then* certain animals have these rights also. The former ... might be termed the stronger ... the latter, the weaker. (1979: 189)

All these versions of AMC make the same basic point: moral status cannot consistently be granted to marginal humans if it is withheld from animals with similar capacities. Regan has indicated an important difference between the stronger and weaker versions of AMC. It is worth laying both versions out more fully.

Weaker version of AMC (hereafter WAMC):

- 1) If a property/properties like rationality etc. is necessary for moral status animals are not morally considerable, but neither are marginal humans who lack that capacity.
- 2) Marginal humans *may* have moral status despite lacking the requisite property/properties.
- 3) If marginal humans have moral status no capacity they lack can be neces-

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sary (though it may be sufficient) for moral status. There must be another property that is also sufficient for moral status.

- 4) Animals often have the same abilities as marginal humans to the same or a higher degree.
- 5) Therefore: *if* marginal humans have moral status so do animals that have the relevant property/properties. If animals are not morally considerable than neither are marginal humans.

Stronger version of AMC (hereafter SAMC):

- 1) If a property/properties like rationality etc. is necessary for moral status animals are not morally considerable, but neither are marginal humans who lack that capacity.
- 2) Marginal humans *have* moral status despite lacking the requisite property/properties.
- 3) Marginal humans have moral status, therefore no capacity they lack can be necessary (though it may be sufficient) for moral status. There must be another property that is also sufficient for moral status.
- 4) Animals often have the same abilities as marginal humans to the same or a higher degree.
- 5) Therefore: marginal humans have moral status and so do animals that have the relevant property/properties.

The central difference between WAMC and SAMC is that the former is hypothetical. WAMC's claim is that *if* marginal humans have moral status so do animals. SAMC's claim is that marginal humans do have moral status and therefore animals do too. Whether SAMC is sound depends on premises 2 and 3 being true. SAMC therefore requires additional arguments that marginal humans have moral status. I do not have room to provide such arguments here so I will concentrate on WAMC and it is this I will have in mind when I refer to AMC hereafter.

WAMC leaves the moral status of marginal humans an open question. Those who deny that animals have moral status are therefore left with a choice: either deny that marginal humans have moral status or admit that animals do. Some philosophers have opted for the former horn of the dilemma.¹⁴ Frey, for example, says it is permissible to experiment on marginal humans because they are not morally considerable (1983: 115).¹⁵ Gauthier

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thinks ‘animals, the unborn, the congenitally handicapped and defective, fall beyond the pale of morality tied to mutuality’ (1977: 268-69). Narveson argues that ‘the proper way to deal with them [marginal humans] is simply whatever way is dictated by our interest in such things’, marginal humans are ‘mere things’ (1983: 45).

This may seem to undermine WAMC: if marginal humans are not morally considerable then nor are animals.¹⁶ But the fact that some philosophers have been forced to admit that, on their position, marginal humans have no moral status shows the strength of AMC: it forces them to take a consistent attitude towards animals. But the real strength of WAMC can be seen when it addresses its real targets: those who think marginal humans have moral status. It forces them to admit animals have moral status too.

Thus, despite being ‘weaker’ WAMC is still very strong. Those who say marginal humans are morally considerable but animals are not must show there is a morally relevant property/properties *all* humans have and no animals do. That opponents of WAMC are forced to make such arguments is an important victory. Part of purpose of AMC is to shift the burden of proof on to those who deny animals’ moral status.¹⁷ This much, at least, has been achieved. Opponents of AMC must agree, to at least some extent, or they would not have given arguments to counter it.¹⁸

II. THE SLIPPERY SLOPE ARGUMENT

In response to AMC, Peter Carruthers argues marginal humans should be given moral consideration because otherwise we will slide down a slippery slope at the bottom of which normal humans are not given proper consideration:

there are no sharp boundaries between a baby and an adult, between a not-very-intelligent adult and a severe mental defective ... the attempt to accord direct moral rights only to rational agents (normal adults) would be inherently dangerous and open to abuse ... if we try to deny moral rights to some human beings, on the grounds ... they are not rational agents, we shall be launched on a slippery slope which may lead to all kinds of barbarisms against those who *are*. (1992: 114)

This is the slippery slope argument.¹⁹ The idea is that when we see a marginal human suffer it is much the same as the suffering of a normal human (1992: 163–4). Anyone who shows indifference to the suffering of a baby or a senile person shows callousness that might be transferred to rational agents (1992:

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164). Part of the danger in saying marginal humans have less moral status is that it is open to ‘abuse by unscrupulous people’ (1992: 115).

