Introduction

Historically, children have occupied an inferior *social* status, in the sense that adults – who dictate the norms of social interaction – have generally regarded children as less worthy of consideration than themselves. A paradigmatic example of this phenomenon is the ancient Roman law under which parents had legal power to sell or kill their offspring (Maine 1930, 153). In addition to having an inferior social status, children have historically been viewed, by many philosophers in the Western intellectual tradition, as occupying an inferior *moral* status. Especially in the post-Enlightenment Western world, when the rational capacities of the individual were central to political theories supporting liberation from monarchy, philosophers maintained or presupposed that only rational, autonomous beings are "persons" belonging to the moral community, a proposition that could explain and justify children's inferior social status.[1] The prevailing view of childhood was as mere preparation for adulthood, a state of being unfinished relative to the human *telos* of cognitive and physical maturity.[2]

However, beginning in the seventeenth century, and accelerating greatly in recent decades, children's position in Western society and in political and moral philosophy has been substantially elevated.[3] Today, international

[1] See Annette Ruth Appell, "The Pre-political Child of Child-Centered Jurisprudence," 46 *Houston Law Review* 703, 737–50 (2009) (discussing the impact of Enlightenment political theories on attitudes toward children); Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Harvard University Press, 2006) 130–1 (discussing Kant and the Greek and Roman Stoics); Arnulf Zweig, "Immanuel Kant's Children," in Turner and Matthews (1998).

[2] Brocklehurst (2006) 3; David Archard, "Children," in LaFollette (2003), 92–3.

[3] See Ariès (1962) 38–39; Peter O. King, "Thomas Hobbes's Children," and David Archard, "John Locke's Children," in Turner and Matthews (1998) (both discussing early liberal political theorists' efforts to justify parental power over children by reference to some sort of contract, based on an acknowledgment of children's moral standing).

and domestic children's rights documents, national ombudsmen for children in many countries, professionalized child welfare agencies, public debates over the acceptability of corporal punishment, and a culture of more child-centered parenting testify to the enhanced respect for children in society. Scholarly work on the moral and legal rights of children has proliferated since the 1970s, with many philosophers and legal academics devoting all or most of their attention to children's issues.[4] It is less common today for philosophers to contend that children occupy a moral status inferior to that of adults. On the contrary, some contend that "[t]he principle that all humans are equal is now part of the prevailing political and ethical orthodoxy" (Singer 1979, 14), and that one fundamental commitment of a liberal democracy is "the proposition that each and every human being has equal inherent dignity" (Perry 2010, 61).

Philosophers have also paid increasing attention in recent decades to the concept and theoretical underpinnings of moral status in general. That work suggests general principles concerning, and criteria for determining, moral status. Those principles could now be applied to the case of children, in order to think through in a more rigorous way what moral status we *should* attribute to children relative to that of adults. But that task has not yet been undertaken, at least not in a sustained way. Whereas in the past three decades "a veritable industry" of work on animals' moral status has developed,[5] and an extensive environmental literature has analyzed the idea of our owing duties to nonanimal entities, moral status theorists have paid little attention to children. Moral theorists concerned with childhood have generally simply stipulated that children have a particular moral status relative to adults, and have focused on the implications of that presumed status.[6] Long overdue is a concerted examination of this most fundamental question in moral theorizing about proper treatment of children – that is, are children of equal, lesser, or perhaps even greater moral importance compared to adults? Undertaking such an examination can help us assess whether popular attitudes and scholarly assumptions have evolved in a direction consistent with sound general principles and

[4] For references to some of the more important theoretical and legal writings on children's place in society, and a critique of the field, see Appell, supra note 1.

[5] R. G. Frey, "Animals," in LaFollette (2003) 161.

