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Moral Standing: Towards An Alternative Moral Framework

by

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ABSTRACT

In this thesis, I argue that if human beings have moral standing and if we examine the more plausible grounds on which they might be granted moral standing then human beings are not the only things that have moral standing. I argue that the capacity to have interests, consequently the capacity to be harmed or benefited, is the most plausible basis for assigning standing to an entity; therefore, all things that are alive are candidates for moral standing. The frameworks for addressing these questions in the literature, I argue, are not complex enough. I propose an alternative framework utilizing two thresholds: *moral standing* and *moral significance*. I also argue that a third non-threshold notion, the notion of *moral importance*, is needed when dealing with cases of competing interests.

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1. Introduction

1.1. Preliminary Comment

In this thesis, I will argue that if human beings have moral standing, and if we examine the more plausible grounds on the basis of which they might be assigned moral standing, then human beings are not the only kinds of things that can have moral standing or be morally considerable, as some have put it. I will argue that in excluding non-human animals from the domain of beings which have moral standing, not only are we guilty of inconsistencies but the criteria that would serve to exclude non-human animals would, as a matter of fact, if applied consistently, also exclude some human beings. I will in fact argue (a) that if we do want to count all human beings as having moral standing then the most plausible criterion of moral standing is the capacity to have interests. But I will further argue (2) that on this criterion not only humans but also various non-human creatures have moral standing. Furthermore, even non-sentient beings such as plants can have interests and hence have moral standing. Finally, I will argue (3) that, even if non-human animals and indeed plants do have moral standing, this should not be taken as meaning that humans morally may not, for example, eat plants or even other (non-human) animals: to treat something as having moral standing requires us to take the effects of our actions on the interests of that thing into account in our decisions - it does not require us to count those interests as always overriding our (human) interests. For example, it is necessary for humans to eat something or the other. It may be that it is not necessary that they eat plants (they could become frutarians). But it is necessary that they eat something. There are clearly many difficult questions here. My point is merely that to allow that things other than humans have moral standing does not force any particular solution of these problems: all it does is require that in our decision-making we take into account the interest of anything which has moral standing. Therefore,

participants in the moral community¹ are not limited to sentient beings and will not have the same moral priority. Nonsentient things such as plants have interests and therefore should be included within the moral community. However, plants' moral standing, for example, cannot override the necessity of human beings and other nonhuman animals to nourish themselves. We ought to treat natural objects such as plants and trees with respect but our need to feed ourselves allows us to justifiably destroy a plant to serve such an end.²

The focus of this thesis will not be on the question of how exactly we ought to treat the various beings that do have moral standing. I will, for example, not directly address the question of whether non-sentient human animals have rights. Rather, I will propose and examine two concepts that will perhaps allow us to deal with the complexities that nonhuman life presents to ethical thinking. They are the concepts of *moral standing* and *moral significance*. I will provide a conceptual analysis of the two notions. I will examine in some detail the roles of these concepts. I will suggest that the criterion for having moral standing is the capacity to have interests, and consequently, the capacity to be benefited or harmed. I will then suggest that the criterion for crossing the second threshold of moral significance is the capacity to have what happens to one *matter* to one. Further, I will maintain that only things that can have interests and hence moral

¹ I will be using terms such as moral realm, moral community, moral circle, and moral standing and moral considerability as stylistic variants of each other. The notion of "moral community" I borrow from Wilhelm Landman, in his article, "On excluding something from our gathering: The lack of moral standing of non-sentient entities" *South African Journal of Philosophy* V.10 no. 1 1991 pp.7-19.

² Dr. Baker suggested this way of putting these points in conversation.

standing (or moral significance) are things that are alive.³ Therefore, artifacts and works of art do not have moral standing. Perhaps the deep reason why such things do not have moral standing is that only things which have *intrinsic value* have moral standing whereas inanimate things can only have instrumental value. Thus inanimate things do not have *moral standing* because: (a) such things are not alive (b) such things are not intrinsically valuable or (c) such things are not harmable, but only damageable. Finally, I will provide a sketch of the roles these two concepts in moral decision-making.

Moral standing, I will suggest, is the first threshold of the community of things with considerability. Indeed, I will argue, the concept of moral standing is a “threshold” concept - that is, moral standing does not itself admit of degrees⁴ - once something

³ Now, one might think of exceptions to this involving very complex computers or robots that have animate-type personalities, etc. I do not believe, however, that this will damage my thesis that the capacity to have interests is the criterion for moral standing. If we come to the point at which we have Data-like (a very complex robot-type character from the series Star Trek) computers we might have to reevaluate the life criterion as these exceptions might prove to have interests that are capable of being promoted or thwarted without satisfying the life criterion. The capacity for life is not central to my argument, but the capacity for interests is. Therefore, the life criterion, if it is not right, that will not, as far as I can see, affect anything else I will say.

⁴ The analysis of what it is to be a threshold concept (viz., a concept is a threshold concept if the criteria for its application specify a threshold such that once the threshold is reached the thing possessing the property denoted by the concept has that property and has it “in full”) together with the point that the threshold concepts

crosses the threshold into moral standing it has as much moral *standing* as anything else which has moral standing. Moral standing, in other words, does not admit of degrees. *Moreover*, something which has moral standing does not have standing in relation to something but not in relation to others - one has it *globally*.⁵ To cross the first threshold called *moral standing* a thing must satisfy the criterion of interests. Once a thing has been shown to be alive (it is a thing with interests and therefore a thing which can be harmed or benefited) then it will be considered to have *moral standing*.

I will also employ a second threshold which I call *moral significance*. I will argue that something has *moral significance* if it is the kind of thing that can satisfy the criterion of "mattering". I will use the term "mattering" to denote things which are capable of sentience. *Moral significance*, like *moral standing*, is a global concept and a threshold concept. This is to say that an entity either has *moral significance* or it does not; hence, it is a global concept. However, once an entity has been shown to satisfy the criterion of mattering then it qualifies for *moral significance*, and hence it will cross this second threshold. I will suggest that *some* creatures with *moral significance* (i.e., those who have both the capacity for affective and reflective consciousness) will have the

denote properties which do not admit of degrees is drawn from Allen E. Buchanan and Dan W. Block, *Deciding for Others: the Ethics of Surrogate Decision Making*, Cambridge University Press, 1989, p.27. They in turn derive their analysis from D. Wikler, "Paternalism and the Mildly Retarded" in R. Sartorius, editor, *Paternalism*, University of Minnesota Press, pp. 83-94. The need to decide whether these concepts are threshold or global was drawn to my attention by Dr. Baker.

⁵ The term "global" concept and its analysis is also drawn from Buchanan and Block (1989), loc. cit.

prima facie right to life, i.e., one may not kill these morally significant beings without strong justification for the killing. Of course justification will be needed for the destruction of things with mere moral standing (hence without significance) but the kinds of reasons that can be offered for harm to or destruction of a morally significant being will be much stronger than those in the case of beings that simply possess moral standing.

Within the class of things with moral standing and moral significance, there may be at times competing interests. This fact requires the introduction of a third notion. I refer to the conflict settler as *moral importance*. *Moral importance* will admit of degrees and hence it is not a threshold concept.⁶ For example, the interests of creature A might be considered more important than the interests of creature B if the interests of creature A, if not protected, will result in greater harm to creature A than B if B's interests were not protected. Consider the case of cosmetic testing on rabbits. The interest of the rabbits (not to be harmed and eventually killed) should surely be viewed as overriding the interests of human beings to apply cosmetics to their bodily parts. Creatures A (the rabbits) and creatures B (the human beings) both have moral standing and both qualify for moral significance, but the interests of A may be found to be more important than those of B. *Moral importance* is also not a global concept. Rather, *moral importance* is

⁶ The need for this third notion and its difference from both standing and significance was drawn to my attention by Dr. Baker in conversation. The need for it emerged once it became clear that standing and significance both need to be treated as threshold concepts and that, nevertheless, some concept which was not a threshold concept, but which could denote a property which did admit of degrees, was needed if the substantive moral issues were to be adequately stateable.

context-dependent, i.e., one will have it dependent on the relative weight of their interests in various contexts.

So what I will argue is this: things will either have moral standing or they will not; standing, once again, is a global concept. As I have said, to determine whether or not a thing has moral standing, one will have to check to see if it is capable of having interests. Only things that are alive can have interests because only such things can be harmed or benefited. But some things with moral standing are more *important* than others also having moral standing, thus we need to rank things with moral standing on parameters of importance. However, if we survey the things with moral standing we will find amongst those which for many purposes have more importance a special class of beings, viz., those to which things matter. These things in fact are to be viewed as having a special status, moral *significance*. Significance, then, is a second threshold in the moral community. Animals that have moral significance have more at stake than beings who can incur less harms and consequently have interests that are in need of greater moral protections; such beings are not only capable of incurring harms and benefits, but are also capable of being *aware* of those harms and benefits. These beings, I will argue, will have moral priority in the moral community, that is they will have greater moral *importance* than some other members of the moral community.⁷ Now, moreover amongst those things with standing but not significance, some things in some ways are

⁷ Not in all instances of course. For example, the interests of human beings to eat hamburgers which will result in more and more of the rainforest in South America being cut down for cattle grazing will rank behind the interests of the rainforest for continued existence. Therefore, although human beings are morally significant beings some of their interests will rank behind those things with mere moral standing.

more important than others *and* amongst those things which have standing and significance some things are in some ways more important than others even though both have both standing and significance. For example, all things in the moral community have an interest in continued existence. However, the interest in continued existence possessed by those things with moral significance will have more weight than those things which only possess moral standing. For example, a blade of grass and a human being both have moral protections by virtue of being the kinds of things with interests but the need of a human being to walk across a lawn may rank above the interest of a blade of grass not to be harmed. With the absence of a second threshold of moral significance there would not be a clear demarcation between things that lack the capacity to suffer to the same degree as those who have the capacity to suffer greater harms. Yet, once again, we might find that there are competing interests amongst beings that possess the moral significance. We will then use the concept of *moral importance* in settling such conflicts. As in the conflict of interest between the rabbits and human beings in the case of cosmetic testing, moral importance will be employed to rank order the interests of those beings with competing interests within the class of things with moral significance. What an entity has when it has moral standing, I will further argue, are moral protections, viz., we cannot use it or harm it without justification.

Therefore, I am in fact interested in the claims of moral substance I have outlined above - e.g., I am interested in the suggestion that some things which have significance have greater moral importance than other things which also have moral significance and in the various particular criteria I have reviewed above. However, in this thesis my aims are primarily conceptual. I am concerned with developing and describing the conceptual tools which I think are needed in order to articulate the complex substantive moral position which I would (elsewhere) argue is in fact one which ought to be adopted.

Correspondingly, I will focus on these tools. To illustrate this point, I will begin with an explanation of why questions about the moral standing of animals can be addressed independently of questions about which moral theory (e.g., a rights-based theory, utilitarianism, etc.) is best-suited to animal welfare. I will then canvass some traditional reasons for singling out human beings as the only bearers of moral protections and reveal the arbitrariness of these reasons. Following this, I will propose and defend an account of what is of relevance when trying to decide whether or not a creature has moral standing. I will defend the thesis that the possession of interests is both a necessary and sufficient condition having moral standing but that different levels of physiology in so far as they yield different levels of capacity, e.g., experience, will yield different levels of moral priority; but that possession of certain kinds of mental life will enable a creature to cross a threshold that will accord it moral significance. However, once an entity has crossed either threshold, its interests, if in conflict with another member of its class will be subject to the test of moral importance, i.e., its interests will be weighed against the interests of its competitor. Thus, crossing the thresholds of moral standing and moral significance may not mean that candidates will be treated equally. Some things with moral standing will be treated with greater care than others. The special subclass of entities with moral standing, viz., those things which have moral significance, will be accorded special care in moral decision-making; yet, amongst this special subclass there will be some that are to be treated more carefully than others. The framework that I am proposing gives recognition to the harms and benefits that anything that has interests (i.e., things that are alive) can incur yet also recognizes the varying degrees of harms and benefits that entities of varying complexities can experience. What *will* emerge from this preliminary canvassing of these matters of moral substance will however be a clear proof of the need for a conceptual apparatus at least as complex as the one I have outlined

(i.e., the concepts of standing, significance and importance, the first two being both threshold and global and the third being neither).

1.2. Not a Question of Moral Theory

In the literature on the moral status of nonhuman life, considerable energy is spent on arguing for or against the attribution of rights to animals or arguing for a particular moral framework which each proponent believes will make the best sense of the moral standing of nonhuman animals. For example, in *The Case for Animals Rights* (1983)⁸, Tom Regan argues for a rights-based framework for animals while Peter Singer in *Animal Liberation* (1975)⁹ argues that a utilitarian framework is best-suited for talk of animal welfare. Both share the common ground that animals or some kinds of animals have moral standing but disagree on how to package the moral standing. Rightists will argue that their framework of a rights-based morality will make more sense of moral standing for animals while consequentialists such as utilitarians want to argue that promoting greater pleasure over pain will make best sense of the moral standing of nonhuman animals.¹⁰

Yet, as L.W. Sumner in his article “Animal Welfare and Animals Rights” notes, the theoretical differences between the “rightists” and “welfarists” are important for practical purposes. For example, a rightist would want to say that rights best protect animals because they count the inherent value of the animals as basic which should not be

⁸ Tom Regan *The Case for Animal Rights Berkeley*: University of California Press 1983

⁹ Peter Singer *Animal Liberation* New York: New York Review of Books 1975

¹⁰ Sumner, L.W. “Animal Welfare and Animal Rights” *Journal of Medicine and Philosophy* V.13 May 1988 pp.159-175

violated no matter what the benefits whereas the welfarist would want to say that right action is what promotes greater pleasure over pain. The welfarist is committed to allowing cost/benefit calculations into moral reasoning which seems to allow the well-being of some animals to be sacrificed, presumably non-consensually, to the general good. These sorts of issues plague rightists and welfarists and consequently less emphasis in the literature is placed on understanding moral standing itself and finding and examining arguments for according moral standing. Regan and Singer, for example, spend a great deal of time attacking each other's favoured moral principle and less time justifying the rationale for including animals within the moral circle. As a result, the debate in the literature is focused on the moral theories and how animals can fit into the preferred moral theory.

I want to suggest that this dispute places too much emphasis on the competing theories themselves and how they can incorporate nonhuman life into morality and less emphasis on why it is that nonhuman life qualifies for moral standing. Thus, concentrating on the substance of the dispute on this point is perhaps not the best way to address the issues, if what is wanted is a clear rebuttal of those who want to deny moral standing to nonhuman animals completely - that is, for example, addressing whether or not a rights-based morality or a utilitarian-based morality is the most effective way to deal with the issue of nonhuman welfare. Rightists and welfarists who agree that nonhuman life (e.g., animals) has moral standing need to spend more time explaining why it is that animals have moral standing and less time attacking each others' style of packaging moral standing.

In this thesis, I would like to concern myself with the issue of moral standing/considerability and the way these concepts function prior to the insertion of a particular moral theory into the debate. While the question of which moral theory is best-

suited for including nonhuman life is an interesting one, it proceeds without providing the necessary conceptual tools which would allow us to effectively deal with the complexities that nonhuman life presents to morality. Using the notions of moral standing, moral significance and moral importance, I hope to provide a description of the conceptual tools necessary for a proper discussion of the moral standing of nonhuman life.

As a first step in my attempt to bring out the importance of developing the conceptual tools needed for discussions like those just described, I would like to briefly examine some of the traditional reasons given for what has been essentially a restriction of moral standing to human beings.

1.3. Traditional Reasons for Preferential Moral Treatment of Human Beings

In the literature, there have been various suggestions for limiting moral standing to human beings and I would like to quickly canvass some of the traditional reasons for this limitation. Amongst the various suggestions, four standard reasons seem to emerge: the rationality criterion (i.e., only rational beings have moral standing and hence, since only human beings are rational, only human beings have moral standing); secondly, the humanity criterion (i.e., only those that possess the genetic make-up of a human being have moral standing); thirdly, the soul criterion (i.e., only those beings endowed with souls are worthy of moral standing); and fourthly, what I call the language capacity criterion (only those beings capable of articulating their needs are worthy of moral standing). I would like to now turn to a brief discussion of each of these criteria.

Proponents of the first of these criteria suggest that the capacity for rational thinking is a cutoff point for moral standing. Human beings are generally rational and thus have moral standing. However, the objection to this view standardly given in the literature works by pointing out that babies do and the mentally deficient can lack rationality and

consequently lack moral standing. Moreover, although some of these kinds of human beings are potentially rational some are not and will never be. A lot more could and in a full discussion would be said on this criterion. For example, I would ask why *rationality* is picked out as important. I would also ask whether humans have a monopoly on this quality. When a tiger is stalking her prey surely she is strategizing using reasoning abilities that require careful judgement. All sorts of animals apart from tigers rely on powers of reasoning to survive. Here, however, I am only concerned to indicate why the suggestion is not as obvious as some have thought. To that end, I will limit myself to the following rather schematic comments.

Rationality involves the capacity to reason in various ways, including inductively and deductively. To reason is “to form conclusions, judgements, or make inferences”.¹¹ The moral relevance of this capacity in decisions about moral standing is questionable. Even if a being cannot conclude, judge, or infer it would be plausible to argue that it would still be morally wrong to deprive it of its needs if such deprivation would involve distress or discomfort to the being. A human infant, for example, lacks the capacity to reason yet possesses the capacity to sustain injuries if inflicted with blows to the head. Such injurious acts will have dire consequences on the infant and the infant will suffer harm as a result. The infant’s inability to add two and two together and perform other reasoning skills should hardly be of concern to us as moral agents. Rather, what should be of concern, I would suggest, is the infant’s capacity to suffer. The harm incurred by the infant should be a sufficient condition for moral agents to abstain from such an action; the infant’s inability to rationalize should not be entered in the moral equation.

¹¹ Webster’s Random House College Dictionary New York: Random House 1991
p.1123

One might even question whether rationality is a sufficient condition for moral standing. For example, one could plausibly argue that a computer can form conclusions based on the inputted keystrokes and thus is a thing that is rational and consequently should be accorded moral standing. Yet, how many of us are willing to accord moral significance to artifacts that can perform reasoning tasks? If someone would like to argue that such things do in fact have moral standing then I welcome their arguments. However, not attributing moral standing to things such as computers is more in keeping with our intuitions. It seems then that rationality should be neither a necessary or sufficient condition for moral considerability. The ability to add two and two together should hardly be of concern to us as moral agents, but rather, the capacity to have interests that can be thwarted (i.e., the capacity to be harmed) or promoted (i.e., the capacity to receive benefits) is a more plausible criterion for moral standing. If adding two and two together were important to the things themselves then calculators and computers would have intrinsic value and as a result they would be candidates for moral standing.¹² However, artifacts such as calculators and computers, most would want to say, can only have instrumental value as their functions only further the interests of the human beings that use them.

Thus, if we examine the reason for protecting human infants and the imbecile closely we will find that why we protect such individuals from others is that they can suffer

¹² We might want to think of artifacts such as these in lacking interests; that is they cannot be directly effected by damage, only their owners have interests that can be violated. In order to be "effected" by an action a thing must be capable of life, minimally. I will provide a more detailed discussion of the connection between interests and the capacity to be harmed and benefited in Section 3.

despite their lack of rationality. Infants and imbeciles can be harmed in morally significant ways. Such entities are vulnerable to the actions of others and moral agents' treatment of them is regulated by morality and the law. Infants and imbeciles have moral standing in most communities because they have the capacities to sustain unnecessary suffering. We cannot kill or torture these categories of human beings. The basic principle for protecting imbeciles and infants is their shared capacity to suffer harms as a result of the actions of others. Instead, the derived principle: "*Human* infants and *human* imbeciles can suffer harm and therefore have moral significance" is the principle to which conventional morality appeals.¹³

Secondly, some might want to argue that membership in the species *homo sapiens* is what is of moral relevance; that rationality is simply a byproduct of humanity and that what is of moral relevance is an entity's humanity.

The *humanity criterion* singles out species as the morally relevant attribute for a creature to have moral standing. Such a criterion is clearly arbitrary and in need of justification. I would like to know what it is about this particular species that makes it so important as to be the only species that is assigned standing and what is it about other species that disqualifies them for standing. If an alien race were to arrive on our planet which exhibited more intelligence and talent than we had would we be able to consistently deny them moral standing because they are not members of *homo sapiens*? If we were to do this it would be just as arbitrary as the alien race declaring that human beings are not worthy of moral standing because they do not belong to the favoured

¹³ The distinction between basic and derived principles was made in Amartya K. Sen's article, "The Nature and Classes of Prescriptive Judgements" *Philosophical Quarterly* v.17 no.66 1967 pp.46-62.

race. This would be just as arbitrary as declaring that men are more worthy of moral standing than women because they are physically stronger and consequently superior to women. It was only in recent history that nonwhites and women gained acceptance as persons. Prior to this, these segments of society did not have moral standing but through persistence they penetrated the moral community.

If species membership is the criterion of standing then in order to avoid arbitrariness we need an intelligible reason as to why *homo sapiens* has moral standing and others do not. This need will force the discussion back to a justification of the criterion. If we ask the question "What is it about human beings that qualifies them for membership in the moral community?" we cannot respond with the circular response: "Because they are human beings." What is needed, once again, is an *explanation* as to what it is about human beings that qualifies them as moral candidates. For example, the reason we do not treat each other indiscriminately is our capacity to suffer harms as a result of injurious actions. If human beings were physiologically-constituted in such a way as they could not feel pain or distress (i.e., they could not suffer through sensation) then we might conclude that it is not morally wrong to pinch them although it might be morally wrong to sever a finger (as the finger serves the function of manipulating objects and thus it is in the interest of a human being to retain the finger).¹⁴ Thus the reason why we do not inflict such harms on one another is not the fact that we are human beings but that we will suffer to some degree if we are pinched. Plants are also physiologically-constituted in a way that external stimuli can result in the hindering or furthering of their interests.

¹⁴ Although it might be wrong to interrupt their natural life span by killing them because of the deprivation of a desired future of non-sentient fulfilments.

Thus the tearing of a leaf off a tree will result in harm to some degree to that tree; similarly, poisoning a tree will result in harm to that tree.

One suggestion as to an explanation of why the human but no other species has moral standing comes from the Judaeo-Christian traditional belief that only human animals have “souls”. I will comment briefly on this suggestion because in fact ensoulment has been by itself counted as the main criterion for moral standing.

This belief, which is largely a religious belief, has strongly influenced our thinking about the human being’s relationship to other species. “Man” has been viewed as an ensouled entity created in the image of God and thus, they conclude, carries with him dominion over all of God’s other creatures. Because animals lack souls they can merely be the tools of humankind. Although there are some historical Christian authorities that emphasized the goodness of animals by and large, as Richard Sorabji points out in his book *Animal Minds and Human Morals* (1993)¹⁵, the Christian tradition was primarily against the inclusion of animals within the moral community. Sorabji links this Christian tradition to the Greek debate on animal welfare. Although some ancients such as Pythagoras advocated vegetarianism and the gentle treatment of animals, Stoic and Aristotelian emphasis on the “irrationality” of animals held by far the greater influence. Sorabji attributes our complacent attitude (until recently) towards animals to this anti-animal legacy of the past.

Whether human beings have souls or not is something that is outside empirical justification and beyond the scope of this thesis. I merely wish to acknowledge that the soul criterion has had a strong and profound influence on our thinking about animals for

¹⁵ Richard Sorabji *Animal Minds and Human Morals: Origins of the Western Debate*
Ithaca: Cornell University Press 1993

hundreds of years. The burden of proof remains on advocates of such a criterion to show that human beings have souls and animals do not.

The fourth criterion I would like to now turn to is what I call the *language capacity criterion*. Some have suggested that perhaps it is the ability of human beings to articulate their disapprobation of particular actions that forces us to restrict the kinds of things we can do to a human being. For example, a human being can state that she does not like it when she is beaten or not given the right to vote. She can organize herself and others and demand that she be included in the moral community. A human being can stand up and state her needs in such a way that others will understand and consider her demands.