Carruthers thinks SSA overcomes the problem posed by AMC, it can legitimately separate all humans from animals because ‘there really are sharp boundaries between human beings and all other animals’ (1992: 115).

There are two types of SSA: logical and psychological. On the logical version if we do not say marginal humans have moral status we will necessarily slide down the slippery slope. On the psychological one if we deny marginal humans moral status it is more likely we will deny humans who have moral status their due. When Carruthers uses the word ‘inherently’ it implies he has the logical version in mind. However, what he says elsewhere implies the psychological version (1992: 115). The logical version is considerably less plausible than the psychological version. For the logical version to be true it would have to be true that we would *necessarily* slide down a slippery slope if we denied marginal humans moral status. Thus, even one instance of us not sliding down the slope while treating marginal humans badly would seriously undermine it. On the psychological version the claim is much weaker: namely, that we will form or reinforce psychological dispositions to treat normal humans badly if we do not accord marginal humans full moral status. This claim is much weaker, much more plausible and thus the psychological version of SSA is much stronger. I will give Carruthers the benefit of the doubt and assume it is the psychological point he, and others, are making.

III. OBJECTIONS TO THE SLIPPERY SLOPE ARGUMENT

a. Drawing lines

Carruthers argues it is possible to draw lines between different groups in theory but it is dangerous in practice (1992: 115).²⁰ But we can and do draw lines all the time. Unfortunately, it is all too easy to categorise humans into different groups. When slavery was widespread white people tolerated treatment of non-white people, which they would not have tolerated had the recipient been white. If something as trivial as skin colour is sufficient for line drawing, something as fundamental (Carruthers says it is fundamental) as rationality etc. is more than sufficient to draw a line.

Carruthers argues that we are capable of drawing such lines, but that ‘it is highly dangerous to attempt to draw distinctions within the category of human beings at all’ (1992: 164). But it is not clear that drawing a line between normal and marginal humans is dangerous. There may be some

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humans it is hard to categorise but SSA, at best, offers a reason to say these unclear cases should be given the benefit of the doubt; this mitigates against any danger for those who are truly rational etc. There is no reason to exclude those humans who are clearly marginal.

SSA does not dictate where the line should be drawn. It gives us no more reason to draw a line at the species barrier than to draw it to include animals. Having one alcoholic drink may lead us down a slippery slope to getting drunk. Acknowledging this does not help decide whether we should never drink, or limit ourselves to two or three drinks. Which option we choose is not dictated by the existence of a slippery slope.

If we do need to draw lines it is not clear divisions should be made by species. A more appropriate barrier would be rationality etc.: that is what is relevant. Carruthers argues most people are not very 'deeply theoretical' (1992: 116). Presumably he means they are unable to make such distinctions; they would make mistakes. But one need not be 'deeply theoretical' to distinguish between a normal adult human and one who is clearly irrational such as a severely mentally disabled person. It is possible to make judgements about the relative abilities of marginal humans and animals. We already do make comparisons between marginal humans and animals. For instance, Downs Syndrome sufferers have IQs ranging from 20–80 (most clustered around 50) (Francis and Norman, 1978: 511).²¹ Downs syndrome sufferers typically have linguistic abilities, some can read and write (1978: 511). Some apes have similar or greater abilities than, at least some, mentally handicapped humans. For example, the orangutan Chantek has a mental age equivalent to a two or three year old (Dombrowski, 1997: 142). Koko the gorilla consistently scored in the 80s and 90s on IQ tests (Dombrowski, 1997: 142). Some chimpanzees have been able to use and understand sign language (Eckholm, 1989: 66–72). Thus, it is possible to make comparisons and so draw a line that does not follow the species barrier.