[6] Two fine collections that exemplify this phenomenon are David Archard and Colin M. Macleod, eds., *The Moral and Political Status of Children* (Oxford: Oxford University Press, 2002), and Michael Freeman, *The Moral Status of Children: Essays on the Rights of the Child* (The Hague, The Netherlands : Martinus Nijhoff Publishers, 1997). Despite their titles, neither book offers an analysis of what moral status children have relative to adults and why.

criteria of moral status and, if so, whether they have moved far enough in that direction. The basic task of this book is to identify those general principles and criteria, assess how they should apply to children relative to adults, and consider some implications of that assessment for legal and social treatment of children.

In the course of accomplishing this aim, I uncover some deficiencies in general theorizing about moral status and suggest ways to correct them. This book therefore aims to improve theorizing about moral status more generally. In particular, most ethical theorists have supposed that only one criterion of moral status exists, while differing as to what that criterion is, and that moral status is an all or nothing thing – that is, a being has either "full" moral status or none at all. I show that neither a single-criterion nor an either/or view about moral status is defensible, and neither is consistent with the way our moral psychology operates. Holding onto those mistaken views is the primary reason ethical theorists have had such difficulty fitting their theories with settled convictions about specific cases – in particular, convictions that certain beings, such as adults in a coma, anencephalic infants, human fetuses, and nonhuman mammals, have some moral status but not the same status as normal humans after birth. Widespread specific moral beliefs or intuitions reflect an acceptance of moral hierarchy, but most theorists writing about moral status go to great lengths to deny such hierarchy, for reasons I will address.

I ultimately find that a more plausible and complete account of moral status – one that incorporates multiple criteria, recognizes that each morally relevant trait can be present to different degrees, and accepts that moral status exists in degrees – generates a quite novel and surprising conclusion about the relative moral status of children. To the extent philosophers in recent decades have addressed directly the status of children, most have simply stipulated that all human beings (at least after birth) are of equal moral status, so that children are the moral equals of adults, against the traditional notion that there is a moral hierarchy among human beings tied to age or stage of cognitive development.[7] At the same time, some still assert that children are inferior in moral status because of their lesser mental capacities relative to adults. Adherents to the view that "personhood," defined as having cognitive capacities that include at least self-awareness, is a necessary condition for having moral status are likely to say either that young children do not matter morally

[7] See, e.g., Noggle and Brennan, "The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice," 23 *Social Theory and Practice* 1, 2–3 (1997).

at all or that moral status is initially slight and then increases during normal human development.[8] My critique of the existing literature on moral status, however, supports an altogether different and novel position – namely, that if it is possible to arrive at any rationally defensible conclusions about the relative moral status of different beings (and it might not be), we should conclude that children occupy a moral status *superior* to that of adults. Various traits associated with youthfulness elevate beings' moral status, and in general children are more youthful than adults.

Chapter 1 explains what moral status is and how it operates in moral reasoning; demonstrates how assumptions about beings' moral status underlie all areas of law, public policy, and personal morality; and describes the status currently imputed to children, explicitly or implicitly, in these domains. The last of these – how society views children – is a very complex matter; no single, uniform attitude toward children prevails among people or is reflected throughout the legal and political system in Western society. But I identify several phenomena that appear to reflect an implicit assumption that children are less worthy of moral and political consideration than adults.

Chapter 2 begins the project of developing the best account of moral status, by getting at the root sources of attributions of moral status in human moral psychology. This approach differs from standard theorizing about moral status. Most theorists begin with assertions as to the relative moral status of particular beings – for example, competent human adults, persons in a coma, fetuses, or nonhuman mammals – and then argue that certain features of those beings justify according them that status.[9] Some attempt to ground conclusions about moral status in conceptual analysis of things such as duty and interests. The approach taken here is more comprehensive and foundational (in a nonrealist sense), first asking in the abstract what all the plausible criteria for ascribing moral standing to any beings are. It is also naturalistic, resting conclusions regarding the plausibility of possible criteria ultimately on observations about how our "moral brains" operate.[10] It pays particular attention to Humean and Kantian accounts of human moral psychology – grounding moral

[8] For the view that the youngest children have no moral standing, see Michael Tooley, "Personhood," in Kuhse and Singer (1998) 124–5; Narveson (2002) 267. For the view that moral status increases during development, see Tooley (1998) 122–3; Walters (1997) 61.