On a very simple level, the language criterion requires that candidates for moral standing be able to articulate their demands in the form of a sentence, e.g., "I demand the right to vote". This is a simple-minded contention if we consider that many human beings (e.g., babies, the senile, the mentally incapacitated) are incapable of articulating their needs yet are, in many communities, protected under both the morality in force in their community and the legal system. It is glaringly inconsistent to deny animals moral standing on the basis of the language criterion and give unqualified human beings moral standing. Babies, for example, cannot articulate their demands yet are accorded protections in many communities. Those who are senile or mentally deficient, in many cases, cannot articulate in a language their needs but are nevertheless accorded certain protections. We may not kill or abuse such individuals without severe moral or legal repercussions despite the fact that such individuals do not have language.¹⁶ Defenders of

¹⁶ I have only provided a brief survey of the standard reasons for circumscribing moral regard to human beings. For a more detailed discussion please see Richard Sorabji's *Animal Minds and Human Morals* and Tom Regan's *The Case for Animal Rights*.

this criterion (usually also supporters of moral protections for language-absent human beings), are being inconsistent in their denial of moral standing to animals while simultaneously granting moral standing to humans that do not have language. Proponents of such a theory might respond and state that while this criterion is sufficient it need not be necessary. What is necessary is the capacity for language or the potentiality for language. I respond to this by pointing out that some human beings are incapacitated to the degree that they will never be users of language and thus should be disqualified as candidates for moral standing. Most proponents of the language criterion will object to the exclusion of such incapacitated humans and in doing so they undermine their reason for attributing moral standing just to human beings. (It seems that such individuals must resort to the *humanity criterion* which is itself lacking in justification). And for those defenders of the language capacity criterion who do not want to attribute moral standing to human beings without language, further explanation is needed as to why such human beings' ability to suffer does not enter into the moral equation. We may also accuse them of being callous moral monsters and underscore that such human beings, despite the absence of language, are still capable of being the beneficiaries of right action and the victims of wrongful action. The language criterion, one might want to argue, might be just as arbitrary as the humanity criterion.

These kinds of criteria have so far been unsatisfactory. They all exhibit human chauvinism and more seriously, arbitrariness, that is, they are inadequate and do not have the resources to provide explanations of why the criterion is worth choosing and are thus hardly justifiable. If we try to get clear why we accord moral standing to human beings, we will not discover that it is rationality or species membership. If we search for a basic principle rather than a derived principle I suggest that what we will find is that what is of importance is the capacity to suffer harm (i.e., have interests that can be thwarted). What

I would like to point out is that what we are really concerned about in morality is the capacity to have interests. If having interests is what is of concern to us then the moral circle will need to be extended to include nonhuman life in general; because things that are alive, other than human beings, can suffer harm. Thus, why we accord moral standing to human beings is not their ability to think rationally or their mere membership in a group called "*homo sapiens*"; rather, what, from a consideration of some of the moves made by the defenders of these criteria, turns out to be of importance is the ability of things with moral standing to sustain injuries and suffer a significant harm as a result of those injuries. If it were not for our capacity to incur harms it would be of no significance if we raped, tortured, and killed each other. However, because of our capacities to suffer harms we restrict the kinds of actions that we can inflict on one another.

If we think carefully about how we think about moral matters, we will discover that we could be unwilling to allow that morality is something that we can be arbitrary or inconsistent about or at least not something we would want to be arbitrary or inconsistent about: I, for one, lose interest in a moral claim once it has been shown to be arbitrary. We cannot, without justification, limit moral standing to some living things because of a unique characteristic possessed by those individuals (i.e., competent human beings) while according it to creatures that lack the requisite characteristic (i.e., incompetent human beings) and simultaneously denying it to others that are also lacking that characteristic (i.e., nonhumans). Our moral structures have so far been largely restricted to human beings for reasons that are lacking in justificatory force. While some philosophers might appeal to self-interest as a motivating force for morality (and since animals cannot actively participate in the moral community they cannot be afforded moral protections), the point remains that we are being inconsistent: we afford moral

protections for human beings lacking the requisite capacities (e.g., ability to contract an agreement, ability to consent, ability to claim, etc.) and deny similar protections to other species which can suffer the same harms.

I have canvassed a number of suggestions that have been made for limiting the moral sphere to human beings each of which contain flaws of two kinds: arbitrariness and inconsistency. Below I will propose the capacity to have interests that can be thwarted or promoted (i.e., the capacity to incur harms and benefits) as a very plausible underlying reason for the restricting what we can do to human beings and as an answer to the question “What is it about human beings that accords them moral standing?”. As I outlined in Section 1, I will not be arguing for an egalitarian model of moral standing. That is, I do not support the thesis that all beings with moral standing are equal. I will argue rather that the greater the capacity for a thing to suffer harm the greater the protections that must be afforded for that being. However, once an entity crosses the threshold of moral significance I will argue that it has basic protections that are equal to its fellow members although competing interests might demand that we rank the interests of candidates using the conceptual tool of moral importance. Interests will have different priorities on at the threshold of moral standing and at the threshold of moral significance “higher” animals such as human beings, gorillas, cats, cattle, dogs, and chimpanzees, I will argue, must be afforded protections that would free them from slaughterhouses for human consumption and the laboratories of science. However, I would like to remind the reader that this does not mean that we may do what we please with “lesser” animals and plants. Entities such as these have moral standing and if we are to use them we must provide justification for that use.

This, then, is what I am interested in addressing in this thesis - it will be primarily an exercise in conceptual development, though clearly with substantive moral issues in

mind. As I stated earlier, I am concerned with developing the conceptual tools that are necessary in an ethical framework that is concerned with consistently applying the notion of moral standing. Such a framework will require a more complex apparatus than has been so far given in the literature.

In the next section, I will begin my conceptual discussions by looking at the concept of moral standing.

2. The Concepts of Legal Standing and Moral Standing

2.1. Preliminary Comment

The roots of the concept of moral standing are found in its legal counterpart, i.e., legal standing. If only for this reason I will begin a discussion of that notion. I will then examine the notion of moral standing itself.¹⁷ As I will suggest, the notion of “interests” is tied closely to the concept of legal standing and similarly the connection between interests and moral standing can also be drawn. Thus, I will conclude with a discussion of “interests” using R.G. Frey’s analysis of the concept. While I concur with Frey that in order to have moral standing one must have interests I disagree with Frey’s connection of interests with the capacity for having desires. Rather, as I will propose, the capacity to be harmed and/or benefited are sufficient for the possession of interests. But before I do this, it will be useful to introduce a distinction which will be of relevance in the sequel, i.e., the distinction between *meaning* and *criteria*.

¹⁷ I remind the reader that moral standing is possessed by entities that have moral significance and the latter notion is a sub-grouping of those things with moral standing, hence my focus in this chapter on the notion of moral standing.

Borrowing R.M. Hare's terminology of meaning and criteria¹⁸, I would like to make a distinction between providing an account of the concept of having moral standing and what are the criteria for having moral standing. An account of the concept of moral standing will involve the idea of what an entity has and acquires when it is accorded moral standing. My suggestion for what it is to have moral standing, that is, of what an entity has when it has moral standing is simply that it *counts* in the moral community. To have moral standing is to *count* in the moral community.¹⁹ When an entity *counts* in the moral community it has interests that the community recognizes as morally relevant, and so, what an entity has when it has moral standing is membership in the moral community and access to the community's moral goods and especially to certain protections, including, in some cases, the protection of rights. A discussion of the criteria for moral standing will be an examination of what attributes an entity must possess in order to qualify for moral standing as just described. I discussed several of such criteria in the previous section.

¹⁸ R.M. Hare *The Language of Morals* New York: Oxford University Press 1964 Chapter Six "Meaning and Criteria" pp.94-110

¹⁹ When an entity belongs to the "moral community" it has recognition by other members as having interests that are worthy of respect or protection. I use the term "community" as a cross-cultural notion therefore the normative conclusions of this thesis are applicable in all communities. Understandably, there are economic as well as cultural barriers that will exclude nonhumans from the domain of moral regard. This, however, I do not believe will mean that the normative consequences will never apply to these communities. That is, if moral progress it to be made in such communities then adoption of my framework will be required.

Moral standing can be compared to legal standing; indeed the notion is, as a matter of conceptual history, modeled (rather roughly) on the notion of legal standing.

If we want to know whether or not something has legal standing we can check to see if its interests have recognition in the legal code. "An entity's legal status is determined by the extent to which it possesses legal duties, rights, powers, or privileges. To have legal standing is to have some such items in one's own right and not in virtue of their possession by others. Legal standing is an intrinsic condition that consists in being recognized by the law as a separate and distinct locus for such possessions."²⁰ A thing might also be considered to have legal standing if it has duties. It has duties because it is recognized by the law as having agency, i.e., the ability to act.

Having one's interests recognized in the legal system of rules and principles (for brevity, in the "legal code"), for example, is what having legal standing may essentially amount to. In the Canadian legal code, for example, human fetuses do not have legal standing but mothers of fetuses do have legal standing. Because mothers are recognized as interest-bearers they have grounds for redress in Canadian courts. Fetuses, on the other hand, do not count (at least legally) as having interests. The interests of the mother will outweigh the interest the fetus has in staying alive. We may conclude, then, that mothers have standing in the Canadian legal code because their interests are recognized by that legal code. Fetuses, however, have no standing; their interests are not recognized.²¹

²⁰ L.W. Sumner *Abortion and Moral Theory* New Jersey: Princeton University Press. 1981 p:26-27.

²¹ Fetal rights are a source of controversy in current Canadian law. There have been attempts to secure some protections for the fetus in cases of substance abuse by

Another feature of moral standing, like legal standing, will involve the idea of a recipient of an action's interests serving as constraints on the behavior of the agent. Because the recipient's interests accord him protections in the moral code, or legal code in the case of legal standing, the agent becomes obligated to resist impinging on the interests of the recipient, other things being equal. If a thing has moral standing it has been afforded moral standing based on certain criteria and thus how the thing is treated matters in the moral schema. A computer, for example, may not be considered to have intrinsic worth and thus will not count as a direct moral object, i.e., it does not count in itself as recipient of a right or a wrong action. It might count for instrumental reasons because damage to it or destruction of it may impinge on the interests of a direct moral object, i.e., a thing with moral standing. A computer can at most be extrinsically valuable. For example, the computer might belong to Bailey who is currently working on her dissertation. Jane, who is aware of this, smashes the computer to pieces and consequently destroys all copies of Bailey dissertation work. Bailey, as a result, has to work even harder but still cannot meet any of her deadlines. Bailey undergoes stress and anxiety and cannot defend her thesis by the proposed deadline. It can be said that Bailey suffers irreparable harm as a result of Jane's actions. While Bailey is the direct moral object (recipient) of Jane's actions the computer is not. The computer, however, only has

mothers or cases of negligence by third parties. See for example: "Foetus Status After *R. v. Sullivan and Lemay*" by K. Mark McCourt in *Alberta Law Review* V.29 no.4 1991 pp.916-925 or "Unborn Child Abuse: Contemplating Legal Solution" by Anita Dorczak in *Canadian Journal of Family Law* V. 9 no.2 1991 pp.133-156. "The Status of the Foetus under Canadian Law" by M. Jackman in *Health Law in Canada* V.15 no.3 pp.83-86 1995.

instrumental moral worth. The computer has instrumental value as a result of Bailey's needs and not for any of its own independent interests. The computer cannot be said to have been harmed because the computer does not have interests that can be thwarted but Bailey can be said to have been harmed as a result of Jane's actions because Bailey has interests. Bailey's computer can only have instrumental value, it is used to fulfill her goals; apart from Bailey's goals and needs the computer is not an object of moral concern.

As a result of being a direct object of moral concern, Bailey and others like her have interests that can be promoted or thwarted. Because Bailey has interests that can be thwarted I must resist causing her harm that can be avoided. Jane could have chosen not to smash Bailey's computer to pieces and given her due respect as being a direct object of moral concern, but instead Jane chose to infringe Bailey's interest in not being harmed. Having moral standing, then, means that one is due consideration and the kinds of things one can do to one with moral standing are thereby restricted.

Bailey matters morally; she is a type of thing that can be benefited or harmed. Bailey's computer, on the other hand, is not a direct object of moral concern because it does not possess independent interests of its own. Therefore, to smash a computer to pieces that does not impinge on anyone's interests, although wasteful, cannot be considered to be morally wrong. Because the computer does not have interests an agent cannot be said to have harmed the computer or caused it a moral wrong if no morally considerable being was harmed by the actions of the agent. Because no harm is done in such a case an agent will not be held morally accountable for damage to the computer; the computer has no interests that can be represented in the moral code.

I would like now to turn to the notion of legal standing, as the precursor of the modern notion of moral standing. Legal standing has been used in the legal community

for hundreds of years and is surely the springboard of the notion of moral standing. As I will note, legal standing is also connected to the idea of one having interests that are recognized, though this time in a legal forum.

2.2. “Legal Standing” as a Historical Term

Neil Cogan, in his article, “‘Standing’ Before the Constitution: Membership in the Community”, provides an account of the origins of “standing” in the legal context.²²

Roman jurists, over eighteen hundred years ago, used phrases such as *stare in iudicium* and *sistere in iudicium* to mean to actually “stand in court” and “cause to stand in court”. That is, in Roman law standing is tied to appearance before a court. Originally, then standing was limited to those who could appear before a court. Standing was also used in the *Digest* of Justinian (533) to mean a person’s appearance in court. Many persons could not appear in court and thus had no standing in court. These categories of persons included those unable to speak, the mentally ill, slaves, and minors.

“Standing”, in English and Scottish contexts, as early as the twelfth century, was also connected with an individual’s appearance in a court of law, “*si vagium & plegium dederint standi iudicio de hiis*” and also with a desire to appear in court and go to trial “*nisi voluerit venire ad rectum... stare iudicio Curiae*” Standing was used variantly as pledging to stand trial and standing trial.

Cogan notes a commentary by writer Wesenbach, who in 1576, said that minors were not ‘persons who could legitimately appear’:

He [Wesenbach] treated the participation of a person who was legitimate or law-worthy as necessary to the proper convening of a proceeding; there was needed “*litigatoribus, qui legitima[m] personam standi in iudicio habere debent*”.

²² Neil Cogan “‘Standing’ Before the Constitution: Membership in the Community”

Law and History Review V.7 No.1 Spring 1989.

Wesenbach's argument that such a litigant was a jurisdictional necessity was more connected with whether a person had the capacity to stand and be heard than with whether a person had the status of having rights and duties or with whether a person had immunity from being sued.²³

It is interesting to track the status of women, slaves, "enemies" and clerics through history in illustrating these ideas about legal standing. In Roman law, for example, a woman could only have a limited role in the courts. A woman could sue for herself but she could not represent the interests of others with one exception: in the case of incapacitated parents. While women were considered members of the community they were not considered *full* members of the judicial community. Ulpian (a third-century jurist) is known to have said: "There is a reason for this prohibition: to prevent them from showing themselves in the cases of other people contrary to the modesty in keeping with their sex and to prevent women from performing the functions of men." Hence, women did not have *full* standing in the courts.

The *persona standi* of married women in Dutch law compared with the *persona standi* of minors. Women moved from the guardianship of their parents to the guardianship of their husbands and therefore did not have standing in the courts; women were barred from making decisions in court. In German-Dutch practice, "married women were not simply less than full members of the judicial community, unable to exercise the privilege of representing others. Women simply were not members at all."²⁴ Husbands and guardians could "stand" in court for women and minors.

Slaves and enemies were other categories of persons that did not have status in legal systems. In Roman law, a slave could not appear in court to sue or be sued. "Although a

²³ Cogan, p.6

²⁴ Cogan, p.8

slave was a person in Roman law, a slave was without *civitas*, the privileges of membership in the community". Under Dutch law, "it is probable that the rules of 'standing' were rules of status" and because of substantive policy enemies lost their status as persons and consequently lost their property rights. English law had a broader rule that denied rights to all aliens, enemies and friends.

Cogan writes that from 312 until the present day, clerics did not have "standing" in the courts and were immune from the rules of secular law. This was not a stripping of status but rather a privilege out of respect for the church. Divine law was provided as an argument: 'God had committed the entire jurisdiction of the clergy, body and soul, to Peter and his successors'.

The account provided by Cogan conveys to us that legal standing had a great deal to do with status and membership in the judicial community. Select persons were granted "standing" in the courts and were therefore recognized by the law as having capacities (for political reasons) to carry out legal proceedings. Legal standing was therefore the granting of admission into the judicial community and membership had its privileges. Privileges involved the having of rights, duties, immunities; such legal mechanisms empowered their bearers with advantage against other members of the community.

Legal standing was given to persons who had recognition in the legal community. It seems that these sorts of persons had *interests* that the judicial community recognized as worthy of representation in the court of law. Although Cogan does not explicitly link interests to the possession of moral standing, there is an implicit connection between the two concepts. Those that have legitimate interests have legal rights, duties, immunities, privileges, etc. Women and slaves were categories of persons in many judicial communities that were not recognized as having legitimate interests worthy of being

represented. Other categories of persons such as men were recognized as having legitimate interests in the court of law and therefore had *standing* in court.

I would like to now turn to what we might mean by legal standing in today's legal setting.

2.3. Legal Standing

If we examine the notion of *standing* itself we might think of it as having what Christopher Stone calls *considerateness* or *advantage* in a particular forum. Stone, in *Earth and other Ethics* (1987)²⁵ uses the notions of *legal* and *moral considerateness*. Legal considerateness accords the bearer an advantage in the law; those with *standing* in the law are allowed compensatory redress for infringement of their interests. Stone illustrates this by the example of the preservation of a lake's intactness:

The lawmakers could provide stiff criminal penalties for anyone who polluted the lake in the least degree. They could fortify this "advantaging" by assimilating the lake into the civil-liability rules in a way that approximated constituting the lake a rights holder with a guardian. Specifically, the law could provide that in case someone violated established effluent standards, altering the state of the lake, a complaint could be instituted in the name of the lake, as a party plaintiff, against the polluter.²⁶

While Stone's aim is to demonstrate that things such as lakes can be assimilated into the legal code as a bearer of protections, for my purposes, what is important here is that a thing with standing is advantaged in the legal code through protections such as immunities, rights, privileges, etc. In Stone's case of the lake, what one can do to the lake is limited based on the recognition of it as being a rights-holder. Advantaging a thing with rights, in the law, is conferring on it the possibility of redress for infringement of its rights.

²⁵ Christopher Stone *Earth and Other Ethics* New York: Harper & Row 1987

²⁶ Stone, p.48

Sumner, in *Abortion and Moral Theory* (1981), also models moral standing on the legal standing framework. According to Sumner, to have legal standing or legal status is to have legal duties, powers, rights, and privileges. "To have legal standing is to have some such items in one's own right and not in virtue of their possession by others. Legal standing is an intrinsic condition that consists in being recognized by the law as a separate and distinct locus for such possessions."²⁷ Sumner suggests that one does not have legal standing if one does not have rights or duties. *Partial* legal standing is awarded to those who have rights but no duties (e.g., infants) or those who have duties but no rights (e.g., slaves). *Full* legal standing is granted if one has both rights and duties (e.g., a competent adult citizen). Legal rights are benefits owing to the right-bearer and legal duties are burdens owed to others. "To lack rights is to lack protections... To lack legal rights is thus to be legally underprivileged."²⁸

Thus, Sumner's analysis explains the different kinds of standing one may have in the law. Having standing, in Sumner's sense of the word, will not automatically mean that one has full standing, and understandably so. One cannot, without absurdity, make the claim that animals or human infants can be held to be legally responsible for the consequences of their actions because animals and young humans can at most be patients and not agents. By contrast, adult human beings or mature human beings will have full standing because they can be both the bearers of rights and the bearers of duties; these kinds of human beings can be both the victims of wrongful action (hence they have rights against others) and the agents of wrongful action (hence they owe duties to others).

²⁷ Sumner, *Abortion* pp.26-27.

²⁸ *Ibid.*, p.28

Examples of partial legal standing might be thought of in the following way. For example, as noted in Cogan's survey of the notion of legal standing in history, not every person had standing in the law. Human beings such as women did not have standing. The interests of such human beings, although not recognized by the law, could be represented via the standing of guardians. For example, in British common law, a woman did not have the right to launch a suit against another for stealing her purse but her husband could sue the thief as having stolen *his* property (i.e., the purse). Secondly, it should be noted that one could have duties not only to not harm persons with standing but also those without standing. For example, a man had duties not to harm another man (with legal standing) but also not to harm another's daughter (without legal standing). Thirdly, human beings such as women might have had a right to inherit, but nevertheless did not have standing in court.

Legal standing, as Sumner suggests, involves a variety of forms as noted in the last paragraph. By having any form of legal standing, however, one is advantaged in the law, i.e., one has interests that the law recognizes in one form or another. A thing that has full legal standing has both rights (or perhaps privileges, liberties, powers, immunities) and duties (or immunities) and a thing that has partial legal standing only has rights or duties.

Having surveyed the notion of legal standing and what it means, I would like to more closely examine its non-formal counterpart called "moral standing". As legal standing is closely linked to the notion of interests, I would like to point to the close connection between the notions of moral standing and interests. I will suggest that what is important when we are deciding who has moral standing is to check to see if the entity in question has interests. I will argue that anything that can have an interest, anything that can be harmed or benefited, is a type of thing that can have interests.

2.4. “Moral Standing” as a Historical Term

Moral standing, unlike its forebear legal standing, has a recent history in the literature. The concept of moral standing has only come into its own in the nineteen-seventies and used more frequently in the nineteen-eighties. The first occurrence of the term “moral standing”, in a literature search of the *Philosopher’s Index*, dates back to 1980 with Michael Walzer’s article “The Moral Standing of States” published in *Philosophy and Public Affairs*. Later, in L.W. Sumner’s *Abortion and Moral Theory* (1981), we find a close examination of the concept in the context of abortion. I will begin by examining Sumner’s analysis.²⁹

According, to Sumner, to have moral standing is to have moral rights and/or duties. An entity that possesses just moral rights or just moral duties has *partial* moral standing. An entity that possess both moral rights and duties has *full* moral standing. Moral standing, like legal standing, is conventional, writes Sumner; it is always particular to some moral community. Moral duties constrain one’s actions towards another and moral rights protect one against the advances of others. “To lack moral rights is to be morally underprivileged”.³⁰

Sumner defines moral standing in terms of moral rights, and having *rights* is having protections. When a person has a moral right then what we are saying is that she “ought to be protected in some specified activity, or ought to be treated in some specified manner. Thus, to attribute a moral right to a person is to claim that (some or all) others have a moral duty to treat that person in some specified manner, and to propose

²⁹ I refrain from a discussion of Walzer’s analysis because Sumner’s is more in keeping with the subject of this thesis.

³⁰ Sumner, *Abortion* p.29

constraints on their behavior on the person's behalf".³¹ What you have then when you have moral standing is protection against the interference of others or perhaps powers and recipient rights (both of which Sumner does not mention).³² Sumner connects the having of moral standing with the possession of some moral rights. To lack any such rights is to have no moral standing. Sumner is of course discussing the case of fetuses in the context of the book and states: "To ask whether fetuses have moral standing is therefore to ask whether they have a moral right to life...If fetuses have a right to life, then (some or all) other persons have a moral duty to extend to the fetus some specified protection of life."³³ What a fetus will have if it has moral standing is protection of its life against the infringement of others; what we can do to a living fetus is restricted once if it is granted moral standing. "Possession of a right to life implies at least some immunity against attack by others, and possibly also some entitlement to the aid of others ... To have full moral standing is to have the strongest right to life possessed by anyone,

³¹ *Ibid.* p.30

³² For a discussion of recipient rights please see John A. Baker's "Morality and the Right to Life" Chapter 2 mimeograph January 1989 University of Calgary. D. D. Raphael in "Human Rights" In *Aristotelian Society Supplementary Volume XXXIX*, 1965, p.207, distinguishes between what he calls "rights of action" and "rights of recipience" which is close to Baker's notion of "recipient rights". For a discussion of powers, rights, immunities, liberties and their correlatives please see Wesley Hohfeld's *Fundamental Legal Conceptions as Applied to Judicial Reasoning, and Other Legal Essays* edited by Walter Wheeler Cook New Haven: Yale University Press 1923.

³³ Sumner *Abortion* p.31

the right to life of the paradigm person.”³⁴ Because of Sumner’s distinction between partial and full moral standing Sumner goes on to allow that the moral community will involve gradations. Sumner’s model then acknowledges that moral standing will have varying degrees: adult human beings, as the “paradigm” candidates for moral standing will have full standing while beings of a lesser sort will have less than full moral standing.

Turning to the criteria for moral standing, Sumner states that the “paradigm” candidate for moral standing is the normal adult human being. Such a being is a complex array of emotions, needs, desires, actions, perceptions, etc. If adult human beings possess a property that is common to all adults or a set of properties that are common then the sphere of moral standing can be restricted or extended to include all creatures that possess that property or those properties. Sumner points out that properties which are putative criteria for standing will be tested for generality and moral relevance. Such a criterion “must connect moral standing with some property of things whose presence or absence can be confirmed by a settled, objective, and public method of investigation”. Sumner contends that when selecting a criterion for moral standing we need to be careful. For example, “rationality” as a criterion will lead to the exclusion of many obvious human candidates for moral standing, e.g., babies, the mentally deficient, the comatose. While rationality is sufficient, Sumner maintains, it cannot be the sole criterion. Rationality may grant its bearer full moral standing which would include both rights and adherence to the higher standard of duties, but moral standing cannot be restricted to the class of rational beings as it would not pass the test of moral relevancy

³⁴ *Ibid.* p.128

and generality. Sumner also considers Kenneth Goodpaster's life criterion³⁵ for moral standing and rejects it as it will include things that cannot be properly said to be capable of being benefited or harmed in a morally relevant way. The capacity to be benefited and harmed, nevertheless, is important to Sumner's framework for moral standing. While I do not agree with Sumner's narrow definition of what is to count as a morally relevant harm or benefit, i.e., sentient harm or benefit, what is important is that harm and benefit are cited as of moral relevance.