b. SSA is self-defeating

Proponents of SSA argue that given certain facts about people's psychological dispositions we have to draw a line with all humans on one side and animals on the other. Because, they argue, if we try to draw a line which puts some humans on the same side as animals we will slide down a slippery slope at the bottom of which lies the abuse of normal humans. Thus, the argument goes, we must draw the line where we do because of the effect it will have on normal humans (or in Carruthers case rational contractors).

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But drawing the line to include marginal humans has other effects too; namely, that marginal humans are full members of the moral community and get its full protection. As such they cannot be used for experiments. But if we were to draw the line so they were outside the moral community we would be able to use them and this would yield enormous benefits for normal rational humans; namely, more effective, safer drugs and other medical treatments.

This causes problems for those who make the SSA from a contractarian point of view. Rational contractors would not rationally opt to draw the line where it would exclude them receiving a benefit (like better medical care). The chance of a rational contractor being mistaken for a marginal human is almost non-existent so the rational thing to do would be to draw the line to exclude marginal humans and thus gain the benefit of experimenting on them. SSA is meant to be a way of countering AMC by showing that there is a relevant difference between marginal humans and animals. But as well as providing a reason to include marginal humans in the moral community SSA also provides contractarians with a reason not to, and as such is self-defeating. It cannot be used to oppose the AMC.

Some who use SSA argue that it is the consequences of where we draw the line that matters and we must draw the line to include marginal humans or it will have bad consequences. But, as Evelyn Pluhar points out, those who use such an argument must take *all* consequences into account (1987: 31).²² It must be the case that killing marginal humans or using them for medical experiments would result in net disutility. If it resulted in net utility those who advocate SSA from consequential viewpoint would have to acknowledge that it is not only acceptable to use marginal humans for experiments but that we ought to. Some may embrace this (for example Frey) but as I said above AMC is aimed at those who want to say marginal humans are morally considerable and animals are not. SSA fails to include marginal humans on the human side of the line. In fact it gives us a reason to put them on the animals side. Thus, it fails to overcome AMC and is self-defeating.

c. There are societies that have treated marginal humans differently without sliding down a slippery slope

There have been societies where marginal humans are not accorded moral status but did not slip into abusing other humans. In some societies couples with more than two children would kill any further babies because the parents would only be able to carry one child each and any further children would put the whole family in jeopardy.²³ In Eskimo societies, old people who could

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not look after themselves would be expected to die (usually by staying out and dying from exposure) because the family could not support them.

Carruthers argues that infanticide was practised against a traditional and/or religious background; our society cannot appeal to religion (1992: 120). It is enough for him that infanticide would be the start of a slippery slope in *this* society. Carruthers argues that such societies were on the brink of survival and killing to preserve oneself is something any rational contractor would agree to.

But the existence of these societies make it clear that it is possible for humans to draw lines and not slip down the slope of human rights abuses. If this is the case SSA loses a lot of its force. Carruthers is left without any resources for saying it would be wrong to harm a marginal human in those societies that have demonstrated they can avoid slippery slopes.

d. Two tier theories

Carruthers argues marginal humans have direct moral status but animals have only indirect status (1992: 55). It is hard to see how this can be made consistent with Carruthers's general theory. Wilson tries to do this. He starts by fleshing out the notions of direct and indirect moral status. An individual has direct moral status iff some of the duties we have to them arise from their intrinsic properties and indirect moral status iff none of the duties we have to them arise from their intrinsic properties (2001: 141).