[9] See Dombrowski (1997) 28 (describing examples of this approach).

[10] Many other moral theorists appear to do this as well, though generally without acknowledging it. See Franklin (2005) 69–70 (discussing Carruthers and Narveson).

attitudes in, respectively, sympathetic identification with others and the inherently objective nature of demands for respect that we make on our own behalf. These accounts capture, as a descriptive matter, much of the social practice of assigning moral status. Chapter 2 suggests, though, that the Humean and Kantian accounts, even in combination, do not provide a complete picture of our practice of attributing moral status. Awe is an additional trigger for intuitions that other entities matter morally for their own sake, and disgust can trigger intuitions that other beings matter less or are less worthy of protection. My approach does share with many others writing on the topic a "coherentist" rather than "foundationalist" (in a moral realist sense) orientation, aiming not to establish any truth of any beings' moral status, but rather to assess whether current prevailing views as to children's standing in society are consistent with, or cohere to, general principles and criteria of moral status that arise from our moral psychology and that we apply in other contexts.[11]

Chapter 3 develops a list of criteria for moral status arising from these three sources or triggers of moral intuition – that is, from sympathetic identification, rational extension of our self-estimation, and awe. I demonstrate the implausibility of both single-criterion and all-or-nothing views of moral status, which predominate in the literature. Any plausible account of moral status, I contend, will allow for more than one basis for having it and will allow for degrees of moral status, in recognition of the fact that different beings have some status-conferring properties but not others and/or can possess any particular status-conferring property to different degrees. Moral status theorists have, to date, failed to grapple adequately with this latter reality in particular – that is, that characteristics such as rationality, sentience, and aliveness come in different degrees. Many simply assert that any being possessing a characteristic to any degree or passing some threshold level of the characteristic has "full" moral status, while offering no argument in favor of ignoring clear differences of degree.

Chapter 4 addresses potential objections to assigning moral status on the basis of multiple criteria and with reference to degree of manifestation – namely, that doing so might justify discriminatory treatment among humans in unacceptable or dangerous ways, and that such a complex

[11] Wood (2007) 44 characterizes this as the "dominant model" of moral theorizing today. Other theorists explicitly taking this approach to the topic of moral status include DeGrazia (1996) and Carruthers (1992). DeGrazia characterizes the test of coherence as "consistency among a wide array of judgments under constraints of adequate reason giving" (15) and offers an extended defense of the approach (11–35).

rubric for moral status makes the enterprise of assigning it too difficult, even indeterminate. It explains how a more comprehensive and complex rubric of moral standing actually provides a stronger basis than do standard accounts of moral status for assumptions about respect owed to certain groups of humans, such as mentally disabled adults and anencephalic infants. Such a rubric also offers a better justification than standard accounts for discriminations that we still collectively embrace – that is, of our intuitions that some beings, such as nonhuman animals, have *some* moral status but less than that of humans, so that it is morally permissible to have greater solicitude for the interests of humans than for equivalent interests of nonhumans. Chapter 4 also suggests that while the complexity of the rubric of moral status I offer might make fine distinctions between similar groups infeasible, some rough rankings are possible and, indeed, indispensable.

Having developed and defended a general theoretical approach to moral status, I undertake in Chapter 5 to apply the identified criteria to children and adults, in just a preliminary way, to see if any defensible conclusion might be reached as to which group of humans, as a general matter, occupies a higher moral standing. A thorough application would require incorporation of an immense empirical and theoretical literature, which is not possible in one chapter, so this assessment is meant to be suggestive and provocative rather than definitive. To make even a preliminary comparative assessment manageable, it is necessary to simplify by focusing on a narrow age range within each category of child and adult. It is not the case, of course, that there are just two phases of normal human life – childhood and adulthood – and that within each phase humans are static in terms of the traits they possess that could be relevant to moral status. There are dramatic changes from neonatal status to infancy to childhood to adolescence to early then middle then late adulthood. It might be that we should assign a different moral status to infants than to school-aged children, and to middle-aged adults than to the elderly. Throughout the book, I make some references to humans at all stages of life, but Chapter 5 principally compares preadolescent school-aged children (roughly six to twelve) with middle-aged adults (forties and fifties). Middle school children present a good test case, because many adults view them with a fair amount of dread. Should we revere rather than denigrate them?