Sumner instead goes on to select sentience as the middle ground between rationality and life. Sentience is defined as: "the capacity for feeling or affect. In its most primitive form it is the ability to experience sensations of pleasure and pain, and thus the ability to enjoy and suffer. Its more developed forms include wants, aims, and desires (and thus the ability to be satisfied and frustrated); attitudes, tastes, and values; and moods, emotions, sentiments, and passions."³⁶

A criterion of life (or teleology) is too weak, admitting classes of beings (animate and inanimate) who are not suitable loci for moral rights; being alive is necessary for having standing, but it is not sufficient. A criterion of rationality (or moral agency) is too strong, excluding classes of beings (human and nonhuman) who are suitable loci for rights; being rational is sufficient for having standing, but it is not necessary. A criterion of sentience (or consciousness) is a promising middle path between these extremes.³⁷

On Sumner's model, spelling out the meaning of the phrase "moral standing" will necessarily involve reference to rights and duties. Those with moral standing will have

³⁵ Kenneth Goodpaster "On Being Morally Considerable" *Journal of Philosophy* V.75 no.7 1978 pp.308-325

³⁶ Sumner, *Abortion* p.142

³⁷ *Ibid.* p.142

protections against interference from others. Just as something with legal standing will limit what we can do to that thing, moral standing will limit the range of actions that can be inflicted on a thing that has moral standing. Sumner's criterion for moral standing is sentience. A thing that is sentient should be granted moral standing because it is the kind of thing that can suffer harms and benefits in a morally relevant way. Non-sentient things such as plants cannot suffer harms and benefits in a morally relevant way and thus should be excluded from the moral community.

2.5. My Account of Moral Standing

As I outlined in the opening sections of this thesis, I will use "moral standing" as a blanket concept to cover all members of the moral community. I use "moral significance" as a second threshold concept to cover beings capable of more complex satisfactions and capacities to be harmed. A being with "moral significance" is a being that already possesses moral standing. A being with moral standing does not necessarily possess moral significance. For example, humans and gorillas will possess both moral standing and moral significance because they have the requisite characteristics for moral significance whereas plants and worms will have moral standing but not moral significance because they do not possess the requisite characteristics for moral significance. In a later section, I will provide a fuller discussion of what constitutes moral significance and oppose it to something that only has moral standing.

Although Stone does not discuss moral considerateness (i.e., having advantage in the moral code by virtue of being recognized as a thing with interests) in terms of advantage and disadvantage, we can give a similar explanation of what it is to have moral standing. Moral standing or moral considerability, as some have called it, will involve the idea of the creature or thing having advantage in the moral code (as a thing with legal considerateness has advantage in the legal code). Having moral advantage, like legal

advantage, is having moral (or “legal” in the context of law) weight and because of that weight moral protections are to be given to the entity in question thus limiting what a moral agent can do to it. “... to have (some form and degree of) moral standing is to count or matter morally (in some respect and to some extent).”³⁸

As legal standing accords one legal advantage, moral standing will accord one moral advantage in the moral community. To have moral advantage is to have moral clout against the actions of others; the moral space of members of the moral community cannot be *invaded* without moral repercussions. As with legal considerateness, the “advantaging” of creatures and things assimilates them into the moral code; in a case where the creature in question is adversely affected by the actions of some agent, groups action on behalf of that creature can present its case to the public.

Firstly, if something has moral standing then it should be accordingly given advantage in the moral code, i.e., it will be given moral protections. If we are going to use something that has moral advantage we will need justification for use of that thing. For example, on the model proposed in this thesis, plants have moral standing based on the life criterion. But does this mean that moral agents cannot walk on grass or harvest vegetables for consumption? I suggest that the answer should be “no” if the moral agents in question can provide justification for their use of these plants. One kind of justification would be that walking on the grass is necessary since there is no other convenient way to cross the field and daily affairs will be disrupted if walking on the grass were prohibited. In the case of consuming vegetables, one might want to argue that eating vegetables is necessary for maintaining health and securing survival and therefore justified. Plants, humans, and nonhuman animals will be advantaged in the moral code, but this does not

³⁸ *Ibid.* pp.159-160

mean that we cannot chop down a tree or swat a mosquito that is about to bite; if we are going to chop down a tree or swat a mosquito we are required to provide justification for the action.

To have moral standing, then, is to be protected against indiscriminate treatment. As a result of the protections (which will not be limited to rights), moral agents must treat things with moral standing in certain ways. If one has moral protections this will not mean that all things with moral standing will have rights or that they will be treated equally. Rather, having the status of a thing with moral standing will mean that any acts of harm against that thing requires good reason.

Secondly, to have moral standing is to belong to the moral community; the moral community, as Landman suggests in his article, should be viewed as including both moral agents and moral patients.³⁹ Moral agents are those individuals capable of causing harm to others or benefiting others and those individuals capable of receiving harm or benefits from others. Moral patients *qua* moral patients cannot perform moral duties and therefore cannot be held morally accountable yet are the recipients of harms and benefits from others. For example, all normal adult human beings are moral agents and some normal nonadult human beings are moral agents.⁴⁰ These individuals are capable of inflicting harms and benefits on others and are at times recipients of harms and benefits. They are moral agents because they can *act* in morally significant ways and are consequently capable of being held morally accountable for their actions. Moral agents *qua* moral agents have the capacity to know when their actions are causing harm and

³⁹ Landman, pp.7-8

⁴⁰ Moral agency and patience are of course transitory stages in an individual's life, i.e., a person may at times be a patient and at others an agent.

refrain from acting in such a manner; moral agents can act in morally responsible and irresponsible ways. Moral patients *qua* moral patients, however, are not capable of acting in morally responsible and irresponsible ways. Moral patients *qua* moral patients are not capable of knowing that their actions are harming others and consequently cannot be held morally accountable. Yet, moral patients are capable of receiving harms and benefits from others and, it is plausible to say, are members of the moral community. For example, immature human beings such as babies are moral patients because they are capable of receiving harms and benefits yet cannot be held morally accountable because they are incapable of understanding the consequences of their actions. Most nonhuman animals are moral patients because they can be recipients of harms and benefits but are not capable of understanding the consequences of their actions. The moral community then will include both moral patients and moral agents.

If we consider both Sumner's analysis and my analysis of moral standing, we will see both the similarities and the differences. Both Sumner and I agree that moral standing can be modeled on the notion of legal standing. Secondly, moral standing and legal standing can be viewed as involving the idea of belonging to a community. Legal standing is given to those who have recognition in the legal community and moral standing is given to those who have recognition in the moral community. Thirdly, Sumner and I both place importance on the role of the capacity to be harmed and benefited as germane to the issue of morality. Fourthly, Sumner's analysis makes room for varying kinds of standing. Sumner discusses full moral standing as opposed to partial moral standing. I prefer to discuss these in terms of mere moral standing and what I call "moral significance". However, Sumner proposes sentience as the cutoff point for moral standing whereas I recognize that harms and benefits can accrue in things that are not sentient but have the capacity for interests (because they are alive) . Sumner's analysis

also differs from mine in the kind of protections that are accorded to things with moral standing. Sumner prefers to speak of “rights” as the mainstay of standing whereas protections, on my account, go beyond rights talk. Living things may have rights, or protection in the form of necessity of good reason for the destruction or harm to a living thing or as little as the recognition by agents of the effects of their action upon the living thing. In later sections of this thesis, I will argue more explicitly why frameworks such as those of Sumner are essentially deficient in complexity.

In the above sections, I have spent some time examining the notion of moral standing. As I have stated, the notion of moral standing has its roots in the notion of legal standing. Historically, legal standing meant literally to “stand in court”. Individuals were to appear in court or pledge to appear in court to stand trial. Some categories of human beings did not have “standing” (e.g., women, slaves, children, and enemies) because essentially they did not have recognition in the legal community. If one did have recognition in the legal community then he had interests that the law recognized as legitimate. If one had interests then one could “appear” or “stand” in court. Similarly, “moral standing” involves the idea of one belonging to the community. Like those with legal standing bearers of moral standing have interests that are recognized as legitimate. Members of the moral community, like members of the legal community, are a select group. Members of the legal community as noted are limited or embraced for various reasons. If we consider the moral community at large we will see that it too is largely restricted to (most) human beings. While we impose duties on each other for some acts towards nonhuman life these duties have been traditionally imposed not for the sake of

the animals themselves but self-serving reasons.⁴¹ Membership in the moral community has been traditionally restricted to human beings because only human beings have been recognized to have legitimate interests. However, if we consider what it is to have interests we will find that interests need not be restricted like some philosophers restrict it to those who possess the capacity to have desires. Interests can not only include things that an entity is interested in but also things that will promote an entity's welfare. Regan, as I will later discuss refers to these as *preference-interests* and *welfare-interests*. While plants and some creatures (e.g., less complex humans and nonhumans) may not have the capacity for preference-interests they will have welfare-interests.

My discussion of moral and legal standing has unveiled several notions. They are the concepts of moral advantage, the moral community, and their legal counterparts.⁴² Stone's notion of considerateness is tied to the idea of a thing having *advantage* in the legal code (or moral code for our purposes). Having advantage in the moral (legal) code, is having protections in the moral (legal) code. Those that have moral protections in the moral (legal) code have been granted membership in the moral (legal) community. Thus to have moral standing is to have moral protections as a member of the moral community.

This much is reasonably clear. However, I think that my discussion of interests shows that what is needed is a story that is different from that of Sumner, which I

⁴¹ For example, Kant believed that we should not be cruel to animals because such cruelty might result in the mistreatment of human beings. This kind of thinking was not restricted to Kant but was prevalent in ordinary thinking.

⁴² I postpone a discussion of moral significance until Section 4 as moral significance is a subset of moral standing (which is what is of concern to me at this time).

suggest is in need of revision. Indeed, I think that a much more complex apparatus is needed. In the next section, I will underscore the importance of “interests” as a criterion for moral standing and the relationship of harms and benefits to the notion of interests. In the later sections of this thesis, I will argue more explicitly as to why I think that a more complex theory is needed. At this point, I will merely set it out for consideration. I think, however, that its attraction will become clear during its presentation.

So, I would like to now stress the important link that both legal and moral standing have to the notion of interests. It will emerge that things that can have interests even if they are not capable of sentience, and consequently, as I have stated, Sumner’s analysis is in need of revision if it is to be a consistent account of the notion of moral standing.

3.1. Preliminary Comment

One’s interests...taken as a miscellaneous collection, consist of all those things in which one has a stake, whereas one’s interest in the singular, one’s personal interest or self-interest, consists in the harmonious advancement of all one’s interests in the plural. These interests, or perhaps more accurately, the things these interests are *in*, are distinguishable components of a person’s well-being: he flourishes or languishes as they flourish or languish. What promotes them is to his advantage or *in his interest*; what thwarts them is to his detriment or *against his interest*. They can be blocked or defeated by events in impersonal nature or by plain bad luck. But they can only be “invaded” by human beings, either by myself, acting negligently or perversely, or by others, single, or in groups and organizations. It is only when an interest is thwarted through an invasion by self or others, that its possessor is harmed in the legal sense (though obviously an earthquake or a plague can cause enormous harm in the ordinary sense). One person harms another in the present sense then by invading, and thereby thwarting or setting back, his interest.

(Joel Feinberg *Harm to Others*)⁴³

⁴³ Joel Feinberg, *Harm to Others* New York: Oxford University Press Volume 1 1984

Essentially, to accord standing to an entity restricts the kinds of things that morally may be done to an entity. There have been many suggestions as to what is an acceptable criterion or set of criteria for possession of standing. If we ask on what basis things were/are accorded or not accorded *legal standing*, I have suggested that things have it or lack it according to whether they can or cannot have interests; moral standing is something that is closely connected to the notion of interests. Legal standing involved the notion of the interests of the person with standing having recognition in court. If one did not have interests then one did not have, what we might call, weight, in court. For political reasons (unjustified of course), married women and slaves did not have weight in court because women and slaves did not have interests that were recognized.

There is much discussion in the literature on the notion of interests as a requisite for having moral standing. Some writers (e.g. Sapontzis, Regan, Goodpaster, Feinberg)⁴⁴ construe interests broadly while others (e.g., Frey, H.J. McCloskey)⁴⁵ construe them quite narrowly. Some would want to say that things that are alive have interests and that rocks and other inanimate objects do not have interests (e.g., Goodpaster). Other writers

⁴⁴ See, for example: Steven Sapontzis *Morals, Reason, and Animals* Philadelphia: Temple University Press 1987 Chapter Seven "Can Animals Have Interests?" pp.115-137; Regan in, *The Case for Animal Rights*, pp.87-88; Goodpaster, in "On Being Morally Considerable" pp. 317-320; and Joel Feinberg in, "The Rights of Animals and Unborn Generations" in *Philosophy and Environmental Crisis* ed. by W.T. Blackstone Athens, Georgia: University of Georgia Press 1974 pp.43-68

⁴⁵ See, for example: Frey's *Interests and Rights: The Case Against Animals* New York: Oxford University Press 1980 and H.J. McCloskey's "Rights" *Philosophical Quarterly* V.15 1965 pp.115-127

(e.g., Feinberg, Sapontzis, Regan, Landman, etc.) would want to say that only sentient beings can have interests because only sentient beings are capable of being harmed in the proper sense of the word “harm”. Still others would want to say that only moral agents can have interests because only moral agents can make claims on behalf of themselves (e.g., Hare, Rawls, Kant, Frey, etc.): In this section, I will suggest that the wide notion of interests, i.e., anything that can be harmed and/or benefited can have interests, a good that can be promoted or thwarted, is the most coherent notion of an interest. It is coherent because it considers what having an interest amounts to before restricting what kinds of things can have interests. It seems that some writers have decided where moral standing should be drawn, i.e., what kinds of things will qualify, and then customized the notion of an interest to fit their preferred candidates for moral standing.

Sumner’s analysis as well as the analyses of other philosophers, e.g., Regan, Feinberg, Frey, and Sapontzis, turn on a specialized notion of what it is to have an interest. I want to argue that to have an interest does not in any way turn on the claim that interests are the interests of sentient (e.g., in the case of Sumner) or rational (e.g., in the case of Frey) beings. As it will become apparent, what makes it the case that sentient things have standing, (viz., they can have interests) also makes it the case that nonsentient things have standing (viz., they too can have interests, though of course, these are non-sentient interests). Therefore, not merely animals, but also plants can have interests and therefore can have moral standing. Consistency demands, I will argue, that we allow that both sentient and nonsentient things can have standing; indeed, anything that can have interests can have standing! Hence, analyses such as those of Sumner and Frey, I suggest, are limited and biased views of moral standing.

I would like to now turn to two interesting discussions of what having an interest involves. Given the constraints of this thesis, I will limit myself to Feinberg and Frey’s

notions of an interest spending some time on the latter's analysis. Feinberg, in "The Rights of Animals and Unborn Generations" (1974)⁴⁶, limits interests to the capacity for conations whereas Frey, in *Interests and Rights: The Case Against Animals* (1980)⁴⁷, further narrows interests to the capacity for what he calls "desires".

3.2. Feinberg's Notion of Interests

Feinberg connects interests with "having a good of one's own". Those entities that have a good of their own are capable of having interests. Mere things, (e.g., plants and rocks), do not have interests because "mere things":

... have no conative life: no conscious wishes, desires, and hopes; or urges and impulses; or unconscious drives, aims, and goals; or latent tendencies, direction of growth, and natural fulfillments. Interests must be compounded somehow out of conations; hence mere things have no interests. *A fortiori*, they have no interests to be protected by legal or moral rules. Without interests a creature can have no "good" of its own, the achievement of which can be its due. Mere things are not loci of value in their own right, but rather their value consists entirely in their being objects of other beings' interests.⁴⁸

Feinberg's restriction of moral (or legal) standing to those entities which have conations is narrow. Like Feinberg, I want to say that things that have a good of their own should have standing, but unlike Feinberg I want to say that things other than conscious beings have a good of their own. The good of nonsentient living things can be analysed in terms of their ability to have functions that are independent of the good of

⁴⁶ Joel Feinberg, "The Rights of Animals and Unborn Generations" in *Philosophy and Environmental Crisis* ed. by W.T. Blackstone Athens, Georgia: University of Georgia Press 1974 pp.43-68.

⁴⁷ R.G. Frey *Interests and Rights: The Case Against Animals* New York: Oxford University Press 1980

⁴⁸ Feinberg, "The Rights of Animals and Unborn Generations" p.46

sentient creatures.⁴⁹ Granted, things that are capable of having conations have interests, but the capacity to have interests, the capacity to incur harms or benefits, goes beyond the mere capacity to have conative abilities. Those nonsentient beings which are alive have interests that set them apart from things such as rocks. Rocks do not possess a good of their own; rocks do not have functions of their own. It is in the interest of a tree to have proper sunlight and water just as it is in the interest of a human being to have proper nutrition and shelter. Trees have needs that are independent of the needs of other living things, we might then say that because of their own independent good trees have intrinsic value. The intrinsic value of trees, once again, is found in their ability to have functions, functions which can be promoted or thwarted by the actions of moral agents. We can speak of living things having a welfare that can be promoted or thwarted and hence interests that can be furthered or hindered. As Feinberg himself states in *Harm to Others*: “These interests...are distinguishable components of a person’s well-being: he flourishes or languishes as they flourish or languish. What promotes them is to his advantage or in his interest: what thwarts them is to his detriment or against his interest. They can be blocked or defeated by events in impersonal nature or by plain bad luck. But they can only be invaded by human beings....” We can also speak of the interests of nonsentient living things because such things have a good that can be promoted or thwarted or “invaded” by the actions of human beings. If I poison a tree I invade the

⁴⁹ For a discussion of the notion of sentience please see Frey’s *Interests and Rights* pages 33-37. I refrain from a discussion of this notion given the constraints of this thesis. For the purposes of this thesis, I take the notion of sentience to simply involve the feeling of pleasure or pain.

interests of a tree, I interfere with its good, if I water a tree I promote the interests of the tree, I further its good.

While Feinberg's notion of interests is limited to those things that have conations R.G. Frey's notion of interests is even more narrowly limited. Frey, a leading opponent of animal rights, links having moral status (which he takes to involve having rights) to the notion of interests. Frey would concur with Feinberg that conative ability is necessary yet he insists that conative ability (i.e., the capacity to have desires) involves the idea of having the capacity for beliefs. While Frey connects the notion of interests to the capacity for desires, a more appropriate connection, I will argue, are capacities to be harmed or benefited.

I will now look at this well-known analysis of interests.

3.3. Frey's Notion of Interests

In his book, Frey claims that for something to have standing is for it to have rights. He further claims that something can have rights if and only if it can have interests. Thirdly, he claims that something can have interests only if it can have desires and, in turn, that something can have desires only if it has beliefs. Further, he claims that something can only have beliefs if it can use a language. He thinks, finally, that only humans do have the capacity for language. Hence, he thinks that only humans have standing. He allows that non-humans can have needs, but they cannot have interests, he thinks, and hence they cannot have standing.

Interests, on Frey's conception (i.e., interests can only be possessed by those beings that can desire, only those beings that have beliefs can desire), are so complex that many human beings will not fulfill his criterion for moral standing. The ability to believe, on Frey's model, requires the capacity for language. In Frey's own words: "It consists in an analysis of desire and belief and of what it is to have beliefs; and it turns partially upon

the view that having beliefs is not compatible with the absence of language".⁵⁰ Frey spells out his language argument in the following:

Suppose I am a collector of rare books and desire to own a Gutenberg Bible: my desire to own this volume is to be traced to my belief that I do not now own such a work and that my collection is deficient in this regard. By 'to be traced' here, what I mean is this: if someone were to ask how my belief that my collection lacks a Gutenberg Bible is connected with my desire to own such a Bible, what better or more direct reply could be given than that, without this belief, I would not have this desire? For if I believed that my collection did contain a Gutenberg Bible and so was complete in this sense, then I would not desire such a Bible in order to make up what I now believe to be a notable deficiency in my collection...

Now what is it that I believe? I believe that my collection lacks a Gutenberg Bible; that is, I believe that the sentence 'My collection lacks a Gutenberg Bible; is true.... The difficulty in the case of animals is this: if someone were to say, for example, 'The cat believes that the laces are tied', then that person is holding, as I see it, that the cat believes the sentence 'The laces are tied' to be true; and I can see no reason whatever for crediting the cat or any other creature which lacks language, including human infants, with regarding the sentence 'The laces are tied' as true.⁵¹

Now, as is obvious, I agree with him that something has standing if and only if it has interests, but the rest I want to reject. Most notably, I want to reject his suggestion that one can only have interests if one can have desires and one can only have desires if one can have beliefs and that one can only have beliefs if one can use a language. I will not argue all of this in this thesis. Here, I need only argue against the claim that one can only have interests if one has "desires" (i.e., Frey's notion of desires). I will point out that Frey too narrowly construes the notion of "needs" in order to exclude nonhuman animals from the moral circle. This will leave it open for things which cannot have "desires" to have interests, and therefore, standing.

⁵⁰ Frey, p.86

⁵¹ *Ibid.*, pp.86-87

Frey is maintaining that one cannot have a desire without having certain beliefs and one cannot have beliefs without having language skills. Those that have language skills are capable of forming and believing sentences of the form “that p”. But why is this morally relevant? If animals cannot believe in the way that competent human beings can I do not think that this is enough to disqualify them as candidates for moral standing. What *is* of moral relevance is the capacity for nonhuman life to incur the ills of wrong action and the benefits of right action. Attached to this objection is the worry for Frey that his argument relies heavily on a problematic theory of belief. The sentential theory of belief is not a settled issue in philosophy of mind since many philosophers want to maintain that belief does not require language. I do not wish to entertain a discussion of belief theories thus I will grant Frey his language theory but argue that belief via language is not of moral relevance. Rather, what is of importance is, as Sapontzis coins it, “affective needs”, which can be analyzed in terms of having a welfare that can be hindered or promoted.

In *Morals, Reason, and Animals* (1987)⁵², Steven Sapontzis lays out Frey’s argument clearly in the following:

A1: Animal liberation advocates accept the interest requirement that all and only beings that (can) have interests (can) have moral rights.

A2: Interests must (logically) be divided into needs and desires.

A3a: If “interests” in (A1) refers to needs, then plants, tractors, cave drawings, and other mere things (can) have interests and, consequently, (can) have moral rights (at least as far as the interest requirement is concerned).

⁵² Steven Sapontzis *Morals, Reason, and Animals* Philadelphia: Temple University Press 1987 pp.115-116

A3b: But this is so counter-intuitive as to be unacceptable, even to animal liberation advocates.

A4a: If “interests” in (A1) refers to desires, then [non-human] animals cannot have them and, consequently, cannot have moral rights.

A4b: Animals cannot have desires because

(i) having desires requires belief or self-consciousness

(ii) both of these require linguistic ability, but

(iii) animals lack linguistic ability⁵³

Frey’s main point here is to show that if “animal liberationists” accept needs as a basis for interests then a whole slew of things would be candidates of moral standing, e.g., tractors, paintings, and plants; and this is unacceptable because it is counter-intuitive. Just as a dog needs food and water a tractor has an interest in being well-oiled and sheltered from the rain.

It is obvious that Frey’s story of needs is impoverished and his account of interests is narrow. What Sapontzis and I want to say is that paintings and tractors, as I will argue below, cannot have interests because they cannot be harmed or benefited in the way a farmer can be if his tractor is in disrepair or well-oiled. Similarly, those who benefit from a well-maintained painting is not the painting itself but those frequent the gallery in which it is housed. Sapontzis states the following on what it is to have interests:

“Interest” is commonly reserved for the people and animals who will benefit or be harmed by the needs of the plants, artifacts, and so on being met or unmet. For example, the tractor “needs” oil to run efficiently, but it is “in the farmer’s interest,” not the tractor’s, that the tractor be well oiled. Again, wheat “needs” water to survive and flourish, but it is “in the farmer’s interest,” not the wheat’s, that the wheat be properly watered.... Thus, the ordinary use of “interest” tells us that plants, artifacts, and other mere things not only take no interest in what benefits them or harms them; they also have no interest in these things. So “having a good of one’s own,” being

⁵³ *Ibid.*, pp.115-116

capable of being benefited or harmed,” or simply “having a need” does not provide an adequate analysis of having an interest.⁵⁴

While I disagree with Sapontzis unwillingness to recognize the interests of nonsentient living things, I concur with him that having a good of one’s own or having the capacity to be harmed and benefited is an “adequate analysis of having an interest”. Admittedly, plants cannot suffer to the same extent as a cat or dog can; however, plants’ attribute of being alive allow them to undergo harms and benefits that are of a different kind from those that inanimate objects can undergo.

We need not accept Frey’s impoverished notion of a “need” and consequently the result that animals do not have interests. The needs of animals and people involve a richer notion of what it is to need something and stands apart from the “needs” of tractors and paintings. Plants, while lacking the capacity for sentience, are alive and can be deprived of benefits and can suffer harms.