Wilson argues one way to accommodate the direct moral status of marginal humans in Carruthers's framework is to introduce a two-tiered moral theory. If we take first-order and second-order considerations into account Carruthers can show marginal humans have direct moral status. But animals will have direct moral status too.²⁴ The first level is practical and should furnish general rules for action, which are simple to help us avoid being influenced by non-moral factors (2001: 140). The second level is reflective and should explain what is morally relevant and why and how we arrive at rules for the first level. Second-order theories should say what the goals of moral action are. Second-level considerations are what lead Carruthers to accept contractarianism and first level rules would be those adopted by rational contractors (2001: 141).

Bearing these two levels in mind, we can, Wilson argues give an account of the direct moral status of marginal humans. A being has direct moral status iff some of the duties we have to them arise from intrinsic properties morally relevant at the first level (2001: 141). A being has indirect moral

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status iff none of the duties we have to them arise from intrinsic properties morally relevant at the first level (2001: 141).

SSA makes marginal humans directly morally considerable at the first level because the fact they are human (this is intrinsic) gives us reason to refrain from harming them (it may lead to our harming rational humans). For Carruthers it is rationality etc. that is morally relevant at the second level.

Carruthers argues that the reason it is wrong to be cruel to animals is it will make people more likely to be cruel to humans. If this is the case then some property of animals, Wilson suggests sentience, is relevant at the first level (2001: 142). Thus, animals have direct moral status too. If Carruthers denies this he must also deny that marginal humans have direct moral status. Wilson is targeting Carruthers as a contractarian, but this line of argument can be used against anyone who makes SSA.

This is an interesting and important argument because it shows that even contractarians and Kantians (both positions which are traditionally unfavourable to animals) are forced to acknowledge that animals have at least one kind of direct moral status or deny marginal humans have similar status. However, I think Wilson's argument also serves to expose a further weakness of SSA; namely, those who make SSA can only say marginal humans (and animals) are directly morally considerable at the first level. This is a problem for those who think they have direct moral status at the second level; this is most of those who want to argue that marginal humans have direct moral status.

IV. SUMMARY AND CONCLUSION

In section one I outlined AMC. In section two I outlined SSA. In section three I argued that AMC does not lead us down a slippery slope. I argued, firstly, that it is possible to draw a line between animals and marginal humans. Secondly, that SSA is self-defeating. Thirdly, some societies have drawn a line between normal and marginal humans without slipping down the slope to abusing normal humans. Finally, I argued, that SSA cannot deliver the kind of direct moral status wanted by its proponents. Therefore, SSA fails to overcome AMC.²⁵

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NOTES

¹ Wilson makes a similar point (2001: 136).

² There are, of course, many other important objections to the AMC, such as Carl Cohen's argument from kinds and the argument from similarity. But I have discussed these arguments elsewhere (2005, 2006) so I will concentrate on SSA here.

³ The term 'argument from marginal cases' was coined by Narveson (an opponent of the argument) (1977).

⁴ See e.g.: Dombrowski, 1997: 4; Jamieson and Regan, 1978.

⁵ E.g.: Garner, 1993: 12–16; Newmyer, 1996; Talbert, 2006: 207; VanDeVeer, 1980: 46 (calls AMC the Extension argument); Warren, 1997; Young, 1988: 19.

⁶ I have defended AMC elsewhere (2005, 2006). Others have supported AMC (some more explicitly than others): Almeida, 2004; Bernstein, 2002; Cavalieri, 2001; Clark, 1977; De Roose, 1989; DeGrazia, 1996; Dombrowski, 1984, 1997, 2006; Everitt, 1992: 51; M.W. Fox, 1983: 310; Feezell and Stephens, 1994; Hartshorne, 1978, 1979; Jamieson, 1981; Jamieson and Regan, 1978; Johnson, 1991; Linzey, 1976: 24; McMahan, 2005: 370; Nielson, 1978; Nobis, 2004; Pluhar, 1987, 1995; Rachels, 1986, 1989, 1990; Regan, 1977, 1979, 1983; Rollin, 1983: 109; Ryder, 1975; Singer, 1986: 306, 1993: 75, 1995; Sprigge, 1979; Telfer, 2000: 225; Wilson, 2001.

⁷ E.g.: Sapontzis, 1985: 252; VanDeVeer, 1979.