Chapter 5 offers reasons for concluding that children come out ahead on nearly every criterion of moral status other than certain aspects of cognitive functioning, that adults' superiority in those aspects does not outweigh all the considerations that favor children, and that, in any

event, children's potential to develop those aspects of higher-order cognitive functioning nullifies adults' advantage even on that measure. If these preliminary conclusions were to hold up following a more thorough examination of empirical evidence, then we should regard children in general as occupying a moral status superior to that of middle-aged adults. Strictly speaking, the conjecture is not that chronological age per se gives rise to superior standing, but rather that youthfulness does – that is, a collection of attributes that typically characterize younger members of our species. Thus, contrary to the traditional view that young humans rise in status by emulating older humans, my analysis suggests that adults could seek to preserve their moral status by emulating children, by holding on to their youthfulness or childlikeness (which is not the same as what "childishness" commonly connotes). To the extent adults fail to do this, we might appropriately regard their interests as less weighty in our moral deliberations relative to like interests of children. Coupled with an assumption that children often have greater interests at stake in connection with many moral, public policy, and legal decisions, such as decisions relating to primary education, this conclusion regarding moral status would support much more child-centered reasoning about many aspects of social life affecting children.

Last, Chapter 6 considers some specific practical implications that might follow, for legal, social, and moral practice, from attributing a moral status to children superior to that of adults. How might we act differently as individuals, spend resources as a community, and assign legal rights if we assumed that children's interests trump equivalent interests of adults? Considering how we might privilege children illuminates some ways in which current practices appear to presuppose the moral inferiority of children despite whatever rhetoric about children's equal personhood might be current.

The project as a whole might be described succinctly as follows: The core of the book advances a general theory of moral status, by developing a naturalistic account of the normal human practice of assigning moral status and identifying the general principles and criteria inherent in that practice. Surrounding the core are, first, an explanation of what moral status is and how current social practices reflect an implicit denigration of children, and then, after the general theory is developed, a sketch of how the principles and criteria generated by the general theory might be applied to the specific case of humans at different stages of life, yielding the counterintuitive conjecture that children might in fact occupy a higher moral status than adults. Finally, I envision an alternative set of

attitudes and policies toward children that would be consistent with this conjecture as to the superiority of youth. Along the way, the book identifies ways in which the general theoretical points shed new light on perennial ethical debates about beings other than children, including debates on abortion, animal rights, and environmental protection. I have chosen to maintain a primary focus on children, however, rather than broaden the topical scope to address these other debates in a substantial fashion, because the moral status of nonhuman entities has received great attention but that of children has received almost none. Children are certainly deserving of special philosophical attention.

One last point about methodology: A starting assumption underlying the analysis is that general criteria of moral status can provide a basis for critiquing more specific attitudes toward particular beings, because specific attitudes might reflect unattractive nonmoral influences on beliefs – in particular, self-interest and ignorance. That assumption underlies much extant theorizing about the moral status and proper treatment of specific categories of beings. For example, proponents of greater respect for nonhuman animals contend that we adult humans have failed to afford sufficient protection to animals because our self-regarding desire to use animals in various ways blinds us to the reality that those animals share with us a characteristic – sentience – that we generally believe to have moral significance and that underlies, at least in part, our sense of why others owe us moral duties. Self-interest and ignorance seems also to have underwritten the tendency, historically, for adult humans to have treated children as nonpersons or of lesser significance in normative discussions.