Yet, plants will not qualify for moral *significance* in my suggested sense of that term.⁵⁵ What Sapontzis and Frey might be separately referring to is moral significance and not moral standing. I acknowledge that sentient beings have a much more complex array of wants. Granted, plants have needs and can be benefited and harmed by exposure or overexposure to sunlight but these needs do not *matter* to the plant in question. Plants are not conscious of the needs because they do not possess, as Landman puts it, the “necessary neurophysiological causal basis for consciousness, namely, a central nervous system.”⁵⁶ Plants, once again, have a good of their own (contra Sapontzis and Feinberg)

⁵⁴ *Ibid.*, p.117

⁵⁵ Moral significance, as I suggested in Section 1 and will discuss in some detail in Section 4, is possessed by those beings which have awareness.

⁵⁶ Landman, p.14

but lack the criterion of conscious awareness of their needs and while plants can have moral standing they cannot be included in the scope of moral significance.

The point that I am making is that interests can be more widely construed as to include both sophisticated types of interests that are possessed by creatures such as human beings (e.g., Frey's belief theory) but also interests that can be possessed by things that have a welfare that can be promoted or thwarted. Regan, in *The Case for Animal Rights*, makes an important distinction between two kinds of interests that may shed light on Frey's confused reasoning.⁵⁷

Regan's employs the notions of preference and welfare-interests to show that Frey has narrowed the notion of interests. Welfare-interests are interests the promotion of which furthers the well-being of the entity in question. Preference-interests are things that the entity in question is *interested in*. For example, it is in the interest of a cat not to be caged in a laboratory for cancer-related research (welfare interest), but the cat cannot be properly said to have an *interest in* not being caged in a laboratory for cancer-related research (preference-interest). Clearly, we can easily speak of food promoting the well-being of a cat while taking care not to say that a cat has an interest in food. Frey's account of interests is too narrowly restricted and fails to take into account interests that are morally relevant but that do not need to rely on a sentential theory of belief. These interests may be called *welfare* interests or *affective* interests.

What I have attempted to do in this section is examine the concept of interests concentrating on Feinberg and Frey's analyses. Both philosophers tightly connect the capacity for interests to the possession of moral standing. Thus, the criterion for moral standing on both their accounts is the possession of interests. However, interests need

⁵⁷ Regan, pp.87-88

not be so narrowly defined as both Feinberg and Frey have outlined. Indeed, nonsentient living things (in the case of Feinberg) and nonhuman living things (in the case of Frey) have a good that can be promoted or hindered by the actions of human agents. Using Regan's distinction between preference-interests (e.g., desiring a Gutenberg bible for one's book collection) and welfare-interests (e.g., having adequate nourishment), one can see that interests is a concept which ranges rather wider than Frey, Sapontzis, et al., would allow.

In this thesis, I am suggesting that we go beyond a concern with sentient creatures and rational creatures and recognize that the good of nonsentient living things as well as that of nonhuman animals can be thwarted or promoted by our actions. And, if we are concerned with an unbiased moral outlook we must recognize that nonsentient living things and nonhuman animals can incur harms and benefits as can human beings. My analysis of interests, unlike those of Feinberg and Frey, looks at what an interest is before deciding where to draw the line on moral standing. An interest, as I have argued, can be held by anything that can have a good that can be thwarted or promoted. Contra Feinberg, I have argued that nonsentient things can have interests and contra Frey I have argued that nonhuman things can have interests.

Thus, the capacity to have interests can be possessed by nonsentient living things and sentient beings as both categories of entities have a good that can be promoted or thwarted. In Section 7, in which I address some possible objections to the framework that I have presented, I will say more about the capacity to have interests as the criterion for moral standing.

The following two sections will in effect throw further light on the ways in which interests are to be understood. I will, in these sections, examine the notion of harm and

benefit. These discussions will be of value, because, I will suggest, to harm something is in fact to thwart its interests and to benefit something is in effect to further its interests.

3.4. Harm

For the purposes of this thesis I am going to work with a notion of “harm” along the lines suggested by Joel Feinberg, in his book *Harm to Others* (1984). Feinberg’s three senses of harm are: 1) harm conceived as the “thwarting, setting back, or defeating of an interest” 2) a harm in the normative sense of the word as a wrongful setback that one person causes another.⁵⁸ 3) a derivative sense or extended sense of harm according to which we say anything can be harmed, e.g., a tomato, a window, etc. The tomato or window are not objects of our sympathies; rather, our sympathies, says Feinberg, are with the owners of the window or tomato.⁵⁹ Therefore, according to Feinberg, this sense of “harm” extends to the owners of the window or tomato as interest-bearers, hence the derivative sense of harm. Feinberg suggests that “harm” when used of tomatoes and windows is used in this “derivative” sense: it is a “derivative” sense of “harm” because while we do talk of harming a tomato (or even a window), even if interests are thwarted as in the primary sense, the interests are not of the tomato or of the window but the

⁵⁸ In Feinberg’s sense of second kind of “harm”, harm is limited to the setting back of an interest of one person against another. Unlike Feinberg, I want to say that the normative sense of the word “harm” will apply to other species of things. That is, a person can set back the interest of a tomato, a person can wrongfully set back the interests of a cat, etc., because such kinds of things (as I will later argue) have interests.

⁵⁹ Feinberg, *Harm to Others*. pp.31-36.

interest of the owner or the grower of the prospective eater of the tomato or of the owner or user of the window.

I can agree with Feinberg's suggestion about harming windows, for, if we were ever to talk of "harming" a window (versus damaging it), then it would be something like this we would have to be meaning, but I cannot agree with his suggestion about tomatoes. Tomatoes are the kinds of things that can be harmed or benefited and thus are the kinds of things that *can* have interests. Correspondingly, we can harm tomatoes in the first or even the second primary sense of harm. I discuss this in greater detail below. This point aside, it is the first of these three senses of Feinberg's notion of "harm" that I am interested in i.e., "the thwarting, setting back, or defeating of an interest". I have several comments that I would like to make here both about what I will be meaning by the word "harm" and about what things can be harmed and hence can be said to have at least standing. First, a comment about the meaning of the term.

Feinberg's notion of "harm" might be taken to mean the thwarting of any kind of interest. "Harm" is a strong word that we might not want to apply to some cases of "thwarting". For example, if I take a dull and inexpensive pen from the desk of a well-off colleague and use some of the ink to write a memo to myself on a piece of paper I cannot be said to be "harming" her. I may have thwarted the interest of my colleague, i.e., used ink that belongs to her without her consent, but I have not harmed her (or only perhaps in a very technical sense of the word "harm"). Of course, Feinberg may be meant to be taken as speaking only of *important* interests so that to harm something would be to thwart the important interests of that thing. But I do not think we need to say that, for, I want to suggest that, anything that can have an interest *can* have an important interest and therefore can have moral standing.

Harm involves the thwarting of any kind of interest that is important to the well-being of that thing. But it may be worth saying a few things about “important” interests. I suggest that the important interests of something are those interests that are essential to the well-being of that thing. Thus to thwart the important interest of something is to interfere with the well-being of that thing. For example, to take the heart of a baboon, e.g., to transplant it into a human being, is to thwart an important interest of the baboon, for the heart is essential to that baboon’s well-being. And freedom from captivity in a laboratory cage is important to the well-being of a cat; and depriving the cat of freedom is to thwart an important interest of the cat. Similarly, poisoning a tree is to thwart the important interest of that tree in staying alive; the well-being of the tree is hindered if it is poisoned.

Important interests are those interests that are essential to the well-being of the entity in question.⁶⁰ We might think of some of these interests as those interests which allow a thing to carry out its daily affairs, e.g., the heart of a baboon is essential to the functioning of her body. Functioning will also involve mental well-being, e.g., freedom from captivity is essential to the mental well-being of a cat. We might want to think of those things that can have interests as things that are mortal; anything that is mortal can have interests that are important interests. And, anything that will cause the death of that thing will thwart the important interests of that thing. Interests will involve both the mental and physical health of a thing will be of concern. *Life* is the crucial attribute that

⁶⁰ There are of course many suggestions as to what should count as “well-being”. For the purposes of this thesis I do not wish to delve into the controversies of this notion, but rather I would like to use it as useful peg upon which to hang the notion of what counts as an important interest.

allows a thing to have interests that are important. So, I am saying that things which are alive can have needs, and hence interest, and that hence they can be harmed. Such things I am saying have moral standing. I am also saying that *only* things which can have needs and interests can be harmed and hence only such things have moral standing. I have suggested, finally, that only living things can, in this sense, be harmed and hence that only living things have moral standing.⁶¹

Continuing my comments about harm and what things can be harmed, I want to make some comments which in effect are meant to supplement what I have just said in summary and in particular about my suggestions about the things that can be harmed, if my view on that is right. Firstly, I want to argue that plants and animals have interests and therefore can be harmed, and hence, on my view, have moral standing; in this they differ from inanimate objects as I have suggested earlier (see Section 3.1). A rock does not have a physical structure that will enable it to carry out activities that will lead to the satisfaction of needs; nothing will count as harming it or benefiting it *qua* rock. A plant has a physical structure that enables it to carry out functions. A plant can breathe, reproduce, seek nourishment, in other words, a plant can flourish. We can properly speak of a plant as being sick or healthy. It can be sick, for example, if its surface is clogged so it cannot breathe. A plant can be healthy if it is properly watered and nourished. In contrast, a rock cannot breathe, reproduce, or seek nourishment; a rock does not have any needs or do anything because it cannot carry out functions such as those of a plant. All the above will of course apply to animals as well, whether human or nonhuman. In fact, I would say more, for at least some non-human animals can not only

⁶¹ I remind the reader that technology may produce computers that are so complex that these kinds of things could conceivably be said to have interests. See footnote 3.

have well-being and hence needs and hence interests: they can also have desires and hence can have a more complex set of needs and interests.

My second point about what can be harmed is a point about artifacts. I want to say that artifacts cannot be harmed in the sense I, here following Feinberg, am using, even though perhaps sometimes we might talk as if they can. Imagine that one did say that a painting or even a tractor had been harmed by some natural event (e.g., a flood) or by some action. I want to say that though we might *say* that, we are in fact, as Feinberg puts it, using the term here in a “derivative” sense. Harm can only be properly sustained by those entities that can incur losses. Artifacts such as tractors and paintings can be *damaged* but cannot be harmed as can plants and animals. Plants and animals, by virtue of being alive, are in a position to sustain harms that are importantly different from the damage that inanimate objects can receive. Inanimate objects can be properly and only said to sustain “damage” and not harm. A living thing can suffer both damage and harm. An inanimate thing, however, cannot be harmed. Consider the sentence: “The tractor was harmed as a result of hail storm”. This would seem peculiar to any speaker of the English language. Harms then can only be experienced by things that are alive. Computers, tractors, and paintings are examples of things that can be damaged but not harmed. The physical structure of artifacts are of a different kind than those of plants and animals. Artifacts can only be damaged and not harmed because they are physiologically incapable of suffering a loss.

One might object to my differentiation between “harm” and “damage” by pointing out that the difference is simply a quirk of the English language, that “harm” is sufficiently close to the structure of “damage” to yield the same results. For example, a tractor can do things, it has functions (e.g., seeding, plowing, cultivating, harrowing,

etc.). Similarly, a painting can do things, it too has a function (e.g., causes a particular reaction in an observer). Therefore, tractors and paintings have moral standing.

As I have done in a previous section (1.1), the response to this objection can be made by first granting that artifacts such as tractors do have functions. However, such functions are of a different kind from those of plants and animals. The functions of inanimate objects serve others' needs and hence inanimate objects cannot be said to have intrinsic value but rather they have instrumental value. A tractor is not valuable in itself but valuable to the farmer who relies on it to farm his land. A painting's value is found in its ability to cause a reaction in an observer and has no value in itself.

Paul Taylor, in "Are Humans Superior to Animals and Plants?" (1984)⁶², illustrates what the notion of inherent or intrinsic worth amounts to:

To say that an entity has inherent worth is to say that its good (welfare, well-being) is deserving of the concern and consideration of all moral agents and that the realization of its good is something to be promoted or protected as an end in itself and for the sake of the being whose good it is... When a living thing is regarded as possessing inherent worth, it is seen to be the appropriate object of the moral attitude of *respect*.⁶³

Taylor further explains "having a good of one's own" in terms of an entity having functions and being capable of being harmed or benefited:

It is not their [living things] capacities taken by themselves; rather, it is the fact that those capacities are organized in a certain way. They are interrelated functionally so that the organism as a whole can be said to have a good of its own which it is seeking to realize. The concepts of benefit and harm, of what is good for it or bad for it, of faring well or poorly, and other connected ideas, must be applicable to such an entity, for it is by virtue of its having a good of its own that we can meaningfully say that its

⁶² Paul W. Taylor "Are Humans Superior to Animals and Plants?" *Environmental Ethics* V.6 Summer 1984 pp. 149-160

⁶³ *Ibid.*, p.151

good is deserving of moral consideration, and that the realization of its good is to be promoted and protected *for the sake of* the being whose good it is.⁶⁴

Most animate things can be said to suffer harms and/or damage. Inanimate things can only be damaged and therefore not harmed. Having the capacity to suffer harm will mean that the thing in question has interests. Because animate things can do things (e.g., a plant can breathe, take in nutrition, etc.) they have interests and because they have interests they can be harmed (and will consequently qualify for moral standing). Living things have intrinsic value as opposed to instrumental value. Because living things have functions of their own they are intrinsically valuable. A rock does not have any functions of its own; it does not have the apparatus which will enable it to carry out functions and hence a rock does not have the wherewithal to be an intrinsically valuable thing. A plant, for example, can sustain harm if deprived of nutrients. An animal can sustain harm if deprived of desired freedom just as a human beings can sustain harm if deprived of goods such as food and shelter. These sorts of things can sustain harms that are unlike the damage that can be "inflicted" on a rock or a heap of dirt; a rock or heap of dirt cannot be deprived of goods necessary to the fulfillment of its goals. Rock formations and heaps of dirt can have instrumental value at most; such things can have value because they are instrumental in serving the needs of the life forms that depend on them.

In summary, to harm something is to thwart the important interests of a thing. If a thing has unimportant interests it will have the capacity for important interests. Only animate things (plants and animals) by virtue of having functions can be harmed therefore things such as rocks cannot be harmed because they do not have functions and therefore will not have moral standing. Yet, what about artifacts that are not like rocks but do have functions: can we not attribute interests to such things? If we make a distinction

⁶⁴ *Ibid.*, p.155

between “harm” and “damage” we will see that animate objects can sustain harms but inanimate objects can only be damaged. This response may not convince the critic who may simply brush this off as a linguistic quirk of the English language. However, in response to this objection I point out that there is a difference of kind between the functions of animate objects and those of artifacts. An animate object is intrinsically valuable and hence to thwart the interests of an animate object is to cause it direct harm. When we cause damage to artifacts we do not cause harm to the object in question but instead we cause harm to the owner or other party that has an interest in that thing; we thwart the interests of the owner of the thing and not the thing itself.

In the light of this discussion, it is, I think, clear that if we start from Feinberg’s suggestion that to harm something is to set that thing’s interests back; then there is nothing to prevent us arguing as follows:

1. To harm x is to set back the interests of x [Feinberg]
2. One can harm something without that thing being aware of being harmed.

[Lemma]

3. Therefore, one can set back the interests of x without x realizing it. [From 1 and 2]

4. Therefore, (a) nothing in the notion of harm (or of interest) excludes the possibility of harming a non-sentient being, (b) nothing in the notion of an interest excludes the possibility of a non-sentient being having an interest. [From 1-3]⁶⁵

All that needs now to be proved is the lemma stated in step 2. It is in fact not clear how we could prove that, but what we can say is that at least as we use the notion of harm in commonsense ways we do seem able to talk of harms of which one is not aware.

⁶⁵ The way of putting these points was suggested to me by Dr. Baker.

For example, if I lack copper in my diet I will gradually become sicker and sicker. I do not need to *know* that I am lacking copper for it to be the case that I am becoming sicker and sicker. Indeed, I do not need to know that I am becoming sicker and sicker to become sicker and sicker! But to become sick is surely to be harmed. Similarly, if a tree is poisoned it will eventually cause the tree to die. The interest of the tree (albeit not a conscious interest) has been set back as a result. The tree could have continued to flourish and carry out its functions had the agent refrained from pouring poison on it. Understandably, we cannot say that the tree is *interested in* being free from poison but we can say that the interests of the tree will be promoted if it is free from poison. To poison the tree is to thwart the functions of that tree; to poison the tree is to cause harm to that tree, its well-being would be sacrificed. Similar things can be said about harming sentient creatures. To cause harm to an animal is to thwart the interests of that animal. It is to invade the good of the creature.

I would like to now turn to the notion of “benefit” as a twin counterpart to the notion of “harm”.

3.5. Benefits

Animate objects are capable of being recipients of benefits in addition to harms. There is a use of the term “benefit” according to which a benefit is something that is advantageous to an entity but not necessary for the furthering of its interests. In *this* sense, for example, benefits are given to employees in some companies. Such benefits as healthcare, vacation, tuition for courses, etc. are provided in addition to the employee’s salary. The employer need not provide these benefits but in order to attract good employees or perhaps increase morale the employer will offer benefits to the employees as incentives. In *another* sense (and wider sense) of the word “benefit”, “benefit” might simply mean something that will further the interests of a thing. For example, a plant can

benefit from adequate sunlight and nutrients. An animal can benefit from proper nutrition and shelter. Plants and animals can benefit in ways rocks and other inanimate objects (artifacts included) cannot. The physiology of a plant or animal allows it to receive external things that will satisfy needs or even desires, in the case of some animals. A thing that is capable of being benefited by the action of another will be something that is alive. Being alive enables a thing to receive external resources which will enable it to progress in some way. Thus far, “benefit” parallels “harm”.

It might be said that not only animate things but also artifacts like tractors and painting can be benefited, e.g., from an oil change or proper lighting so its colors will not fade, etc. By parallel argument as in the case of harm, I would deal with this worry in the same sort of way as I dealt with the worry about harming such things. Tractors and paintings do not *benefit* themselves from proper maintenance. Rather, the interests of the farmer and the observer of the painting is what is at stake. Neglect to such objects will thwart the interests of the direct recipients of the benefits, in these cases, the farmer and the observer.

Plants and animals can be the recipients of beneficial actions. A thing that can be benefited by the goodwill of an agent can be the recipient of an action that will further the satisfaction of needs or desires of the thing. If an agent is fully capable of endowing a thing with a benefit the moral system may impose an obligation on the agent to carry out the beneficial action. For the purposes of this thesis, I will not attempt to establish whether or not moral agents are obligated to confer benefits on things such as plants and animals; rather, I merely contend that those entities that are capable of receiving benefits qualify as members of the moral community i.e., have moral standing. Having the capacity to benefit from the actions of others, will mean that an entity has a physical structure such that it has needs or can do things. I am merely contending then that being

able to benefit from the acquisition of the required object will mean that the entity has interests; and, having interests will mean that an entity qualifies for membership in the moral community.⁶⁶

I have been merely providing a description of what we might mean when we use the notions of “harm” and “benefit”. I have avoided a discussion of the normative issues surrounding harm and benefit, e.g., whether or not it is acceptable to poison a tree because it is blocking one’s view of the river. In fact, I will only indirectly address the normative issues as it relates to the framework that I am proposing in this thesis.

If we search for the basic principle, rather than appeal to a derived principle, what I have suggested we will find, is the capacity for interests, consequently the capacity to be harmed and or benefited, as what is pertinent in moral reasoning. As I have contended, if we want to be consistent about the capacity for interests as a criterion for moral standing then the interests of all things that have a good that can be promoted or hindered must be included in the moral community. As I have stated, Sumner’s analysis, as well as those of other philosophers, is in need of revision.

Given what I have argued in the above, the capacity for interests will go beyond the line of sentience; indeed, anything that can be harmed or benefited is the kind of thing that can have interests. I contend that plants do have moral standing, moral standing that is independent of human and animals needs; plants have intrinsic moral worth because plants have a good of their own. Yet, many animals and all human beings are physiologically-constituted in a way that gives the word “suffering” considerable meaning. Such creatures have many interests that can be thwarted or promoted. Interests

⁶⁶ If I have not already made it clear, I would like to add that *being aware* that one is being harmed or benefited is not a necessary condition for being harmed or benefited.

in food, shelter, and freedom are only a subset of the many interests that such creatures have.

Thus, within the class of things that can have interests there is a special class of things that can incur harms and benefits of a different kind. It is these kinds of entities, things to whom events can matter, that are in need of greater moral protections. This special subclass of things will have what I call “moral significance”. I would like to now turn to an explanation of what I refer to as the criterion of “mattering” and the second threshold called “moral significance”.

4. Mattering and Moral Significance

As I have said, animals, like plants, are the kinds of things that are physiologically capable of having interests. Some animals are more complex than most plants. Many animals are sentient and thus have the apparatus that enables them sustain harms that are of a different kind than those of plants. Imagine that something X is done to some animal. Let it be the case that X in fact is harmful to that animal. Now in such a situation sometimes an animal is capable of being aware of X, whether or not they are aware that X is harmful. Sometimes the animal is capable not only of being aware of X but also aware that X is harmful. Sometimes, thirdly, the animal is not only aware that X is harmful, what is more, it matters to the animal that X is harmful.⁶⁷ It is these kinds of animals, i.e., those for whom actions matter to them, that necessitate higher moral protections than those that can suffer less harm as a result of their inability to be aware of external stimuli. Mattering will essentially amount to consciousness and a mental life. Thus, sentient beings will satisfy the criterion of mattering. At the outset, I would like to

⁶⁷ These distinctions I borrow from Dr. Baker who I am grateful for pointing out these small but nevertheless important distinctions.

state that not every action against the entity will lead to the action or its effects mattering to that entity. For example, a dog can be fed small doses of arsenic on a daily basis. This action does not matter to the dog but it is nevertheless causing her harm. There are countless examples of this instance. This of course will not disqualify these subjects from the class of things with moral significance.

What I mean by “mattering” is the following. For something to matter to an individual is for that individual to have affective attitudes towards the outside world; mattering will thus involve something more than mere reaction to stimuli - the subject in question will have positive or negative mental attitudes to external stimuli. Individuals capable of satisfying the criterion of mattering will have preferences that events proceed in a certain way, that is, they will have either positive or negative preferences to external stimuli. For x to matter to A, I have said, is for A to prefer that x happen if x is good or that it not happen if it is bad. Hence only something which is capable of a mental life which will involve the capacity to have preferences, i.e., affective attitudes, can have things matter to it. Mattering does not necessarily involve the capacity to reflect on the situation that is presented to someone and weigh the benefits of various outcomes; deliberating on one’s actions and weighing the consequences of alternative acts is not a requisite for moral significance. If mattering were to involve high-order deliberation mattering would involve the capacity for rationality. Animals that satisfy the criterion of mattering are not only capable of experiencing pain and pleasure but prefer, if the act is harmful, that the act cease. For example, it matters to me whether or not a harmful chemical is dropped in my eye; I prefer that the chemical is not dropped in my eye. Similarly, cows and other mature mammalian farm animals undergo severe stress at the slaughterhouse; it matters to a cow or a pig that they are about to be slaughtered as they

enter the slaughterhouse.⁶⁸ It matters to a gorilla that her newborn daughter is taken from her. Satisfying the criterion of mattering will mean that the entity is at least capable of a mental life. Now, within the group of things that can satisfy the criterion of mattering there are some that are not only capable of affective attitudes to external stimuli but who are also capable of having reflective attitudes about the external world. Such beings have the capacity to conceive of themselves as separate and distinct individuals. As I will later explain, these beings will have *moral importance* and therefore what can be done to them is more restricted than what can be done to nonsentient living things. In the case of the second threshold of moral significance, what we have is essentially beings that are sentient and who can therefore incur harms of a different kind than those of plants. Yet, amongst those beings with moral significance there are some that not only have affective attitudes but reflective attitudes as well. Such entities, once again, will be shown to have more importance.

I would like to point out to the reader that we might implement a third threshold for those with both the affective and reflective capacities. Since these beings have a greater capacity to suffer harms and receive benefits we might decide upon a third threshold, perhaps “mature animals capable of reflective awareness of their state”, as another cutoff point on the moral standing line. The kinds of animals that would satisfy this criterion would include human and other primates and perhaps all adult animals. Such beings might be given the high protection of a *prima facie* right to life. One might venture to ask why we could not conceive of an endless string of thresholds with adult human beings occupying the highest threshold. To this, I would respond (though, as I have said several times, I am not terribly concerned to argue the details of my more complex story:

⁶⁸ See Singer's *Animal Liberation*

I am primarily concerned to establish the need for at least as complex a story as the one I am suggesting) that such a method might have the effect of reintroducing arbitrariness into the framework. For example, a string of thresholds might result in the reintroduction of rationality as a criterion. Such a criterion would then be subject to the test of arbitrariness and as I have hoped to show such a criterion is not of moral relevance. Thus, going beyond the threshold of mammals or perhaps primates, might be going beyond morally relevant features and resorting to arbitrarily selecting highly-sophisticated criteria. Within the scope of this thesis, however, I would like to limit myself to the two thresholds of moral standing and moral significance.