⁸ Anderson, 2004; Becker, 1983; Benson, 1978; Carruthers, 1992; Cigman, 1981; Cohen, 1986, 2001: 36–7; Devine, 1978, 1990; Diamond, 1978, 1991; Feinberg, 1978; Fox, 1978: 108, 1986; Francis and Norman, 1978; Frey, 1977, 1980, 1989: 115; McCloskey, 1979; Narveson, 1977; Nozick, 1983; Paden, 1992; Rolston, 1988; Sapontzis, 1983, 1985: 225; Scruton, 2000; Watson, 1979; Wetlesen, 1999: 287.

⁹ Some object to the use of the term 'marginal humans' because it marginalizes them (Bernstein, 2002: 525: 538; Nobis, 2004: 43). I agree the term marginal human is open to objection; it implies they are already on the fringes of moral considerability. However, using the term marginal humans does not seriously undermine their status as humans. The use of the term marginal human is widespread so I shall continue to use it. Those who refer to marginal humans: Almeida, 2004; Bernstein, 2002; Carruthers, 1992; Cigman, 1981; Cohen, 1986; De Roose, 1989; DeGrazia, 1996; Dombrowski, 1984, 1997; Diamond, 1978; Feezell and Stephens, 1994; Fox, 1986; Francis and Norman, 1978; Frey, 1977; Jamieson and Regan, 1978; Linzey, 1976: 24; McCloskey, 1979; Narveson, 1977; Newmyer, 1996; Nobis, 2004; Pluhar, 1987, 1988, 1995; Regan, 1979; Ryder, 1975; Sapontzis, 1985: 252; Scruton, 2000; Singer, 1995; Warren, 1997; Wilson, 2001; Young, 1988.

¹⁰ I will use rational here to stand in for rationality etc.

¹¹ E.g.: Almeida, 2004: 27; Bernstein, 2002: 525; Cavalieri, 2001: 76; Feezell and Stephens, 1994: 8; Johnson, 1991: 52; Linzey, 1976: 24; Pluhar, 1987: 23; Regan, 1979: 189; Ryder, 1975: 3; Singer, 1995: 237, 239–40; Wilson, 2001: 136.

¹² First published in 1975.

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¹³E.g.: Frey, 1977: 187, 1980: 29; Regan, 1979: 194.

¹⁴E.g.: Blatz, 1985: 478; McCloskey, 1979: 31; Paske, 1988: 110–11 (does not think it follows that marginal humans ought to be treated in the same way as animals, though he provides no argument for this).

¹⁵Though he adds that because there may be side effects of experimenting on marginal humans e.g. if massive numbers of people are opposed it may be unjustified (I will consider this in 1.2).

¹⁶Unless animals possess another sufficient condition for moral status, which marginal humans lacked.

¹⁷Pluhar says something similar (1988: 100).

¹⁸There have been many attempts to show there are criteria met by all humans and no animals which I have considered elsewhere (2005, 2006, 2007).

¹⁹Carruthers gives the most thorough outline of SSA so I will concentrate on his version. Others have made SSA: Fox, 1986: 61; Frey, 1983: 115; Kant, 1963: 239–40; Lomasky, 1987: 205–6; Rawls, 1999: 443; Warren, 1986: 170, 1997: 207.

²⁰Lomasky also thinks it is problematic for normal humans to differentiate between normal children and the severely mentally retarded (1987: 200).

²¹Also see Dombrowski, 1997: 161.

²²Pluhar calls SSA the side effects argument (1987: 31).

²³Some might object babies are not marginal humans but they must first show potential matters (see 1.4).

²⁴He argues Hare has shown the need for a two-tiered theory (independently of consequentialism). First, we face everyday moral problems without the luxury of time. Second, we may be tempted by self-interest. We need first order rules to overcome these problems. Wilson thinks this two-tier division would be acceptable to Carruthers – see 1992: 157.

²⁵I would like to thank G.K. Harrison and the reviewers of this journal for their comments on earlier drafts of this paper.

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