Conversely, unshakable convictions about specific moral beliefs – for example, that among conscious adult humans no distinctions of moral status should be drawn – might cause us to question use of one or another general criterion of moral status, or might push us to look for a more sophisticated general account. Ultimately, it could be that some such "fixed points" in our moral attitudes cannot be reconciled with any plausible general theory of moral status, yet abandoning those specific convictions would make us very uncomfortable and would serve no purpose other than logical consistency. As a possible way out of such a dilemma, I will suggest that in some instances nonmoral, pragmatic considerations might license us to ignore certain status distinctions that the best theory of moral status generates. But before considering possible untoward implications, I proceed unconstrained to construct a general account of moral status based on our moral psychology.

1

What Is Moral Status and Why Does It Matter?

Moral status is a characteristic that we human moral agents attribute to entities, by virtue of which they matter morally for their own sake, so that we must pay attention to their interests or integrity when we consider actions that might affect them, regardless of whether other beings are concerned about them. When an entity has moral status, I may not act toward it in any way I please, disregarding its well-being, preferences, or continued existence. I owe some moral obligations to that entity itself. As a moral agent, I must care to some degree about what it wants or needs, or simply what it is; this imposes some limitations on how I may act toward it. This is importantly different from having obligations *in relation to* some entity (e.g., my neighbor's house) that are actually owed to some other entity (i.e., my neighbor). It is the being to whom duties are owed that has moral status.[1] Moral status is also importantly different from moral goodness; persons' intentional conformity to moral principles might be one of the characteristics that enhances their moral status, relative to persons who routinely act immorally and to beings who are incapable of moral action, but being worthy of consideration in others' moral reasoning is quite distinct conceptually from acting morally oneself.

Because moral status gives rise to moral obligations, what moral status different beings occupy is crucial to all of social existence and to every area of law. With respect to some contemporary legal issues, the moral status question is apparent to all and openly discussed. For example, discussion of legal issues relating to preservation of human life

[1] I treat as synonymous with "moral status" several other terms that more clearly connect with the notion of moral agents owing duties – namely, "moral considerability," "moral standing," "moral importance," and "worthiness of moral consideration."

often focuses on the question whether the being whose life is at stake is a "person" – an ontological category believed to entail the highest moral status. The abortion debate has turned, to a substantial degree, on the moral status of fetuses, and specifically on whether a fetus has yet become a person. Developing legal rules for treatment of humans who have fallen into a coma or persistent vegetative state has required consideration of what moral status those humans possess, often couched in terms of assessing whether they remain persons. Outside the human realm, advocacy for protection of endangered species and of natural resources has raised the question whether individual animals, species per se, and non-animal entities, even if not persons, nevertheless have moral standing, such that they matter for their own sake and not simply because of any benefit humans might derive from them.

Truly, though, moral status is critical to every area of law, and much legal debate simply presupposes that the beings under discussion occupy a particular moral status. For example, scholarly analysis of the rights of convicted criminals typically presupposes that convicts remain persons no matter how heinous their behavior, and thus are entitled to a certain level of respect and fair treatment. Yet a society conceivably *could* adopt a practice of demoting some convicted criminals to a status less than personhood, or less than "full" personhood, if such a notion of partial personhood makes any sense.[2] In fact, actual conditions in some prisons today might suggest an unstated popular view that some criminals do have a diminished moral status and are therefore undeserving of the same concern and protection they received prior to committing their crimes. Some people express an "anything goes" attitude toward how prisons treat, for example, murderers and child molesters, equating such prisoners to animals, thereby implying they possess a diminished moral status.

Other groups in our society that once occupied a subordinate social position – for example, African Americans and women – were regarded as having a lower moral status than a socially superordinate group (i.e., white male adults), and those in power invoked this supposed inferior moral status as justification for the subordinate treatment. Though their equal moral status is no longer a matter of serious dispute, moral status remains crucial to their treatment, and many believe once subordinate groups must still fight for recognition of their equal moral status.

[2] Some Kantians have suggested a partial, but not complete, demotion in moral status as a result of criminality. See Colin Bird, "Status, Identity, and Respect," 32 *Political Theory* 207, 227–8 (2004); Franklin (2005) 78.