Having an affective attitude will involve having positive or negative reactions to external stimuli. For example, an animal might not only be aware of stimulus X but she will have attitudes towards stimulus X: she may like it, not like it, fear it, loathe it, etc. Others kinds of animals will not only have affective attitudes towards external stimuli but can have the capacity to have reflective attitudes. In the reflective case of mattering, Y will prefer that X not have x or will prefer having something else z to having x. An animal which is capable of having a reflective attitude is one which can also conceive of itself as a separate and distinct individual, i.e., it possesses self-awareness.

For example, animals such as cats and dogs will qualify for moral significance, on both theories (i.e., the affective and the reflective) because they are the kinds of things that are capable of sustaining harms and what is more these harms matter to them both affectively and reflectively. Something mattering to creature X will mean that creature X has a developed enough mental life that she is capable of a wide range of preferences. For example, if I beat a dog with a stick it matters to the dog that she is undergoing such treatment and she will attempt to resist the beating. Firstly, the dog's sentience will enable her to feel the pain of the stick and her mental capabilities will enable her to suffer

distress by the action. It matters to the dog that she is being beaten. However, for such animals there will not be a recognition that such acts are harmful, i.e., the dog may not recognize the act as an act that is harmful; she may not have the capacity to categorize “beatings with sticks” as acts that are harmful. Awareness of that act as a “harmful act” is sufficient for moral significance but not necessary. “Higher” animals such as human beings and other primates may recognize such acts as harmful in themselves; animals such as cats and dogs may not recognize the act as harmful but mattering may still be present. Satisfying the condition of mattering is both a sufficient and necessary condition for moral significance.

Sentient animals⁶⁹ will satisfy the criteria for moral significance as they all have the capacity to be affected in a morally relevant way by the actions of others and other external factors; what is more such animals have the capacity to prefer x if x is good or avoid x if x is bad. Sentient beings will suffer conscious harm (as opposed to the non-conscious harm that a plant can suffer); the deprivation of their ends would matter to them. By “conscious harms” I do not mean harms where what is harmed is conscious that it is being harmed (i.e., I do not want to be taken as suggesting that where there are such harms the harmed is aware of itself as harmed). Rather, I mean that the harmed is aware of what is as a matter of fact harming it, though not necessarily awareness of that *as a harm*.⁷⁰ In other words, the harmed creature has the neurophysiological apparatus (a

⁶⁹ There are of course exceptions, e.g., the comatose, in which the subjects in question cannot prefer or have affective attitudes towards things. I acknowledge such cases but I do not believe that this will damage the claim that animals do have preferences or affective attitudes towards things.

⁷⁰ This distinction I borrow from Dr. Baker

la Landman) to be aware of what is harming (or benefiting) it. For example, a dog is a being that is conscious and has needs; if deprived of her health due to insertion of harmful chemicals into her body she will suffer a physical agony and perhaps mental distress. Similarly, a gorilla is a being that is conscious, a being that has needs: a gorilla has awareness and is a creature that needs to roam freely in natural environment and will suffer if deprived of her freedom.

A corollary of the suggestion that only things to which things can matter can have moral significance is the suggestion that only things which are capable of consciousness have moral significance. Those beings that are conscious or at least capable of consciousness and who have the capacity for preferences of a certain kind are worthy of moral significance. The capacity for consciousness is a necessary condition for mattering, i.e., those beings that are of moral significance must at least be capable of consciousness.

I would also like to add that a consequence of what I am saying is that while sentience is sufficient for moral significance more complex beings such as mammalian animals might have more *importance* than others. Because such animals are capable of greater satisfactions and can incur greater harms than beings which simply have sentience but not the capacity for reflective attitudes, such beings will have more importance. Having more importance might yield the result of having, for example, the *prima facie* right to life. Nevertheless, the distinction that I have made between those beings that are nonsentient and sentient beings serves the purpose of giving recognition to those entities that are capable of incurring harms and benefits that are of moral significance. Sentient animals incur harms and benefits that are of a different kind and consequently can suffer greater harms than nonsentient beings. Sumner argues for sentience as the criterion for moral standing and describes what things possess sentience in the following:

Like consciousness, sentience emerged during the evolutionary process as a means of permitting more flexible behavior patterns and thus of aiding survival. Biologically it is marked by the emergence in the first vertebrates of the forebrain (the primitive ancestor of the human cerebral hemispheres). As far as can be determined, even the simple capacity for pleasure and pain is not possessed by invertebrate animals. If this is the case, then the phylogenetic threshold of moral standing is the boundary between invertebrates and vertebrate animals.⁷¹

While Sumner restricts moral standing to sentient beings, I do not. Sentient beings, on my model, will qualify for moral significance as opposed to merely having standing. These kinds of creatures are set apart from those that are nonsentient because the kinds of harms that they can incur are of a different kind. Thus, what we can do to a morally significant thing is not merely constrained with the demand for justifiable reasons but the kinds of reasons given are much narrower than those that can be given for things with mere moral standing. For example, a tulip has moral standing by virtue of being the sort of thing that can be harmed or benefited - for it is alive. We may not trample on a tulip for no good reason and thus our behaviour towards a tulip is constrained by the moral protections which go with having moral standing. If destruction of the tulip is desired we can proceed to destroy the tulip so long as good reason is provided. For example, if a tulip is needed for consumption then a justificatory reason has been provided for the destruction of the tulip to serve this end. In the case of a sentient being, however, what we can do to it is more restricted. Because sentient beings can incur worse harms than nonsentient things they must be allowed greater moral protections. For example, tearing a leaf off a tree and tearing a wing off a bird are two different kinds of harms. The bird will suffer a greater loss because the bird is aware of the harm; the bird can experience the pain of the act, the action matters to the bird. The plant, on the other hand, is not aware of the harm and what is more it cannot experience the pain of the loss.

⁷¹ Sumner p.143

However, within the class of things which can satisfy the criterion of mattering there exists some that are capable of reflective attitudes. These sorts of animals will satisfy what Regan calls the “subject of a life” criterion or what Tooley calls the “subject of an experience” criterion.⁷² These kinds of beings, I want to say, may have more “importance” than those beings with mere sentience. Because these kinds of animals have a greater capacity to suffer harms within the class of things with sentience, i.e., they are not only capable of having affective attitudes to things but have the capacity to reflect upon the external world - they are *self*-aware and not merely aware, they will necessitate high moral protections. These protections might be in the form of rights and immunities. If one were to inquire as to the kind of animals that would satisfy this criterion I would venture to say that mature mammals are capable of having both affective and reflective attitudes. Once again, what can be done to such beings is highly restricted. For example, since human beings will qualify for moral importance consumption of a human being by a human being will require justificatory reasons; however, these justificatory reasons will be limited.⁷³

⁷² See p.42 for Tooley’s notion of a “subject of an experience” *Abortion and Infanticide* New York: Oxford University Press 1983 and p.51 of Regan’s *The Case for Animal Rights* for the notion of a “subject of a life”.

⁷³ An example of a justificatory reason is being trapped on a deserted island with a dying dead companion with no means for consumption other than the dying companion and nutrition is required immediately. Or finding oneself in a lifeboat with five other companions and there is room for only five or all occupants are sure to meet with death.

Sentient beings differ from plants and tractors because they consciously (as opposed to the unconscious plant which seeks the sunlight) seek the satisfaction of their desires. Plants and trees do not have the wherewithal for consciousness, i.e., a central nervous system. Because these sorts of things do not have consciousness they cannot be harmed or benefited in the way gorillas and animals akin to gorillas can. It matters to a gorilla if she is anaesthetized and dispossessed of body parts just as it would matter to you or me if such an atrocity were committed against us. The gorilla is consciously aware that harm is being inflicted on her and in her own way she would prefer not to be treated in such a manner. A plant or tree, however, is incapable of preferring one way or another way of treatment because they cannot consciously desire things.

Because amoebas do not have conscious wants, I am not committed to saying that amoebas have moral significance. It is a biological structure that is simple and that has no sense organs. It is "a piece of living matter, microscopic in size, continually changing in shape and moving slowly about. It has no specialized organs, such as a mouth or sense organs; any part of its surface will engulf food with which it comes in contact, and any part will respond to stimuli such as light or touch".⁷⁴ An amoeba cannot be harmed to the same degree as a creature that satisfies the criterion of mattering because an amoeba is not conscious; what is more, an amoeba does not have a mental life that furnishes it with a wide range of capacities. It is alive but things do not matter to it. I can approach an amoeba and poke it with a needle and it will react but it will not react with awareness to my action because it does not have the neurophysiological wherewithal for awareness of the needle and hence, in my technical sense, for conscious harm. The amoeba will be

⁷⁴ G. C. Grindley *The Intelligence of Animals* London: Methuen and Co. 1937 p.5

harmd just as a plant will if I destroy it but it will not have made a difference to the amoeba one way or another.

Conscious entities are living things that are unlike plants and trees (or insects) in that they have wants as well needs and hence can be harmed in ways that entities not capable of experience can, for they can also have their wants unsatisfied. The harms that such creatures can incur are worse than the harms that nonsentient things can incur by virtue of their greater capacities to incur losses. Things matter to these kinds of beings because they have a point of view and are not simply collections of cellular materials or inanimate materials that do not have a perspective on the world. If we were to take him as speaking not, as he does, about moral *standing*, but about moral *significance* then Landman, in my opinion, could be taken as making exactly the point I am making. In his article, Landman says the following:

... moral standing emerges only where there is an entity with sentient consciousness or with a subjective point of view such that that entity somehow has conscious experiences which are, in some minimal sense, pleasant or unpleasant to it. Only a being capable of experiencing enjoyment or suffering, a being we can be concerned about for its own sake where that 'sake' matters to the being itself, is a moral patient.⁷⁵

Sentient beings are physiologically capable of a wider range of harms and benefits than nonsentient beings and therefore require protections of a different sort. However, as Landman does not make the distinction, and as I have, there are some sentient beings that require even greater moral protections. Beings such as adult mammals, as I have suggested, are capable of sustaining a wider range of harms than other animals that are less physiologically sophisticated. There might be a need, as I suggested earlier, for a third threshold for these sorts of beings.

⁷⁵ Landman, p.10

I would like to remind the reader that things with moral standing and moral significance will have varying degrees of importance. Within the category of things with moral standing there is a range of rankings which entities of varying capacities will occupy. For example, we might put bacteria at the bottom of the moral standing line because such things cannot be harmed to the same extent as plants, for example, which will occupy perhaps the next place on the moral standing line. As we progress on the line of moral standing, we will find less specialized animals that have some type of awareness of the outer world but who cannot feel pleasure and pain. Further up the line of moral standing we will cross the second threshold of moral significance. Here we will encounter creatures that can satisfy the criterion of mattering, such creatures will be sentient beings. Now, as I suggested in Section 1, sentient beings can be divided into those that are only capable of affective awareness and those that are capable of both affective and reflective awareness. It is the latter type of sentient creature, I want to suggest, and have indeed already suggested, that might have more moral importance than those sentient creatures that are not capable of reflective consciousness. Because such creatures possess a highly sophisticated awareness and consequently can be harmed to a greater degree, we might assign such creatures the *prima facie* right to life.

5. Moral Importance

Moral standing and moral significance are threshold concepts which denote properties which do not admit of degrees. However, within both classes, I want to suggest, there exist entities that have varying capacities to suffer harms. At times, there may be competing interests that will need to be resolved using some sort of method of rank ordering. For example, within the class of things with moral standing there might be some that can incur greater losses than others. One might consider that invertebrates such as fish can suffer more harms than seaweed. If there occurs a conflict of interest

between a school of fish and an entangled mass of seaweed *moral importance*⁷⁶ might find that the interests of the seaweed will rank behind those of the fish. This does not mean that at all times will the more complex being's interests take precedence over those of the less complex living thing. The concept of *moral importance* can be used as a tool in deciding which entity or entities in situations of conflicting interests will have moral priority. It is to these issues that this section is addressed.

One might assume that the interests of those with moral significance will always have moral priority over those without significance. This, however, is an incorrect assumption. The conceptual structures I am introducing in no way require that assumption, and indeed I myself would anyway want to reject the assumption. Consider the case of the interest of a company to dump its refuse in a nearby lake versus the interests of the plant and animal life which inhabit the lake in staying alive. The interest of the human beings that form the company in having a convenient and inexpensive location for the dumping of their chemicals will be an interest that ranks behind the interest of the lakes plant and animal life in being free from pollutants. Although human beings are morally significant beings and the plant and animals that inhabit the lake do not qualify for moral significance, the interests of the human beings may well be considered of less moral importance than the things that inhabit the lake in staying alive. A reason that might be given is that the intrinsic value of the living things that inhabit the

⁷⁶ Moral importance is a property of interests whereas moral standing and moral significance are properties of things, (e.g., plants and animals). This is to say that importance is a description of the interest in question in a context and not directly of the entity in question whereas standing and significance are descriptions of the entity in question.

lake ranks above the economic interests of the company; the harm that the inhabitants of the lake will incur is greater than the inconvenience that the company might experience in trying to find another method of disposal of their waste. Therefore, ranking interests using the notion of moral importance is a means of adjudicating conflicts that will exist inter-threshold as well as intra-threshold. Another example of competing interests intra-threshold can be seen in a modification of Judith Jarvis Thomson's trolley thought-experiment. Thomson describes the trolley problem in the following way:

An out-of-control trolley is hurtling down a track. Straight ahead of it on the track are five men who will be killed if the trolley reaches them. Bloggs is a passerby, who happens at the moment to be standing by the track next to the switch; he can throw the switch, thereby turning the trolley onto a spur of track on the right. There is one man on that spur of track on the right; that man will be killed if Bloggs turns the trolley.⁷⁷

If we modify Thomson's trolley scenario by replacing the five men with one man and the single man on the right track with a cat we will have a situation in which there are competing interests between two species with moral significance. Moral importance, as a conflict settler, will need to determine what is to be done. What will be taken into consideration is the level of harm that will be incurred by both beings if they collide with the trolley. It seems that the human being will incur greater suffering than the cat. Granted, both beings are intrinsically valuable and are morally significant but the losses that the human being will experience will be worse than those of the cat. For example, the human being might be aware of his impending doom, his family will lose the support of his income and will grieve the loss of someone who is dear to them, the man is young and has a long life ahead of him with many opportunities, etc. The cat is also dear to a

⁷⁷ Judith Jarvis Thomson *The Realm of Rights* Cambridge, Mass.: Harvard University Press 1990 p.176

good many people who will suffer grief from her loss, she is also aware of her impending doom, however, moral importance might include her shorter life span and her lesser ability to incur the same level of satisfactions as the man. Moral importance, then, will weigh the benefits and burdens of the loss of the cat against those of the human being in the equation.

So I have distinguished between at least three classes of things - (a) those that have no moral significance and no moral standing, (b) those which have moral standing but no significance and, (c) those which have both moral standing and moral significance. It is my view that many discussions in the issues which suggest the need for a something like a notion of moral standing would be less confused and certainly less confusing if they had the two concepts and not one concept, i.e., they had not only the concept of moral standing (or something like that) but also the concept of moral significance (or something like *that*). The need for a three-fold classification of entities as above can be seen from a consideration of the lake and the trolley problem.

Michael Tooley's conception of moral standing, as discussed in his book *Abortion and Infanticide* (1983), is an example of a discussion that could benefit from a more complex analysis of moral standing. His notion of personhood is very like my notion of significance. I remind the reader of the earlier distinction I made between those capable of only affective attitudes towards things and those capable of reflective awareness. I also suggested that beings of the latter sort will have more importance than those only capable of affective awareness. It is those capable of reflective awareness that might be what Tooley refers to as "persons". Tooley argues that these sorts of beings, i.e., persons or those with high moral importance (on my analysis) possess the *prima facie* right to life. Yet, what is clearly lacking in his discussion is the *standing* (or perhaps *no standing*) of those who do not satisfy the criteria for personhood. The apparatus that I have

proposed (i.e., moral standing, moral significance, and moral importance), I want to suggest, is needed if we are to get clearer about the difficult problems involved in substantive moral questions about how to treat nonhuman animals, fetuses, plants, etc. It is clearly a much more complex apparatus than is usually found in the literature which is addressed to these substantive moral questions. I think that the more complex apparatus is certainly needed. Tooley's discussion, I wish to suggest, is less persuasive than it might have been because, in effect, he works with only a twofold classification - if an entity lacks personhood, then it seems that morally we can ignore it completely and use it or destroy it as we feel fit.

In the next section, I would like to address this last claim by reviewing Tooley's discussion of the moral status of fetuses. My discussion will, I think, reveal clearly the relative value of his simple apparatus and my more complex apparatus.

6. Tooley's Concept of a Person

Tooley suggests that to be a person is to be due moral protections and he construes this as meaning that persons have certain rights. He states that only beings which are capable of desiring their own continued existence are persons and hence only such beings have the rights which go with personhood. Tooley argues for his views about personhood and the moral treatment of persons from some views which he has about the nature of rights-holders. His argument is as follows:

(1) The concept of a right is such that an individual cannot have a right that p be the case unless the individual is capable of desiring that p be the case.

(2) An individual cannot at time t have capacity, in the strict sense, of desiring that p be the case unless that individual possesses at time t the concepts involved in the proposition that p.

(3) The proposition that an individual desires true when he desires to continue to exist involves the concept of a subject of experiences, the concept of a temporal order, and the concept of identity of things over time.

Hence:

(4) An individual cannot have a right to continued existence unless he possesses the concept of a temporal order, and the concept of identity of things over time.

(5) The proposition that an individual desires true when he desires to continue to exist is not merely the proposition that some subject of experiences or other continue to exist, but the proposition that this subject of experiences continue to exist.

(6) In order to have a desire about an individual picked out by an expression such as 'this subject of experiences', one must in some sense be aware of the individual in question.

Hence:

(7) An individual cannot have a right to continued existence unless he has the capacity of being aware of himself as a subject of experiences.⁷⁸

What is involved in being a "subject of experiences" according to Tooley? An entity must be a subject of consciousness, aware of itself as a continuing mental substance with a desire to continue to exist. Embryos and newborns, for example, could not be said to have such an interest since they are not capable of desiring to continue to exist; adult members of many nonhuman species, however, have an interest in continued existence because they are capable of having such a desire. Tooley asks the reader to consider the following in response to critics Stanley Benn and H.J. McCloskey who propose agency as the criterion for moral standing:

⁷⁸ Tooley *Abortion and Infanticide* p.107

...a continuing mental substance that has memory-thoughts about past mental states that belonged to the same mental substance, that believes that there will be, in the future, a mental substance identical with it, that has desires about the future of that mental substance, and whose personality traits do not alter radically with the passage of time. Suppose, finally, that this entity has no capacity for deliberation. It has desires, which it is aware of, and finds itself acting upon, but it never has any sense of considering different possibilities, of weighing conflicting considerations, thereby, of deciding to do one thing rather than another. If Benn and McCloskey are right, such a being would not have a right to life.⁷⁹

Tooley rejects agency as a necessary condition for being a person (“moral standing”) and questions the relevance of capacity for decision-making:

My own inclination is to say that if something can recall some of its past states, can envisage a future for itself, and have desires about that, and if its personality traits do not alter in too drastic a fashion over short periods of time, then it is intrinsically wrong to destroy it, and it is irrelevant whether some of its desires have arisen through a process in which conflicting considerations are weighed against one another.⁸⁰

This then is Tooley’s view. I think that it is clear that he conflates moral standing and moral significance in a quite implausible manner. His criterion for personhood suggests that it is significance that he is talking about. But, in that case, I would argue that he is mistaken in suggesting, as he seems to, that we can just do what we will with no constraints on our actions with entities which are not persons. If, on the other hand, it is standing that he is talking about when he talks of persons, then his criterion is much too stringent. Tooley’s person or non-person framework is in need of supplementation if it is to have any plausibility. Tooley is much too quick and leaves the reader with the suggestion that if something is not a person then it has *no* moral status at all because, in effect, he does not distinguish between standing and significance.

⁷⁹ *Ibid.*, p.141

⁸⁰ *Ibid.*, p.142

Tooley's concept of a person includes most adult animals but excludes the very young who are incapable of being the subjects of experiences. What is to be done with these failed candidates for moral standing on Tooley's account is a question whose answer is implied in Tooley's definition of a person. Failed candidates will not have a right to life although we still will have duties to them. I think that Tooley wants to offer these failed candidates some type of moral standing but not standing that will grant them the right to life. What Tooley is really describing is moral significance and not moral standing. Moral significance will grant one the right to life and moral standing will not. Tooley's concept of a person is the restriction of the right to life to those beings that are morally significant by virtue of their ability to be subjects of experiences. However, Tooley's analysis is deficient in that it does not offer a clear account of what we are to do with failed candidates. My distinction between moral standing and moral significance provides the necessary tools for deciding what we are to do with things that are capable of being harmed and benefited yet that do not have a mental life of a particular level. In the next section, I would like to entertain some possible objections that proponents of other frameworks (Tooley included) might put to the moral standing/moral significance/moral importance framework that I have proposed.

7. Objections to the Alternative Framework

7.1. Preliminary Comment

In section 1.2, I addressed the inadequacies of ethical frameworks that have been proposed for our treatment of nonhuman life. In section 2, I provided a discussion of the meaning and criteria of moral standing. I then explicated a set of concepts which are, I think, needed if we are adequately to address and articulate the complexities of discussions about the moral status of non-human entities, and indeed of the status of human beings themselves - the concepts of moral standing, moral significance, and moral

importance. I will refer to this alternative framework as the moral standing/moral significance/moral importance or MSSSI framework. In this section, I would like to entertain some possible challenges to my framework that proponents of alternative theories may make, e.g., Tooley, Regan, Sumner, Singer, and Landman.

Once again, I have distinguished between three classes of things, (a) those without standing, (b) those with standing, and (c) those with both standing and significance. Those without standing will not be recognized as having interests. Such things cannot possess intrinsic value but may possess instrumental value. Those things which can be harmed/or benefited are the sorts of things which can have interests and thus will enter the moral community and consequently will have moral standing. Such entities, I think it plausible to say, will have intrinsic value rather than instrumental value, they will be valuable in themselves, because they are the sorts of things which can have interests. Now, within the class of things with moral standing there is a special class of things that are due special regard because of their wider-ranging capacities; such beings, as a result, can suffer greater harms. These kinds of things will be deemed morally *significant* and thus will have higher moral protections than those with mere moral standing; what we can do with such entities is highly restricted.

What I have singled out as a morally relevant commonality is the possession of interests; the capacity to have interests will admit an entity into the class of things with moral standing. Naturally, those with interests are the sorts of things which can be harmed or benefited. However, different kinds of species of living things are physiologically constituted in differing ways, i.e., some animals are more complex than others, which will result in differing capacities to experience harms and benefits. Differing protections for those things with differing capacities to suffer harms and benefits must be recognized if we are to have a fair distribution of protections. For

example, the capacity of a blade of grass to suffer harm is considerably less than that of a chicken; a chicken can sustain far greater losses than a blade of grass. Such varying capacities will result in having what we might call a “moral standing line”; and, as we progress up the moral standing line we will discover an increase in the capacity to incur harms and benefits. At the point at which the animals we encounter can satisfy the criterion of mattering we will cross the threshold of moral significance. These beings are so constituted that destruction of them or infliction of other kinds of suffering will require tighter justification than for the destruction of nonsentient beings. Both the community of things with moral standing and moral significance will at times involve instances of competing interests that will need to be adjudicated. These competing interests might be intra-threshold or inter-threshold, i.e., they may only involve members within the first threshold of moral standing or within the threshold of those with moral significance or between members of the two thresholds. *Moral importance* will thus be the conflict settler of these competing interests. It is this kind of framework that is better able to deal with the complexities that arise due to different capacities yet which can also recognize important commonalities that are shared by different species.

Moral standing and moral significance are threshold concepts and will not admit of degrees. Rather, the conflict settler of *moral importance* will serve as a tool for ranking the interests of competing members of the moral community. However, qualified candidates of each threshold will have protections that bear some similarity. Those with moral standing will qualify for protection that will involve justificatory reasons for harm to them while those with moral significance will possess higher protections (what we can do to such beings will be more limited than what we can do to things with mere moral standing). And, perhaps some of those with moral significance will possess the *prima facie* right to life.

Moral standing and moral significance are useful concepts that will enable those concerned with our ethical treatment of nonhuman life to sort out what is appropriate behavior from inappropriate behavior towards such entities.⁸¹ My suggestion has been that moral standing will admit anything that can be harmed and/or benefited as a candidate for some type of moral protections. Things that are alive, from viruses (if they are alive which is unclear) to entire biospheres, will qualify for moral standing. However, this does not mean that these entities will have the right to life. If killing a virus will mean that we will save a species of animal then the interests of the species may outweigh the interests of the virus. Moral standing will still allow us to rank the interests of members based on justifying reasons. The interests of plants may sometimes outweigh the interests of human beings and the interests of human beings will sometimes outweigh the interests of plants.

Note, once again, that while moral significance does not admit of degrees the conflict settler which I call *moral importance* will admit of degrees. Crossing the second threshold of moral significance, will not result in the entity having equal protections in every situation with other members of this second threshold. Rather, in cases of competing interests the entity's attributes will be examined and differing levels of capacities will be recognized. However, because mature human beings will naturally qualify for moral significance (since any human-made morality that excluded human agents would be quite odd) it does not follow that all such individuals will always occupy the highest echelon of moral significance. The more important interests of an animal can

⁸¹ It will also provide those concerned with our treatment of nonhuman life with the necessary tools to persuade the opposition of the inconsistencies inherent in our current ethical structure.

outweigh the interests of a human being. Similarly, the second threshold of moral significance will allow us to deal with those classes of entities that are obviously complex enough to warrant high protections. Mature mammals are likely candidates for such protections because such animals have capacities which will allow them to suffer losses that are of greater moral relevance than less complex entities. However, as moral standing allows the ranking of differing consideration due to entities varying capacities moral significance will allow a similar kind of ranking. In allowing the ranking of interests, I am acknowledging that there may be competing interests between members. Once again, we should not assume that any interests of any human will outweigh any interest of any non-human; important human interests may rank below more important nonhuman interests.

Moral standing and moral significance especially if supplemented by the notion of *importance* are preferable to other criteria for moral candidacy because these notions are not arbitrary and strive for consistency in moral principle. They are not arbitrary because they are not based upon the preference of a particular group for itself, e.g., all white heterosexual males under the age of sixty-five have moral standing. They strive for consistency because they seek to uncover what it is about morality that is of importance and once this is discovered all entities possessing the characteristic will be given moral consideration. In Section 3, I singled out interests as the reason why human beings should be viewed as qualifying for moral standing. I have found that the capacity to have interests (interests that can be promoted or thwarted) is what is of moral relevance in the ethical treatment of human beings *and* that such a capacity is shared with human beings by both plant and animal life.

Moral standing/significance is more useful than other proposed frameworks because these frameworks fail to provide us with the tools for deciding what to do with those

entities that fall outside the criteria of being a subject of experience (in the case of Tooley) and sentience (in the case of Sumner) but who nevertheless have interests that can be promoted or thwarted. Frameworks such as those provided by Singer, Regan, Tooley, Sumner, Landman, and Frey cannot adequately deal with these complexities. In the following sections, I would like to take on some possible challenges that such philosophers might put to the MSSSI framework and argue that these challenges can be met. So, this said, let me examine some possible challenges to my complex apparatus.

7.2. Moral Vacuousness Objection

Tooley, Sumner, and Landman might argue that moral standing as I have presented is too broad and consequently lessens the importance of morality because it allows the entrance of all sorts of things. Because things such as plants and bacteria cannot be the proper subjects of moral regard granting them admission to the moral community will diminish the importance of morality. This objection is captured in the following statement of Landman: "I would suggest that moral standing becomes vacuous and that morality loses its point given a criterion of moral standing which allows intrinsic moral concern for living entities which are devoid of any own point of view in the sense of at least a very rudimentary or primitive consciousness".⁸² Why should we be concerned what we do to plants? Plants cannot experience the same losses as mature animals can (in the case of Tooley) or those of sentient beings (in the case of Sumner). The protections provided by morality, on this view, are provided only for those that can feel what they experience; if morality is to be taken seriously it should be limited to those beings that can suffer rights and wrongs in the proper sense of these words. The objection is also captured in the following statement by William Frankena:

⁸² Landman, p.13

... I can see no reason, from the moral point of view, why we should respect something that is alive but has no conscious sentiency and so can experience no pleasure or pain, joy or suffering, unless perhaps it is potentially a consciously sentient being, as in the case of a fetus.⁸³

As I have discussed earlier, sentient beings are not the only kinds of things that can sustain losses or receive benefits. Plants and trees can be properly said to be harmed or benefited because they are the sorts of things that can be effected by external stimuli. Moral standing recognizes the intrinsic worth of things that are alive but that are not sentient. A forest, for example, that is devoid of any animal life and whose existence is not effecting any significant interests of other entities has a purpose that is independent of the absent animal life. The individuals that make up this forest have interests that can be analysed in terms of their ability to carry out functions that are independent of sentient beings. The destruction of this forest for no good reason would be wrong because the individuals that make up the forest would be senselessly harmed as a result. The trees that make up the forest have defence mechanisms that they will employ to stave off predators, they are capable of being poisoned, they have a natural propensity to grow; in short, trees have a good that is capable of being promoted or hindered. If we are concerned about being consistent in moral matters then the interests of the forest (the ability of the trees that make up the forest to incur harms and benefits) will count in our deliberation.

However, moral standing and moral significance recognize that there are differing levels of harm and that some entities' needs are more important than others. For

⁸³ W.K. Frankena "Ethics and the Environment" in K.E. Goodpaster and K.M. Sayre (Eds.), *Ethics and Problems of the 21st Century* Notre Dame and London: University of Notre Dame Press, 1979 pp.3-20 (quotation on p.11)

example, a blade of grass will not have the same moral protections as a human being. In extending the moral domain, I am not arguing for an egalitarian ethic; for example, I am not claiming that everyone in the moral domain has a right to life. I am simply maintaining that the capacity for having interests is what is of concern in moral matters and things other than sentient beings can have interests and thus can be harmed and/or benefited. Although the above philosophers want to exclude non-persons (in the case of Tooley) or non-sentient entities (in the case of Landman and Sumner) from the moral domain, it is unlikely that they would say that we may do what we want to things that fall outside their criteria. However, their frameworks, as they have outlined, leave it open as to how we are treat failed candidates.

In *Abortion and Moral Theory*, Sumner argues against Goodpaster's life criterion (i.e., anything that is alive has moral standing):

...if morality has to do with the promotion and protection of interests or welfare, morality can concern itself only with beings who are conscious or sentient. No other beings can be beneficiaries or victims *in the morally relevant way*. Goodpaster is not mistaken in suggesting that nonsentient beings can be benefited and harmed. But he is mistaken in suggesting that morality has to do with benefits and harms as such, rather than with a particular category of them. And that can be seen the more clearly when we realize that the broadest category to be benefited and harmed extends not only out to but beyond the frontier of life. Leaving my lawn mower out in the rain is bad for the lawn mower, pulling weeds is bad for the weeds, and swatting mosquitoes is bad for the mosquitoes; but there are no moral dimensions to any of these acts unless the interests or welfare of some sentient creature is at stake. Morality requires the existence of sentience in order to obtain a purchase on our actions.⁸⁴

Sumner is maintaining that the harms and benefits that plants can incur are of a different kind than those that can be incurred by sentient beings and are not of moral relevance. Sumner is therefore in agreement with Goodpaster (and me) that plants can

⁸⁴ Sumner, p.136-137

indeed be benefited and harmed. What Sumner opposes is the inclusion of non-conscious harms and benefits into the same category as sentient harms and benefits. Sentient harms and benefits involve a richer idea, Sumner might state, of what it is to be harmed and benefited. Nonsentient things such as plants do not have the neurophysiological wherewithal to sustain conscious harms and benefits. Therefore, according to Sumner, plants should not have moral standing.

I concur with Sumner (as Goodpaster might as well) that the kind of benefits and harms that nonsentient life can incur is different in kind. Conscious beings are usually physiologically more sophisticated than most plants and thus can sustain harms and receive benefits that are more complex in nature. However, as Goodpaster would want to agree with me this is not good enough reason to exclude nonsentient life from the moral community. The capacity to have interests, consequently the capacity to be harmed or benefited, is what is of relevance when we are deciding what kinds of actions are morally acceptable and morally objectionable. In admitting plants into the moral community, frameworks which endorse a life criterion do not intend to diminish the harms that sentient life can incur as degrees of moral protections will apply. The intrinsic value of a plant is located in its capacity to carry out functions that realize a good that is its own. Human beings and other animals, as a result of being alive, are capable of being harmed and benefited (understandably to a greater degree than plants); human beings and other animals can carry out functions and realize a good that is their own. It is these sorts of things, i.e., those things capable of being harmed or benefited, that necessitate protection from abuse or neglect by moral agents. Goodpaster's life criterion recognizes that harm and benefit can be incurred by nonsentient living things and hence grants moral standing on a more inclusive criterion.

The sentience criterion, i.e., the capacity to feel pleasure and pain, what I have called the capacity for affective mattering, is not an appropriate cutoff point for the moral community because it is an endorsement of a limited view of harm and benefit, and secondly, it is narrowly restricted whereas the interests criterion (covering all things that can incur harms and benefits) is an all-encompassing life-respecting criterion. And, hence the interests criterion, construed as I have construed it (what Goodpaster calls the “life criterion”), moves beyond what Goodpaster calls a “hedonistic” moral outlook that has a strong hold on Western ethical thinking:

Let me hazard the hypothesis, then, that there is a nonaccidental affinity between a person’s or a society’s conception of value and its conception of moral considerability. More specifically, there is an affinity between hedonism or some variation on hedonism and a predilection for the sentience criterion of considerability or some variation on it. The implications one might draw from this are many. In the context of a quest for a richer moral framework to deal with new awareness of the environment, one might be led to expect significant resistance from a hedonistic society unless one forced one’s imperatives into an instrumental form. One might also be led to an appreciation of how technology aimed at largely hedonistic goals could gradually “harden the hearts” of a civilization to the biotic community in which it lives - at least until crisis or upheaval raised some questions.⁸⁵

What both Goodpaster and I are maintaining is that harm and benefit (in my case this is also the capacity for interests) goes beyond mere sentience and hence recognition must be given to things outside the realm of sentience but within the realm of having a good that can be promoted or thwarted. The sentience line, as a criterion of standing (though of course of significance) is too narrow because it places all emphasis on a subset of the domain of harm and benefit. In including nonsentient living things, once again, I am not diminishing the importance of the gravity of harms that sentient beings can incur. Extending what Landman refers to as the “gathering”, does not mean that

⁸⁵ Goodpaster, pp. 321-322

beings which have greater interests at stake will be the equals of plants and other nonsentient living things. Rather, extending the moral circle to include nonsentient living things, is an attempt to move beyond a myopic view of morality and offer a fair and consistent principle by which to guide our moral conduct.

Interests can only be held by those things that are alive and since plants, as I have argued, can be construed as having interests that are independent of human or animal needs plants are appropriate candidates for moral protections (only things that have interests are things which have a stake, plants are the kinds of things which can have a stake). If we shift our thinking beyond pleasure and pain we will see that while such a criterion is sufficient, it is not necessary. As I have been maintaining throughout this thesis, plants can incur harms or benefits that will result in the thwarting or promotion of the plant's interests.

I take issue with other frameworks such as the one proposed by Tooley which are more restrictive than frameworks such as Singer's and Sumner's that propose sentience as the cutoff for moral standing versus what I am calling significance. On the Tooley model, adult animals (both human and nonhuman) qualify for personhood (and hence moral standing). The issue of young animals (both human and nonhuman) is a problem for the Tooley model for surely Tooley would not want to say that we may do what we please with such creatures.

I am here making a moral claim for it seems to me that it is highly objectionable that we exclude things such as young animals. Tooley's restriction of moral standing (what he refers to as "the right to life") to subjects-of-experiences will disqualify kittens, babies, the mentally deficient and other beings that are incapable of the requisite mental life. These beings are still capable of suffering losses, i.e., incurring harms and benefits, and thus to fail them as moral candidates would be to support the assertion that their

suffering is not of moral relevance. The first threshold of moral standing allows us to admit Tooley's failed candidates into the moral realm and thereby recognizes their capacities to suffer harms. Similarly, it is objectionable that we exclude nonsentient things that admittedly cannot incur the same degree of harm as animals but nevertheless can incur harms and benefits that are related to the shared capacity (with animals) for life. Singer and others endorsing sentience as a cutoff point will object that the harms incurred by plants are of a different kind than that of animals and is not a difference in degree as in the case of Tooley's exclusion of sentient but less developed things. Plant life, then, cannot suffer the same kind of harms as can sentient beings; to speak of the incurring of harm by a plant is to speak of a different kind of harm from that of a sentient entity; sentience, on this view, is not only sufficient but necessary for moral standing. Therefore, extending the moral domain to include plants is not only inappropriate but lends to the diminishing of the meaning of morality.

The above philosophers' frameworks are not mistaken in their attribution of moral standing to persons and sentient beings. Rather, they are wholly justified in attributing moral standing to such creatures. What these frameworks are deficient in is their failure to provide the necessary tools to deal with the complexities that will arise in our dealings with the nonhuman world. Tooley and others have restricted their conceptual tools to "person or non-person", and "standing or no standing". Rather, what is missing in these frameworks are: recognition that harm and benefit goes beyond sentience (while it stops at life), thresholds that recognize that creatures of a decided mental life require more protection than less complex animals and nonsentient living things, and that attribution of moral standing to less complex beings does not mean that such beings are on equal footing with more complex beings. Problems, such as the one discussed in the next section, can be effectively addressed by a framework that is inclusive yet acknowledges

that varying degrees of complexities in living things will require varying moral protections, but that also entities that share a certain level of complexity will require similar moral protections.

Morality does not lose its importance if we consider the interests of nonsentient living things. It does not lose its importance because what is of relevance, i.e., the capacity to have interests, and therefore, the capacity to be harmed or benefited, is still respected. What I am aiming to do is give recognition to the good of nonsentient living things and move beyond the restrictive bounds of hedonism while stopping at the line of interests which I argue, if we are concerned about being consistent in moral matters, is an appropriate cutoff point for morality. Rather, recognizing the interests of all things that are alive will have the effect of increasing the importance of morality because we will have what Taylor refers to as a life-respecting view of the earth. Morality, then, will not be vacuous if we extend the moral community to the nonsentient but limit it to the living. All things that are alive have a good and thus to recognize that good is to extend and give more importance to morality.

7.3. Arbitrariness or Narrowness Objection

Alternatively, there are some such as Andrew Brennan who, in “The Moral Standing of Natural Objects”, maintain that the life criterion, i.e., the capacity to be harmed and benefited, is too narrow in that it does not include things such as the Grand Canyon and rocks which should also qualify for moral standing.

Brennan argues for a wider scope of morality and thus would object to the interest criterion for moral standing by stating that limiting morality to things that are alive is just as arbitrary as the line of sentience; everything that is natural including inanimate objects should be the proper subjects of moral concern. The Grand Canyon, rock formations, the air, and deserts should be counted as having intrinsic worth just as living things are

accorded intrinsic worth. Brennan maintains that “the pointless destruction of inanimate things is as much vandalism as the destruction in a similar spirit of living things”.⁸⁶ In this paper, Brennan argues for the similarity or what he calls the “common predicament” of all natural uncreated things with living things; acts of vandalism against living things (sentient and non-sentient) are merely a difference in degree rather than kind. Brennan also grants that while natural non-living things do not have interests he urges his readers to move away from this kind of thinking and adopt a more holistic approach to ethics.

While we should not destroy things such as rock formations if they impinge on the interests of anything with standing, I disagree with Brennan that such things are in a “common predicament” with things that are alive. Further to this, acts of vandalism are not of the same kind as those that are committed against things that are alive since such acts are wrong only for instrumental reasons. Things that are alive have a stake that things that are inanimate do not possess. If I tear a leaf off a tree the tree incurs a loss (despite how minimal this loss it is a loss nevertheless). If I scrape the surface of a rock the rock does not incur a harm because the retaining the shavings cannot be said to have been in the interests of the rock; there is not a function of the rock that has been hindered or thwarted by my action. A tree, however, has interests by virtue of its ability to be harmed or benefited by external stimuli; tearing a leaf off a tree amounts to interfering with a function of the tree. Once again, I can benefit or harm a tree but I cannot benefit or harm a rock.

Things such as the Grand Canyon have no good that can be furthered because it is not the type of thing that has interests that can be promoted or thwarted. The Grand

⁸⁶ Andrew Brennan “The Moral Standing of Natural Objects” *Environmental Ethics* V.6 Spring 1994 pp.35-56 (p.51)

Canyon is a merely a thing that exists that is not functioning in any independent way. One could argue that the Grand Canyon only has instrumental value, e.g., we attach value to the Grand Canyon because we admire its beauty. Like a painting, the Grand Canyon serves the purpose of causing stirrings of admiration when human beings view it and serves the purpose of housing the animals and plants that inhabit it. Other than these kinds of functions the Grand Canyon has no function of its own, it does not have interests that can be furthered or hindered.

I would also like to respond to Brennan's objection by pointing out that the scope of morality that he is proposing could be also considered to be too narrow. "Why stop at the line of natural objects?" some might want to ask him. A beautiful painting should also count as having intrinsic worth by virtue of its existence. Computers and other synthetic objects should have moral standing since they exist. The line of morality can be extended as far as mere existence and that will mean that everything from paper clips to human beings will have moral standing. If life is too narrow, I want to say to the Brennan camp, then limiting moral standing to natural objects might be too narrow as well. Synthetic objects as mentioned above might also be proper bearers of moral standing.

What is of moral relevance is the capacity to have interests, and consequently, the capacity to suffer harms and receive benefits, which I have argued, is the best starting point for moral standing. I agree with Landman that the purpose of morality is vacuous if we go beyond a cutoff point. The cutoff point that I have proposed is more appropriate than Landman's because the notion of harm and benefit can properly be applied to not only things that are sentient but to things that are alive. Plant life has a good of its own because it is able to carry out functions of its own; a plant has interests. A rock, however, does not have a good of its own because a rock is not the sort of thing that can have interests. Consider other planets in our solar system which are devoid of plant and

animal life. The rock formations on these planets cannot properly be said to have interests. These rock formations cannot be harmed or benefited by us (although they can be damaged by our actions). Were there no life in our solar system “intrinsic worth” is a quality that could not be properly applied to rock formations or other natural objects. Plant life and animal life have intrinsic worth because plant life and animal life have interests as a result of their ability to be harmed and benefited.

If we consider Landman and Singer’s sentience criterion admission to the moral community will give entrance to sentient beings but what are we to make of those entities that are not sentient yet valuable in themselves nevertheless? Landman and Singer’s response would be to point out that such things do not have intrinsic value and that it is an error to attribute intrinsic value to such things. Rather, plants and other animate non-sentient entities are instrumentally valuable. The value of a plant is found in its satisfaction of the needs and desires of sentient beings. Only sentient beings have intrinsic value because only sentient beings have a good of their own.

I respond to this objection by pointing out that intrinsic value can be applied widely to include non-sentient things because such things have a good of their own. Having a good of one’s own is having functions that lie outside the good of some other thing. For example, the good of a plant is found in its capacity to flourish. The good of a tree is found in its ability to respond positively to adequate sunlight and water. Stones and other such objects do not have a good of their own because such things do not have interests that are at stake. Intrinsic value applies to things that are alive because things that are alive have functions that are independent of any other living thing. Something that has instrumental value by contrast is a thing whose function serves the interests of a living thing. As I have outlined in Section 3 of this thesis, only living things can have interests as living things can incur harms and/or benefits. Intrinsic value, then, applies to things

that have a good of their own, e.g., can be the direct recipients of harms and benefits; sentient beings are not the only kinds of living things that have a good of their own.

Thus, Brennan's extension of the moral domain to include things that are not alive but natural is misguided. What these natural objects have is instrumental value. The Grand Canyon and other similar natural nonliving things serve the needs of the living things that depend on it for the furthering of their interests. The attachment of intrinsic value to such things is a mistake because what *is* being attached is instrumental value. Natural objects such as rock formations invoke feelings of admiration and respect in human beings which might lead to the conclusion that they have inherent value. Rather, they are serving the purpose of causing emotions in human beings. Secondly, I have pointed out that natural nonliving objects do not have interests that can be promoted or thwarted and thus fail to satisfy the interest test. Morality, I have argued, is about protecting, and perhaps promoting, the interests of things and such things do not have an independent good of their own.

7.4. The Lack of Clarity Objection

Another possible objection to the moral standing/moral significance framework can be made by both Singer and Regan. Singer and Regan can point to the lack of definitive lines that one cannot cross. The framework that I am proposing, they might say, is much too complex and will be difficult to implement. Singer might say that "sentience" is a clear line that can be easily implemented. Regan might want to say that his "subject-of-a-life" criterion is a clear line at which the line of moral regard should be drawn. Singer and Regan may state that their criteria select an acceptable line at which to limit moral regard because their criteria select what is morally relevant; my framework, they might continue, does not provide a clear and simple line at which to draw morality.

This objection has some force if what is needed *is* a simple line at which to draw moral regard. I again counter this possible Singer/Regan objection by contending that a simple framework will not do, what is needed is a more complex ethical theory in order that we may take care of the complexities in a morality which gives recognition to the interests of nonhuman life. Let us first consider Regan's subject-of-a-life criterion as stated in the *Case for Animal Rights*:

Individuals are subjects-of-a-life if they have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feeling of pleasure and pain; preference and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential life fares well of ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else's interests. Those who satisfy the subject-of-a-life criterion themselves have a distinctive kind of value - inherent value - and are not to be viewed or treated as mere receptacles.⁸⁷

Regan goes on to state that those animals over the age of one (both nonhuman and human) will satisfy the above criteria for moral standing. Subjects-of-a-life will have inherent value because they satisfy the above criteria and those with inherent value will qualify for moral standing. If Regan's aim is to offer a clear demarcation between those entities that count as morally relevant and those that do not then he has succeeded. The clear demarcation of the subject-of-a-life criterion will allow us to clearly separate those that have moral standing from those that do not. We can check to see if a candidate has for example "perception, memory, and a sense of the future..."; if it does not that it will be a failed candidate, if it does that it is a successful candidate. Regan's criterion presents itself as a clear test of what is of moral relevance. What is more, once a thing qualifies as a subject-of-a-life then she holds equal moral standing with other subjects-of-a-life.

⁸⁷ Regan, p.243

Regan is thus proposing what he himself calls a “categorical” criterion of moral standing: “one either *is* a subject of a life...or one *is not*. All those who are, are so equally. The subject-of-a-life criterion thus demarcates a categorical status shared by all moral agents and those moral patients with whom we are concerned”.⁸⁸

Granted, Regan’s criterion can serve as a clear marker between bearers of moral standing and failed candidates. However, while it is a clear marker it is also quite arbitrary in its failure to include entities that are not subjects-of-a-life but who are nevertheless capable of suffering harms and benefits. Those under the age of one, e.g., infant animals, experience harms and benefits despite their inability to have a “psychophysical identity over time”. Regan’s framework, while admirably simple, arbitrarily dismisses beings that can suffer harms and benefits but fail to satisfy the criteria of a subject-of-a-life. What is Regan to do with these failed candidates? It seems that they do not qualify for moral standing and therefore what we do to them is without restriction. Regan’s model, like Tooley’s, tells us what we cannot do with beings that satisfy their respective criterion but fails to inform us about candidates that do not satisfy their respective criterion but can suffer in morally relevant ways. Surely, an eight month-old kitten or human infant should have some form of moral protection given that these beings can suffer harms.

The moral standing/moral significance framework will account for differences in capacities yet also provide moral protections for entities that can suffer harms. This framework casts a much wider net in order to embrace all entities that can suffer harm and receive benefits. In proposing such a framework, I am not contending (as do Regan and others) that all those who satisfy the criterion have equal treatment (although they all

⁸⁸ Regan, p.245.

have inherent worth). Rather, admission to the moral community is merely a threshold that entities cross. Once inside the moral community what one can do to a member requires justification, outside the moral community what one can do to a thing is not restricted.

Because moral standing casts a wider net entities such as infants will be afforded moral protections despite their lack of intelligence required by the Regan model. The interests criterion for moral standing recognizes that infants can suffer losses and have a good of their own and thus grants them admission to the moral community. The interests criterion is not an arbitrary criterion as is Regan's because it isolates the capacity to have interests (hence be the kind of thing that can be harmed and benefited) as what is of moral relevance. By contrast, satisfying the criteria of a subject-of-a-life is perhaps too demanding and draws an arbitrary line between those who have moral standing and those who do not.

I would also like to reply to this objection by pointing out that the MSSSI framework does indeed have a simple line at which to draw moral standing. The interests criterion is a clear line at which to admit things into the moral realm. Secondly, those that satisfy the criterion of mattering will qualify for higher moral protections and perhaps those that satisfy both the capacities for affective and reflective consciousness will qualify for the right to life. Moral importance will serve to adjudicate competing interests. Therefore, it seems, that the MSSSI framework is both consistent and a simple model for morality.

7.5. The Complexity Objection

Another objection to my view might be that it is too complex, perhaps that it is unnecessarily complex. The egalitarian frameworks of Singer and Regan avoid all of these complexities. To this I reply by saying that so far from the complexities being a disadvantage, they are in fact an advantage - indeed, I would argue that they are essential

if we are to make sense of conflicts of interests. Frameworks such as those of Regan and Singer do not tell us what to do in cases of competing interests: the MSSSI framework does. In other words, the MSSSI framework is also a much more attractive ethical framework *because* of its complexity.

Without going into too much detail, Singer's sentience criterion, like Regan's subject of a life criterion, will work the same way as an objection to the MSSSI framework. Sentience, Singer might state, is a clear marker between those who have moral standing and those who do not. Singer's sentience criterion is also much wider than Regan's but once again it can be considered inflexible when we consider cases involving non-sentient entities. It seems that Singer and other supporters of the sentience criterion are committed to maintaining that the interests of a sentient being will always outweigh the interests of non-sentient things. Singer, then, might object to the conflict-settler *moral importance* since moral importance might force the interests of the nonsentient being to be ranked above those of sentient beings. On Singer's model, non-sentient things are excluded from the moral community and therefore what we can do to them is not restricted for intrinsic reasons. Rather, what we can do to them will not result in moral reproach so long as the acts do not violate the interests of a sentient being. For example, if a rainforest is slowly being destroyed because human beings are harvesting its contents for medicinal purposes, moral standing, as I have outlined, will require that we consider the interests of the rainforest when deciding whether or not to stop its destruction. Because the rainforest has intrinsic value and is not simply considered instrumentally valuable its interests will need to be considered in the schema of things. It seems that Singer is committed to supporting the harvesting of the rainforest if greater satisfaction would be produced by such an act. Since the rainforest itself does not have moral standing as a non-sentient entity its interests have no weight in Singer's

cost/benefit calculation. If the rainforest is to be saved it would be saved based on its instrumental value (e.g., the animals that inhabit the forest).

Thus, what are Singer and other proponents of narrowly-defined criteria for moral standing to do with the competing interests of nonsentient things and sentient things? It seems that the rainforest will not count for anything and thus what we do to such entities is not restricted so long as it does not interfere with the interests of those who do qualify for moral standing. Yet, surely if the rainforest does not count for anything any plant does not count for anything and consequently there should be nothing wrong with indiscriminately destroying nonsentient living entities. This surely is unfair if we consider that beings such as plants have interests that are in need of some kind of protection. To give no recognition to things that can be harmed and benefited is inconsistent. As things which are intrinsically valuable, nonsentient entities have a good that can be promoted or thwarted. The good of such things should surely enter into the moral equation. Using the notion of moral importance on my framework will allow us to weigh the interests of *all* things that can be harmed and benefited and choose the best possible outcome.

The notion of moral importance will be also be useful in cases of competing interests intra-threshold. For example, both Singer and Regan appeal to an egalitarian model of moral standing, i.e., everyone that qualifies qualifies equally, yet have difficulty addressing questions of competing interests. If we consider the dog in the lifeboat scenario⁸⁹, both Regan and Singer endorse an equal inherent value position yet both also

⁸⁹ This is a popular thought experiment in which we are to imagine the following. Four people and a dog are in a lifeboat. There is room for only four occupants therefore one of the five will have to be tossed into the deadly waters. Who shall it be? Both Regan and Singer decide that the dog must be tossed aside for their respective

decide that the human beings are more valuable than the dog.⁹⁰ They both then create an *ad hoc* solution to this problem by appealing to the ability of the human beings to suffer greater loss than the dog and therefore sacrifice the dog to the perilous waters. The framework that I have proposed is better able to deal with such issues without modification or *ad hoc* principles. In the case of the lifeboat, all five individuals would qualify as morally significant beings. The dog, unfortunately, would have to be sacrificed since the human beings (as Singer and Regan agree) would suffer greater harms.⁹¹ In other words, I would argue that we need not only the notions of standing and significance, but also the notion of importance, if we are to make sense of issues like this. (I would like to remind the reader that such real life cases are rare and that human interests will not always outweigh the interests of other species).

reasons: Regan because "Death for the dog..., though a harm, is not comparable to the harm that death would be for any of the humans" (*Case for Animal Rights*, p.325); and Singer would presumably have to weigh cost and benefits of sacrificing the dog versus a human being, and having done this, would find that utility would be d by sacrificing the dog.

⁹⁰ Recall Singer's slogan: "All animals are equal" and consider the following from Regan's *The Case for Animal Rights*: "These individuals [subjects of a life] ... are therefore due, as a matter of strict justice, treatment that is respectful of the kind of value they have, and all are owed this treatment equally". (p.277)

⁹¹ For example, we might count the human beings as having a longer life span in which there would be many more fulfilments that could be secured or perhaps we might count the losses that the family would incur if their beloved were sacrificed to the waters.

I therefore reply to the complexity objection by maintaining that a more complex framework is needed in cases of competing interests. Some frameworks such as those of Singer and Regan claim to be egalitarian, i.e., all things that satisfy the criterion are equal, yet in cases of competing interests we are not told what we should do. The MSSSI framework contains the conceptual tools that will allow us to rank the interests of competitors based on their *importance*, that is, the level of harm or the losses that will be incurred by each competitor.

7.6. Endorsing the Status Quo Objection

Tooley, Landman, Singer and others might also object that my framework is simply an endorsement of the *status quo*. That is, what I am proposing is a hierarchical structure somewhat similar to the Great Chain of Being, low life forms occupying the lowest echelons with human beings at the top of the pyramid (angels and God aside).⁹² The objection might continue that what I am proposing is nothing new but a more detailed account of an anthropocentric view of life. Singer might want to say that his cutoff at the line of sentience is a more just means of determining things with moral standing, as

⁹² The *status quo* is the traditional belief, which is largely cross-cultural, that we may use nonhuman life in whatever manner we choose to further our ends. Opponents of this are groups acting behalf of animals and/or the environment that work towards the eradication of such abuse. The status quo is the standard belief that we may entertain with, destroy, and torture (e.g., vivisection) nonhumans for our purposes no matter what the harm to the animals. Because animals are not humans, proponents of the standard belief maintain, it is permissible to treat them in ways human beings would not be treated.

Singer himself has stated: "All animals are equal".⁹³ Sentience does not count the suffering of a human being as more important than that of a dog for example. In choosing the criterion of sentience as marker of moral standing, we will be choosing a non-arbitrary attribute at which to draw the line of standing. Beings capable of experiencing pain and pleasure are constituted in such a way that deprivation of their needs or infliction of harms are morally objectionable. Singer, Landman, and Sumner, by endorsing the line of sentience, are proposing a more just measure for separating the class of those with standing from those without. The moral standing/moral significance framework, the objection will continue, is not just but simply reinforces the framework already in force in most human communities.

This objection as it stands is seemingly forceful. I acknowledge that the moral standing/moral significance story does utilize gradations in capacities as an organizational tool. Admittedly, mature human beings are the types of beings that are due high moral protections yet this does not mean that other animals of similar capacities are not due the same moral protections. Primates such as gorillas, chimpanzees, and orangutans will be due moral consideration that is equal to that of a human being. Rather than selecting a unique characteristic of human beings, e.g., rationality, what has been selected as a morally relevant characteristic is the capacity to be harmed and benefited (the capacity to have interests). An oak tree has the capacity to be harmed and benefited yet it cannot be harmed or benefited in the same way as a bird can be harmed and benefited. Similarly, a cat cannot be harmed or benefited in the same way as a chimpanzee can be harmed and benefited; a chimpanzee, due to the complexity of its physiology, can suffer greater harms and gain greater benefits than can a cat. However,

⁹³ This is in fact the title of the first chapter of Singer's book *Animal Liberation*.

both beings have the capacity for a mental life that is far more complex than that of a bird. Cats and chimpanzees can be harmed or benefited in ways that a bird cannot. It might be argued that cats and chimpanzees possess both affective and reflective consciousness and thus we might assign to these sorts of beings the *prima facie* right to life. The cutoff point of moral significance will thus come into play at the point of mattering for the bird, the chimpanzee and the cat are the sorts of beings for whom things can matter. However, the chimpanzee and the cat may qualify for the right to life since such beings have emotions that are capable of being fulfilled, they have needs that are capable of being satisfied, *and* what is more, they are capable of individuating themselves from others and consequently have an identity. The moral standing/moral significance framework does not ignore the fact that cats can suffer harms that are worthy of recognition but it does recognize that more complex beings have an increased ability to suffer losses. This will not mean that we can sacrifice beings of a particular constitution to the laboratories of science because such beings will share a commonality with other beings of significance (e.g., humans) that if inflicted with such harm it will result in losses to those beings that are similar in kind. This, then, is hardly an endorsement of the *status quo* which permits the sacrifice of beings who share capacities with humans to the laboratories of science.

One might point out that Sumner's theory of moral standing does make room for gradations in moral protections and thus is similar to the framework that I have proposed, i.e., one that allows for different moral protections based on varying levels of capacity to suffer harm. Sumner's analysis of moral protection is in terms of the right to life. He makes a distinction between *full* moral standing and *partial* moral standing and states that more complex beings will have a stronger right to life. Sumner states the following:

An analysis of degrees of standing would require a graded right to life, in which the strength of the right varied inversely with the range of considerations capable of overriding it. The details of any such analysis will be complex and need not be worked out here. However, it seems that we are committed to extending (some) moral standing to all vertebrate animals, and also to counting higher animals for more than lower. Thus we should expect the higher vertebrates (mammals) to merit greater protection of life than the lower (fish, reptiles, amphibia, birds) and we should expect the higher mammals (primates, cetaceans) to merit greater protections of life than the lower (canines, felines, etc.). Crude as this division may be, it seems to accord reasonably well with most people's intuitions that in our moral reasoning paramecia and horseflies count for nothing, dogs and cats count for something, chimpanzees and dolphins count for more, and human beings count for most of all.⁹⁴

While Sumner is correct in maintaining that adult human beings (he specifies "adult" in a previous section) as the right sorts of candidates for moral standing, I disagree with his statement that human beings will count for most of all. Sumner's proposed framework excludes non-sentient life and awards sentient life with varying capacities varying degrees of the right to life. Sumner's analysis is closer to an endorsement of the *status quo* as it lacks a threshold or thresholds at which morally relevant features will govern who gets what kind of standing. Rather, it seems that human beings are at the top of the pyramid because they are the most complex beings. While I agree that human beings are candidates for high moral protections I do not see why other non-human primates or higher mammals cannot share what Sumner calls an equal "right to life". It seems that while Sumner endorses a theory of sentience he simultaneously awards human beings the strongest right to life based on their mere membership in a species call *homo sapiens*. Other primates, as described in the quotation below from Goodall, have an emotional life that is comparable to human beings and deserving of recognition aside from its likeness to human behaviour. Such animals have a social and emotional life that is deserving of respect and non-interference by human beings. Sumner's model is an

⁹⁴ Sumner, p. 144

endorsement of the *status quo* as it lacks any kind of threshold that will accord beings with similar morally relevant features an equal right to life. So my account avoids the charge of anthropocentrism because it does not choose the satisfaction of the criterion of mattering for moral significance because human beings can satisfy the criterion of mattering. Rather, it is the other way around. I argue firstly to the mattering criterion and then note that humans satisfy it. As evidence that this is the direction of reasoning, it is noteworthy that things other than humans *can* satisfy the criterion.

Furthermore, in response to the *status quo* objection, I would like to state that frameworks such as Singer's and Landman's have little to say about what we should do with living things that fail to satisfy the sentience criterion. Only sentient beings have intrinsic worth and nonsentient living entities, at most, have extrinsic or instrumental worth. If both Landman and Singer accept this then the destruction of rainforests and other biospheres have no moral import if they do not support the life of any sentient beings. What Singer and Landman are endorsing is a framework that does not go beyond a mindset that informs us that only pleasure and pain are what are of relevance in the moral sphere. By contrast, the moral standing/moral significance framework admits nonsentient entities which can hardly be considered an endorsement of the *status quo*; traditionally, plant life has had little if any moral standing.

The objection of endorsing the *status quo* will not be successful against the moral standing/moral significance framework because of the recognition that some species share enough in common with each other that they are worthy of equal protections. For example, chimpanzees and other non-human primates are not only genetically close to human beings but also share a social life within their species that is indicative of beings

that have complex relationships. Consider the following encounter told by Jane Goodall in an article entitled "Chimpanzees - Bridging the Gap" (1994)⁹⁵:

She was too tired after their long, hot journey to set to on the delicious food, as her daughters did. She had one paralyzed arm, the aftermath of a bout of polio nine years ago, and walking was something of an effort. And so, for the moment, she was content to rest and watch as her two daughters ate. One was an adult now, the other still caught in the contrariness of adolescence - grown up one moment, childish the next. Minutes passed. And then her eldest, the first pangs of hunger assuaged, glanced at the old lady, gathered food for both of them and took it to share with her mother.⁹⁶

Moral significance would deem that non-human primates are complex enough to warrant equal protections to those of human beings. Non-human primates might bear protections such as the right to privacy that will be endorsed by both the legal and moral codes. This then is hardly an endorsement of the status quo which would not support the right to privacy for non-human primates. Disregard for such a right and other minimal protections afforded to human beings is exemplified in the caging of non-human primates in zoos and use of them in scientific experiments. The *status quo* grants individuals the license to use non-human primates (who are notably more intelligent than a good segment of the human population) as tools for human ends; moral standing/moral significance would prohibit the use of non-human primates as tools for human ends.

The MSSSI framework of moral standing and moral significance that I have outlined can be differentiated from other ethical theories proposed for the treatment of nonhuman life. Unlike other frameworks proposed by philosophers such as Regan, Tooley, Sumner,

⁹⁵ Jane Goodall "Chimpanzees - Bridging the Gap" in *The Great Ape Project: Equality Beyond Humanity* Peter Singer and Paola Cavalieri (eds.) London: Fourth Estate Limited 1993 p.10

⁹⁶ *Ibid.*, p.10

Landman, Singer and others the moral standing/moral significance framework admits all things that can be harmed or benefited. Goodpaster's life criterion is the approach that I have chosen to adopt. Goodpaster goes beyond the sentience line and admits plant life which he believes can be conceivably be harmed and benefited. If we shift our mindset from the sentience stronghold we will see that plants share the commonality of being alive with sentient beings and as a result they can be harmed and benefited. Admittedly, those entities that can experience pain and pleasure should be treated differently from those who cannot and the moral standing/moral significance will account for the difference in capacity.

If we assess the debate that follows between those philosophers who opt for various lines of morality and who attack one another's proposed criteria we will find that their conceptions are confused and that they might be in agreement with each other but lack the conceptual notions to gain understanding of one another's position. For example, Tooley proposes what he calls the subject of experience criterion. Those who satisfy the criteria for the subject of experience will be called persons and persons will have the right to life. Naturally, one wonders what is to become of those who are not persons and who do not satisfy the subject of experience criterion. Is Tooley committing himself to the conclusion that we may do what we want with those things that fall outside personhood? Specifically, is Tooley maintaining that babies and other young animals do not have moral standing? It seems that Tooley would not endorse the wholesale slaughter of babies and other young animals and would find this to be morally objectionable; yet, his framework seems to lend him to this conclusion.

As I have suggested, what is missing from frameworks such as those proposed by Tooley and others is a separate notion to deal with those that are not constituted in such a way as to perceive themselves as individuals but who can nevertheless suffer

deprivations. Tooley, like many other theorists, narrowly limits moral standing which results in the exclusion of what seem to be reasonable candidates from the moral community. What Tooley and others may be discussing is moral significance and not moral standing. Persons, on the Tooley model, should be accorded high moral protections because they can suffer greater losses than non-persons; yet, non-persons can nevertheless suffer harms and could be due moral regard without having what Tooley calls *the right to life*. Tooley's analysis thus lacks the necessary tools to deal with failed candidates. It is deficient because its view is myopic on what should have moral standing. As I have surmised previously, it is unlikely that Tooley would say that we can do what we want with non-persons.

What I have sought to establish in this section is that the two-threshold framework which I have called "moral significance and moral standing" is better able to deal with the complexities that will arise in an ethical system that grants standing to nonhuman life.⁹⁷ Unlike other frameworks such as those proposed by Tooley, Sumner and other philosophers this framework provides the conceptual tools that will result in a system that is fair to all living things yet recognizes that varying capacities will require gradations in moral protections. This framework, however, shares with other frameworks the need for a radical shift in our thinking with regard to nonhuman life. Such frameworks require us to shed an anthropocentric view of the world and embrace a perspective that recognizes the inherent worth of all life forms.

In the next section, I would like to offer some positive arguments for the more complex MSSSI framework.

⁹⁷ Naturally, I support the position that such a system is obligatory; morality should not be a human-centred enterprise.

8. Positive Arguments for Moral Standing/Moral Significance/Moral Importance

8.1. Preliminary Comment

In the last section, I spent some time defending the framework that I have proposed against some possible objections. I have maintained through the thesis that an apparatus more complex than those found in the literature is needed in ethical theory; an apparatus that will be able to grapple with the complications that might arise in a theory that gives moral standing to nonhuman life. The story that I have presented is an account of the most fundamental structures of morality and therefore finding positive arguments for this story is terribly difficult. In this section, I will provide what I take to be three positive arguments that might be made in favour of this framework. I call these: the argument from the object of morality, the argument from the nature of the moral community, and the argument from moral theory. With regard to the argument from the object of morality, I will argue that the (MSSI) framework respects the object of morality if the object of morality is promoting good and minimizing wrongful actions. Secondly, I will argue that if the nature of the moral community dictates that we recognize things that possess interests that can be harmed or thwarted then we must recognize the interests of things other than human beings. Thirdly, I will argue that traditional theories such as utilitarianism, Kantianism, and modern contractarianism can be cleared of inconsistencies through the recognition of interests as the criterion of moral standing.

8.2. The Object of Morality

Morality, I will assume, is, minimally, a set of principles and/or rules. These principles and/or rules assign certain duties to certain people or assign rights to certain people. Morality might also be about determining certain things as being of value or specifying that such a distribution of benefits or burdens is just, etc., and setting the rules specifying that certain acts are to be done or avoided in certain situations. This definition

will not of course be accepted by all moral philosophers.⁹⁸ If we consider what the object of morality is, then it seems plausible to say that it is something to do with promoting beneficial deeds and avoiding deeds that are harmful to others or perhaps respecting the space of others. G.J. Warnock, in *The Object of Morality*, describes what he takes to be the aim of morality in the following:

Now, the general suggestion that (guardedly) I wish to put up for consideration is this: that the 'general object' of morality, appreciation of which may enable us to *understand* the basis of moral evaluation, is to contribute to betterment - or non-deterioration - of the human predicament, primarily and essentially by seeking to countervail 'limited sympathies' and their potentially damaging effect.... its [morality's] proper business is to expand our sympathies, or, better, to reduce the liability to damage inherent in their natural tendency to be narrowly restricted.⁹⁹

Now, Warnock is certainly being myopic in this particular sentence with his restriction of moral consideration to human beings. This bias aside, we can see it might be that the object of morality is: "to contribute to betterment - or non-deterioration - of the predicament [of those things which it makes sense to say *can* have their predicament improved, viz., those things which can have interests], primarily and essentially by seeking to countervail 'limited sympathies' and their potentially damaging effect... its [morality's] proper business is to expand our sympathies... and reduce our liability to damage in their natural tendencies to be narrowly restricted". In being sympathetic to things that can be harmed, we seek to promote as best we can rightful action and avoid as best we can wrongful action.

⁹⁸ For a discussion of this contentious issue please see *The Definition of Morality* edited by G. Wallace and A.D.M. Walker London: Methuen & Co. 1970

⁹⁹ G.J. Warnock *The Object of Morality* London: Methuen and Co. 1971 p.26

Now, several comments are needed here, even after we have removed the speciesism (and hence the arbitrariness) of Warnock's statement of object. Firstly, not any systems of rules might make up a system of *morality*. For a system of rules and/or principles can easily apply in a number of instances, e.g., the game of Monopoly, football, etiquette, the law, religion, etc.¹⁰⁰ I would like to work with an intuitive account of what the rules or principles of morality are. W.V. Quine, in *Word and Object* (1960).¹⁰¹ states the following on what "intuitive" might mean: "By an intuitive account I mean one in which terms are used in habitual ways, without reflecting on how they might be defined or what presuppositions they might conceal."¹⁰² I will use morality then in this sense of the word.

Secondly, by the word "object" in the phrase "the object of morality" I mean any or all of the following:

- a) what morality/moralities *in fact* do or best alone do in a society
- b) what morality or moralities *ought* to do in a society
- c) what good or goods morality or moralities *do* promote and/or what evil or evils they *do* prevent
- d) what good or goods morality or moralities *ought* to promote and/or what evil or evils they *ought* to prevent

In these discussions, I am not assuming a realist stance and therefore not assuming that there is in fact a single correct morality. I am in fact simply asking what is the aim of

¹⁰⁰ Once again, see Wallace and Walker for a discussion of what the rules of morality are as opposed to any other set of rules.

¹⁰¹ W.V. Quine *Word and Object* Cambridge, Mass.: Technology Press 1960

¹⁰² *Ibid.*, p.36

any system of morality with a view to creating what might be a reasonable account of what the object of morality might be. If we consider the aims of actual moralities such as Nazism, utilitarianism, Kantianism, and other systems of morality what we will find is that they are designed to protect the interests (of a select group albeit).¹⁰³ The object of morality, I am maintaining, seems to point to the protection of all interests (whoever's interests they may be).

I would like to begin by making some sociological points about what form the object of morality might be in some societies. For example, in some human societies, prohibitions are implemented in the form of rules against deeds that will cause pain and suffering. In Canadian society, there are both moral and legal prohibitions against inflicting unnecessary suffering on another human being.¹⁰⁴ Canadian society organizes its legal and moral code so as to restrict the kinds of behaviour that are considered inappropriate or reprehensible. The object of morality, or at least one of the objects, in these societies, is to minimize misery, damage, harm, and perhaps benefit those who can

¹⁰³ Theories such as divine voluntarism, which states that God has deemed human beings as the only beings with standing because humans are ensouled is problematic in itself. This sort of theory may not be attacked on grounds of consistency but perhaps on grounds of rationality or some other objection.

¹⁰⁴ There are of course both moral and legal prohibitions against causing harm to animals, however, such protections are minimal and hardly comparable to those reserved for human beings. Plants, of course, have little if no protections. Further, animals and plants are largely considered property and do not possess direct interests. The interests of the owners of such "items" are what are essentially at stake.

be benefited by our actions. In some societies, the male is considered to be more valuable than the female and consequently he is granted more privileges and rights than the female; the male's interests are given more moral weight. The object of morality, in these communities, is to further the interests of males. What is counted rightful in these moralities, then, is the promotion of action that will further the good of the male and prohibitions of actions that will cause harm to the male. In some societies, it might be the case that the interests of religious group A are given more protection than the interests of religious group B. The rules and regulations of morality are construed in order to further the good of A and prevent the harm of A. Indeed, systems of rules and principles which we would count as positive moralities in their different ways do seem construable as being concerned with interests. There are countless examples of how different societies organize their rules and principles in order to promote the interests of some (or perhaps all things which are capable of having interests). What the aim of all these kinds of moralities is to protect and promote the interests of something.

If the object of morality is as described in the above paragraphs (the protection of *interests*) then what we need to examine is who can be the beneficiaries of right action and the victims of wrongful action. When searching for candidates for moral standing then we will attempt to find those things that can be harmed or benefited, viz., those things that have the capacity for interests. Human beings most certainly can be both the beneficiaries and victims of moral actions. The systems of morality described above are instances of systems that restrict moral standing to human beings (or some human beings). However, if we want to avoid arbitrariness we must not exclude things from the moral sphere which are capable of having interests, viz., capable of incurring harms and benefits. And, therefore, we must include *all* things that have interests.

Thus, if morality is concerned about the minimization of harm or the promotion of beneficial actions then the moral circle must be extended to include interests of all living things and not only those of a subset called *homo sapiens*. Interests, viz., the capacity to be harmed and benefited, is what we are essentially concerned about in matters of morality.

One might counter this claim by objecting that the capacity to have interests as I have construed them is too wide a criterion for moral standing. I respond to this objection by referring the reader to Section 7 in which I dealt with this worry under the heading “The Moral Vacuousness Objection”. In there, I argued that harm and benefit can be incurred by things other than human beings and if we want to be consistent about moral matters we cannot arbitrarily select the interests of some and disregard the interests of others. I also pointed out that differing levels of harms and benefits will result in differing levels of protections and differing levels of importance will result in differing levels of protections. Thus the MSSSI model is not one that gives blanket equality to all things that can have interests.

If the object of morality then is the protection of things that are capable of having interests what might be the nature of the moral community? In the following section, I would like to argue that the nature of the moral community will include the interests of both moral agents and moral patients.

8.3. The Nature of the Moral Community

The argument from the nature of the moral community seeks to create what might be a reasonable view of morality based on what the object of morality is, i.e., the protection of interests. If we consider what moralities do in fact aim to do we will find that it is essentially the granting of recognition to things for whom right action can be meaningfully predicated. But that is not all, for right actions and wrong actions are done

to things. Many have assumed that the things *to* which right and wrong actions are done must be the same kinds of things as the kinds of things that can themselves do right and wrong actions. It would be hard to defend this assumption without allowing arbitrariness into the story. This said, one must then acknowledge what kinds of things should be viewed as being recipients (in the sense of “beneficiaries”) of right and wrong action. The answer to this which is surely plausible given all that has been argued so far in the thesis is that the recipients, the beneficiaries, of moral action will not only include entities that can do right and wrong actions (moral agents) but also many other sorts of things, indeed anything that can be harmed or benefited, that is, anything which can have interests. As Landman states, the moral community should be viewed as containing not only moral *agents* but also moral *patients*. Because both moral patients and moral agents are the sorts of things that can have interests the moral community will include both categories of living things. Human beings, for example, have interests that can be promoted or thwarted. Yet, if we consider what the object of morality is (perhaps the minimization of harm and the promotion of beneficial actions or the promotion of interests and avoidance of the thwarting of interests) human beings are also not the only species with this capacity. If we look at the collection of things that surrounds us we will find that many things have interests that can be thwarted or promoted. These things have a stake as these things have a good or a welfare that can be protected. The interests of all things capable of having interests will need to be entered into the moral equation if we are interested in being consistent and non-arbitrary.

If we look at the collection of things that surrounds us and decide that human beings qualify for moral standing and no other species does then we must provide a reason for this restriction of moral considerability just to human beings. In an early section, I considered some of the traditional (and typical) suggestions for limiting the moral realm

to human beings. The rationality criterion, the humanity criterion, the soul criterion and the language criterion are, I have argued, reasons that contain arbitrariness and are consequently lacking in justificatory force. If we want to be consistent about moral matters then we must shift our thinking beyond human terms and consider what is of concern to us in the moral community. Morality, as I have suggested in the above, is about preventing harm, i.e., minimizing pains (and perhaps maximizing benefits). If this is what morality is about then the capacity to be harmed or benefited is what is of concern to us as moral agents.

The moral standing/moral significance framework helps us to sort out the complexities inherent in the moral community. While plants most certainly are incapable of moral action (incapable of action for that matter) they are nevertheless capable of being the direct recipients of right and wrong action. Nonhuman animals and juvenile human beings, while not rational, are nevertheless capable of being the direct recipients of harmful and beneficial actions because such things are capable of having interests. To exclude such things from the moral realm because they are not rational would be mistaken if we accept that such things are capable of being the beneficiaries of moral action. Rather, it seems that we are compelled to grant recognition to the harms and benefits that nonrational things can incur. The MSSSI apparatus does just that. It extends the moral boundaries to include all things with interests. However, it also recognizes that there will be differing degrees of importance between members of the moral community and thus assigns the role of conflict settler to *moral importance*.

I have maintained that if we recognize that the object of morality is the protection of interests we will see that more than just human interests will enter into the moral equation. What is needed then is a more complex apparatus that will be able to tackle the complexities inherent in a system that admits nonhuman life. Thus, when we include

plants in the moral community we are recognizing that such things have a good that is capable of being fulfilled just as the good of a cat or gorilla is capable of being fulfilled. It might seem the case to some that admittance of nonsentient entities into the domain of morality entails the conclusion that such things will be granted the same consideration as sentient creatures; that if we admit nonsentient creatures suddenly we will not be allowed to chop down trees or eat fruit. This, however, is hardly the result of the moral standing/moral significance framework. This framework admits all entities on the basis of possession of interests and not on the possession of a subsidiary notion of an interest (e.g., human interests, sentient beings' interests, etc.). Rather, the natural fulfillments of all living things are given recognition and the capacity of those for whom things can matter (e.g., Landman's sentient creatures) are granted moral significance.

The moral community will thus consist of both moral patients and moral agents. It will be composed of things that can have interests and consequently such things will have moral standing. If we want a non-arbitrary and consistent moral framework we will be required to give recognition to *all* things that have interests. As I have argued elsewhere, the capacity to have interests, and consequently, the capacity to be harmed and/or benefited goes beyond the line of humanity and will include all life forms. Things within the moral community will all have intrinsic value and hence the benefits and harms that can be incurred by these things will be recognized. The patients and agents within the moral community, while they all are intrinsically valuable, will not all have the same treatment because of their differing levels of capacity to incur harms and benefits.

In the next section, I would like to argue that MSSSI can be incorporated into traditional moral theories. Given the constraints of this thesis, I will limit the discussion to utilitarianism, Kantianism and modern contractarianism.

8.4. Utilitarian Approaches to Moral Standing

Traditional theories such as utilitarianism have limited moral standing to creatures that are sentient. In this section I would like to argue that the MSSSI framework can make sense of theories such as utilitarianism. And, what is more, if utilitarianism were combined with and indeed embedded in the MSSSI framework, then the result would be a version of utilitarianism which would contain within it less arbitrariness, and indeed, less inconsistency.

Utilitarians, when discussing what I am calling “moral standing”, have focused their attention on sentience. The capacity to be harmed and benefited in a conscious manner has preoccupied proponents of this theory. Hedonistic and eudaemonist utilitarians will want to admit moral patients into the moral community because moral patients are things which can feel pleasure and pain or be happy or unhappy. But such versions assume that pain and pleasure are the only forms of harm and benefit when perhaps they should recognize that harms and benefits can be incurred in other ways, e.g., a plant can be a recipient of beneficial and harmful actions yet is not aware (as far as we know) of this. It is tempting to say that perhaps the deep theory of utilitarianism is better thought of as being concerned with pleasure and pain only because what is painful is often harmful and what is pleasant is usually beneficial. This is in effect the position taken by another version of utilitarianism, welfare utilitarianism. Welfare utilitarianism counts well-being as what is of moral concern and is sometimes interpreted to analyze well-being in terms of harm and benefit.¹⁰⁵ Welfare utilitarianism can recognize that there are harms and

¹⁰⁵ There are other forms of welfare utilitarianism which construe well-being in terms of preference satisfaction. I thank Dr. Baker for pointing out these important distinctions to me.

benefits that are not conscious but that nevertheless have an affect on the well-being of an entity. Moral patients will include anything that can be harmed or benefited and this class of things is certainly not limited to things that are aware of such harms and benefits. For example, the presence of a particular chemical in the brain as a result of consumption of a particular foodgroup is necessary for the mental health of a person. People are not aware of the presence of this chemical yet the chemical contributes to the well-being of the person. Similarly, a plant is not aware that adequate water and sunlight is beneficial to its well-being, but nevertheless adequate water and sunlight contribute to the well-being of the plant. So what I am suggesting is that traditional versions of utilitarianism are concerned with a very narrow view of what entails harm and benefit if they are unwilling to countenance that unconscious harms and benefits effect the well-being of sentient creatures. The more plausible version of utilitarianism, i.e., welfare utilitarianism, has room for the inclusion of nonsentient harms and benefits. If utilitarianism is to be devoid of inconsistencies or arbitrariness it cannot limit itself to a subsidiary notion of what will count as a morally relevant harm.

The moral standing/moral significance framework is a moral apparatus that is much more complex and therefore able to deal with the complexities that the animate world presents to us. It is in keeping with utilitarianism in that it has room for the sentience criterion, i.e., it gives recognition to sentient creatures, yet also recognizes that harms and benefits can go beyond consciousness and therefore has room for things such as plants and other nonsentient living things. The MSSSI framework, as I have hoped to show, is compatible with welfare utilitarianism in that it deems what is of moral relevance is the capacity to have a well-being that can be promoted or hindered. Indeed, as is, I hope, clear, I think that combining utilitarianism at least in its welfare form with

the MSSSI framework will yield a stronger theory than utilitarianism without the MSSSI framework.

I would like to now turn to a second traditional moral theory, Kantianism, and argue that it too can incorporate the MSSSI framework into its structure with some modification.

8.5. Kantian Approaches to Moral Standing

Kantian ethical theory limits the moral community to the kinds of entities that can be moral agents: indeed, the kind of entities that can be moral patients (recipients of moral actions) are exactly, and only, the same as can be moral agents. This emerges fairly clearly in the formation of what Kant says is the fundamental principle of morality, the categorical imperative. In the *Foundations*¹⁰⁶, one of Kant's formulations, and the one which is arguably the most important, tells us to treat people always as ends and never only as a means. He tells us in other words how to deal with things which are themselves capable of being moral agents: more importantly, he says nothing about how to deal with things which are *not* themselves possible moral agents!

Yet, if we consider the nature of moral action we must grant that immoral action can not only effect rational agents but the non-rational as well. I concur with Kant's view that only rational agents are capable of moral action, that is, only those beings that have the capacity to recognize the difference between right action and wrong action are capable of carrying out moral deeds or misdeeds. I do *not*, however, agree with Kant in his view that only rational agents can be *patients*. Moral actions after all can affect not only the kinds of things that can be moral agents, viz., rational beings, but also the kinds of things that cannot, e.g., both non-rational animals and plants. A baby or a tree are

¹⁰⁶ Immanuel Kant *Foundations of the Metaphysics of Morals* 1785.

both incapable of moral action but are capable of being the direct recipients of harms and benefits. While Kant's moral agents may be a special subclass of things that are alive and are due special consideration this cannot be as a result of their rationality, as rationality is not what allows them to be the recipients of harms and benefits. While we may allow rational beings to have such things as duties, rights and privileges as these beings are fully capable of undertaking moral action this does not lead to the conclusion that only rational agents can be the direct recipients of right or wrong action. Things that are alive, e.g., plants and animals, can be the direct recipients of moral action yet cannot be moral agents, since such things cannot be held morally responsible. In other words, why would Kant hold that it is wrong to harm the kinds of things which can be rational, but *not* those things which can be harmed but are not rational? This seems a deep arbitrariness in his theory.

Thus, systems such as that of Kant while justified in assigning moral worthiness to adult human beings are much too stringent and myopic in their outlook. They are justified in recognizing rational agents such as adult human beings as bearers of moral considerability because if we are going to begin the discussion of morality adult human beings must necessarily be included. This, however, does not lead to the conclusion that every other thing that is capable of being the direct recipient of right action should be excluded from the moral community. Rather, things capable of being the direct recipients of moral action, while understandably incapable of being moral agents, should be offered some moral protection since they have interests that are capable of being thwarted and promoted. Kant was perhaps justified in giving recognition to rational agents but not to the extent that it excluded things that are not rational but capable of being the direct recipients of right and wrong action.

A Kantian might object that animals cannot guide themselves by rational conduct and therefore cannot be held to be direct recipients of moral action. Kant himself might say that animals are incapable of rational (moral) action and therefore are outside the scope of morality. I would like to counter this objection by asking why it is that human beings that are not rational (e.g., the mentally incapacitated) should be included within the scope of morality. If a Kantian responds that these categories of human beings are not included I would object that nonrational human beings are still capable of being the beneficiaries of right action and the victims of wrongful action. I concur with the Kantian that plants, animals, and human incompetents cannot have obligations or what we call “duties”, however, these kinds of entities are capable of having duties owed to them. If a Kantian wishes to be non-arbitrary she must avoid simply selecting rationality as a criterion for moral standing.¹⁰⁷

8.6. Contractarianism

But not only classic Kantians have this narrow picture of the moral community. Others in a typically Kantian manner, might simply want to say that what morality involves is a contract between consenting members of a community. When we live in communities we either implicitly and explicitly agree to conduct our affairs in a certain manner and those who are incapable of contracting an agreement cannot be part of the moral community. Contractarians tend not to address these questions, but in so far as they do, they seem to assume that moral standing is restricted to the kinds of things which can make contracts, that is, to rational beings. A full discussion here would require an examination of the reasons given by contractarians for such a limitation. Here I merely

¹⁰⁷ I do not wish to entertain another discussion of this criterion, but refer the reader to Section 1 in which I discuss the irrelevance of rationality.

want to make the following points. Some contractarians might not want to include animals in the moral community because animals cannot contract an agreement with human beings. Firstly, once again, it must be pointed out that there are many human beings who cannot give consent to a contract but are nevertheless included in the moral community: such categories of human beings have moral protections. It is therefore inconsistent to single out the capacity for rationality as a criterion for moral standing and include nonrational human beings while excluding nonrational nonhumans. Thus, if a contractarian is to be consistent she can allow that while nonhumans cannot ask for better treatment those who are concerned with them can ask on their behalf. The contractual agreement will be based on the inferences of those concerned with the welfare of nonhuman life. The contract can be designed in such a way that protections for nonhumans are built into it. Granted nonhumans are not capable of contracting an agreement with human agents, but they are nevertheless capable of being the beneficiaries and victims of human actions. Bernard Rollin, in *Animal Rights and Human Morality* (1981), states the following on this issue:

Whatever merits this theory may have [contractarianism], it does not seem to provide us with legitimate grounds for excluding animals from the scope of moral concern. Most basically, it does not follow ... that just because only rational agents can set up or be party to the rules, only such agents are protected by the rules. In a nutshell, there is no argument that shows that only moral agents can be moral recipients...¹⁰⁸

¹⁰⁸ Bernard E. Rollin *Animal Rights and Human Morality* Buffalo: Prometheus 1981

Rollin, later in the book, discusses the “contract” that pets have with human beings with an attempt to show that the traditional view of what it is to “contract” an agreement is limited:

... it is difficult to find a more clear example of this sort of “contract” than that of man’s relationship to the dog. Yet, as we shall see, we are systematically violating the contract and the fundamental rights of the animals who are party to it ... Let us elaborate on this claim. One may choose to see the human relationship to the dog as involving something like a social contract, in which the animals gave up their free, wild, pack nature to live in human society in return for care, leadership, and food, which people “agreed” to provide in return for the dog’s role as a sentinel, guardian, hunting companion, and friend ... The dog evidences in countless ways its fulfillment of the contract with humans. The dog has been, and still is, a guardian of the home, a warrior, and messenger, a sentry, a playmate for and protector of children, a guardian of sheep and cattle, a beast of burden, a rescuer of lost people, a puller of carts and sleds, a friend, a hunter, a companion, a constant companion to the deaf and blind and other handicapped persons, an exercise mate, a contact with nature for urban people, and invaluable source of friendship and company, ...¹⁰⁹

While I do not wish to discuss whether Rollin is correct in his characterization of the dog as a participant in a contract with human beings, I do wish to acknowledge that other versions of what it might mean to contract an agreement (i.e., not requiring “rational” consent) are problematic for the theory. What is of more importance, however, as both Rollin and I want to emphasize, is that while nonhuman entities and immature human beings cannot contract in the sense demanded by contractarians they can nevertheless be the recipients of harmful actions. While only the most callous of us would want to say that we do not owe duties to these categories of things, it is safe to maintain that we do owe duties to things such as babies and animals who are vulnerable to the actions of moral agents.

¹⁰⁹ *ibid.*, p.137

The MSSSI framework goes beyond mere rationality (which advocates of contractarianism generally maintain is needed for contractual agreements) and recognizes that in addition to those capable of contracts (those who will have moral significance because they are the kinds of things that can satisfy the criterion of mattering) there are other things that cannot be excluded from the moral community because, while they cannot satisfy the rationality criterion or the mattering criterion, they are nevertheless the kinds of things which have interests.

What I have attempted to show in this section is that if utilitarians, Kantians, and contractarians are concerned with consistency and nonarbitrariness then they will recognize that the capacity to be a beneficiary of right action and a victim of wrong action goes beyond the lines of sentience or rationality. To the utilitarian, I argue that well-being can be incurred by things other than sentient creatures; welfare utilitarianism remains the more plausible alternative utilitarian theory. To the Kantians and contractarians, I argue that although nonrational agents cannot be *moral* or contract an agreement they can nevertheless be the recipients of human action. Since such creatures are vulnerable to our actions we might owe them duties although they cannot be themselves duty-bearers. Selecting rationality, as I maintained in Section 1, is akin to selecting hair colour or eye colour as a criterion for moral standing. In summary, things other than sentient creatures or rational creatures can have interests and so can suffer harms or incur benefits.

I am of course not concerned with showing that utilitarianism, Kantianism or modern contractarianism are unsound moral theories. Rather, within the scope of this thesis, my concern is with showing that traditional moral theories such as utilitarianism and Kantianism can be modified in order to make sense of the complexities that nonhuman living things present to morality. If such theories are to be devoid of

inconsistencies and arbitrariness; an account of why the limits of morality are imposed as the sentience line (in the case of utilitarianism) and at the rationality line (in the case of Kantianism and contractarianism). As I have suggested, the justification for the narrowing of the moral circle is absent given morality is concerned with preventing harm (and perhaps promoting benefits). Harms can be incurred by anything that has an interest and things such as plants and animals can have interests and to deny moral recognition to such entities is to deny something to which they are entitled if we are concerned about consistency in moral issues.

The moral standing/moral significance framework will embrace utilitarianism's sentient beings and Kant's and modern contractarianism's rational agents for these entities are capable of having interests. What is more this framework will grant recognition to the harms and benefits that nonsentient living things can incur. This in turn is a recognition that such things have intrinsic value by virtue of the fact that they have a good that can be promoted or hindered. Choosing interests as the marker of moral standing is not arbitrary as it does not examine a particular species of living thing and select a unique characteristic of that species and then decide that such a characteristic should be possessed by candidates for moral standing.

9. Conclusion

In this thesis, I have argued that if human beings have moral standing and if we examine the more plausible grounds on which they can have moral standing then human beings are not the only kinds of things that can have moral standing. I considered the notion of moral standing and found that it is closely modeled on the notion of legal standing. When examining the criteria for legal and moral standing found in the literature I argued in effect as follows:

A. Rationality, humanity, ensoulment, and language are variously flawed as criteria for standing. Instead,

B. the capacity to have interests is best viewed as the criterion of moral standing.

C. The arguments for A and B do not in any way turn on the claim that interests are interests of sentient things.

D. Hence, given C, it looks as though what makes it the case that sentient things have standing (viz., they can have interests) also makes it the case that nonsentient things have standing (viz., they too can have interests, though, of course, these are nonsentient interests)

E. Hence, not merely animals, but also plants can have interests and therefore standing.

F. Hence, consistency demands that we allow that both sentient and nonsentient things can have standing. Indeed, anything that can have interests has moral standing!

I also argued:

G. though artifacts and tools (e.g., tractors) can be damaged or protected, they cannot be harmed or benefited in themselves and hence they do not intrinsically have interests and hence they do not in themselves have moral standing.

Further, I argued:

H. Amongst those things which can be said to have moral standing, we need to distinguish two and possibly more subgroups which are to be assigned special status. I myself think that perhaps one more subgrouping might be needed for those beings that have both the capacity for affective and reflective consciousness. However, given the constraints of this thesis, I limited the discussion to one additional subgrouping called *moral significance*.

I. A third notion is needed if we are to make sense of the issues here, a notion which denotes something which admits of degrees. I called this *moral importance*.

Plants, trees, and nonhuman animals, while not all have the capacity for preference-interests, have the capacity for welfare-interests. Welfare-interests or needs are possessed by things that can be harmed or benefited. Plants, trees, and animals (human and nonhuman) are the sorts of things that can be harmed or benefited. Because such things can be harmed or benefited they have needs, and consequently, are the kinds of things that have interests. Plants, trees and animals thus satisfy the criteria for moral standing.

I have also addressed the difference between the needs of plants and what Frey calls the "needs" of inanimate objects. Frey maintains that if one attributes needs to animals and plants then things such as tractors and paintings will also have needs. As I have stated, Frey's notion of needs is used so loosely that the meaning of "needs" is lost. The needs of plants and animals differ in kind from the needs of tractors and paintings. Tractors and paintings do not have needs rather it is the farmer and the observer whose needs are being satisfied through the proper maintenance of the tractor and painting. Inanimate things can have extrinsic or instrumental worth whereas things that are alive have intrinsic or inherent worth, i.e., they are valuable in themselves. Tractors and paintings serve the needs of those who will benefit from their functions whereas things that are alive have a good of their own.

In the first section of this thesis, I considered several criteria that might explain why it is that moral standing is largely restricted to human beings. Rationality, humanity, ensoulment, and language were all found to be unsatisfactory responses to the restriction of moral standing to human beings. What I found to be germane to issue of human morality is the capacity to be harmed or benefited. Because human beings are the sorts of

things who have a well-being that can be promoted or hindered what we can do to human beings is largely restricted. However, when we examine why it is nonhuman life does not have moral standing we will not find the absence of the capacity to be harmed or benefited. Rather, nonhuman life shares these capacities with human beings. If human beings are granted moral standing on the basis of interests (having a good of one's own that can be realized or thwarted) then not granting moral standing to nonhumans is a glaring violation of principle.

I remind the reader that the granting of moral standing to a thing does not mean that all things with moral standing should be treated equally. The MSSSI framework is a two-threshold concept with varying degrees of moral protections within each category based on the differing levels of importance. Those things with moral standing will not all have moral significance and those things with moral significance will all possess moral standing. Within the category of things without moral significance there will be differing levels of protections. Things such as plants will have less protections than birds for example because birds are the kinds of things that can suffer greater harms than a plant. Birds are physiologically constituted in a way that enables them to secure greater satisfactions and incur more harms. Birds are sentient and thus necessitate more protection than plants. This, however, does not mean that the interests of birds will always outweigh those of plants. For example, if a bird is contributing to the destruction of a garden the interests of the garden may outweigh the interests of the bird. In such a case the bird may have to be moved to another location in order that the interests of the flowers in the garden be promoted. Human beings are physiologically-constituted in a way that allows them to secure greater satisfactions and incur greater harms than birds for example. Human beings, then, must be acknowledged to possess a wider range of interests than birds. This, as in the case of plants and birds, does not mean that all

interests of human beings will outweigh any interest of a bird. Because a bird, like a plant, is deemed to be a thing with intrinsic worth, her interests will have to be considered if in conflict with the interests of a more complex being.

In presenting a more complex framework, what I call the MSSSI framework, I have hoped to contribute clarity to the confusion that is apparent in the literature addressed to the moral status of nonhuman animals and nonsentient life. I have opted for the wider notion of what constitutes an interest with the intention of presenting a non-biased and consistent analysis. It is non-biased because it does not begin with a subsidiary notion of the general notion of interest. I have considered what having an interest involves in a general sense and thus considered the notion *before* considering what things ought to have moral standing. In doing so, I argued that all things that have the capacity to be harmed and benefited have interests that can be thwarted or promoted and on this basis contended that such things ought to be accorded moral protections. It might be that proponents of the sentience criterion, or the subject of a life/experience criterion (i.e., Regan and Tooley), or the humanity criterion decide what things should have moral standing prior to deciding on what basis moral standing should be granted and thus tailor the notion of interests to fit their preferred candidates. Once again, I have chosen to look at the notion of interests without bias and have found the capacity to be harmed and benefited to be what having an interest will amount to.

The confusion in the literature is also compounded by the simplistic models that are presented. It seems that philosophers in this area spend far too much time arguing against particular theories and less time on why it is that nonhumans do indeed qualify for moral standing. It seems that they are in agreement with each other because they recognize the interests of nonhumans but lack the vocabulary to provide a clear and consistent account of what standing means. Thus, the more complex apparatus of moral

standing/moral significance combined with the conflict settler called “moral importance” is a much more clear and consistent analysis and provides a much more attractive method of approaching moral matters. As I have suggested in previous sections, frameworks such as those of Landman, Singer, Regan, Tooley, and Sumner are simply on/off theories of moral standing, that is, one either has moral standing or one does not. This hardly helps when we must deal with cases in which the subject concerned fails to satisfy the criteria for personhood (in the case of Tooley) or sentience (in the case of Landman, Singer, and Sumner). Plants and trees in the latter case do not satisfy the criterion of sentience but nevertheless satisfy the criterion of interests. Such things are excluded from our “gathering” but nevertheless have a good that can be fulfilled. The interests of nonsentient living things must certainly be recognized if what we desire is a non-arbitrary criterion for standing. Yet, crossing the threshold of standing does not mean everything will have equal treatment as sentient beings and persons, due to their greater capacity to suffer harms, will require greater moral protections. Moral importance will adjudicate competing interests intra-threshold and inter-threshold as well. Therefore, sometimes the interests of a thing or things with moral standing will outweigh the interest of a thing or things with moral significance.

Thus, the impetus for having two thresholds of moral standing and moral significance is to acknowledge that there is a subclass of entities that are physiologically capable of a much more complex array of wants and needs. The class of animals for whom things can matter is a special class of things requiring special protections. What we might call an “interest in continued existence” will fall to all things with moral standing and such an interest should be protected. However, those with moral significance are a special subclass of the things with moral standing. This subclass will be divided into things which are only capable of affective attitudes and those which are

capable of both affective and reflective attitudes. To those who are capable of both the affective and the reflective we might assign the *prima facie right* to life rather than merely recognizing the interest of these creatures in continued existence. Further, the interests of things with moral significance will of course not always override the interests of things with mere moral standing and the interests of those with both reflective and affective capacities will not always override the interests of those with only affective capacities.

It is this kind of framework that will clarify the confusion in the current literature on the moral status of nonhuman life. Indeed, the debate on which moral theory will best accommodate the place of nonhumans conceals the glaring inconsistency and arbitrariness that characterizes current moral practice. As I have stated, I am not adopting a moral realist stance, but arguing that if we are concerned about consistency and non-arbitrariness we will not simply recognize the interests of selected things but the interests of *all* things that are capable of being harmed or benefited.

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