

## Marginal Agents: Catalysts for Moral Discovery

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**H**uman beings seek to belong. We seek attachment with one another, we try to build meaningful relationships, and we hope to bring light into the lives of those with whom we interact. We face some of our most complicated and important interactions through our relationships with marginal agents. Marginal agents exist on the fringes of the moral community and usually grapple with some sort of cognitive or emotional defect. Some examples of marginal agents may include young children, Alzheimer’s patients, or individuals diagnosed with autism or intellectual disability. Navigating the moral landscape with marginal agents can be difficult, yet our perceptions and actions can often substantially influence these marginal agents. Agnieszka Jaworska and David Shoemaker provide us with helpful tools to navigate this nuanced landscape.

In this paper, I will explain Jaworska’s conception of caring and its implications on an individual’s moral status. To do so, I will draw upon her pieces “Caring and Internality” as well as “Respecting the Margins of Agency: Alzheimer’s Patients and the Capacity to Value.” I will then use Shoemaker’s piece “Moral Address, Moral Responsibility, and the Boundaries of the Moral Community” to provide a sketch of Shoemaker’s treatment of marginal agents and outline the tools he provides to draw

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the boundaries of the moral community and assign moral responsibility. I will argue that (1) Jaworska and Shoemaker's work operate in separate but related spheres, and (2) if we use both models of agency, we can retain a more complete picture of marginal agents. Finally, I will assert that these theories may guide us in determining whether and to what degree these individuals require legal guardianship.

### Jaworska and Marginal Agents

In "Caring and Internality," Agnieszka Jaworska asserts that the capacity to care provides individuals with the special moral status unique to humans. She asserts that caring ties an agent to his or her moral standing as a person (534). Furthermore, she states that if a creature cannot care, that creature cannot retain equal moral standing to human agents (536). Jaworska explains that carings carry drastically greater importance than mere desires. Carings occupy this special status in part because they are "invariably internal" (538). Because carings are invariably internal, it is impossible to be "a passive bystander to one's caring attitude" (538). Carings speak for us as agents; they represent and constitute who we are. Consequently, they cannot be regarded as an external aspect of our psyche. Carings also imbue the cared for object with a sense of importance; when we care about an object, we are emotionally tethered to the fortunes of that object (560). For example, if I care about my father, I will experience joy when he finds success, and I will experience sorrow when he suffers. Thus, carings necessarily leave us emotionally vulnerable.

Jaworska asserts that carings do not necessarily depend on reflectiveness (544). She uses examples of marginal agents to advance this claim. Jaworska claims that we regard young children and Alzheimer's patients as agents demanding moral respect because of their capacity to care. However, in many cases, it is not clear that either of these parties exercises any significant degree of reflectiveness. Thus, agents may maintain the capacity to care without simultaneously maintaining the capacity for reflexivity. If reflexivity was a necessary component of caring, it seems that we could never discover our carings, as we would have already reflexively endorsed them. However, because it seems that we may authentically discover our carings, Jaworska concludes that caring does not necessarily involve reflexivity.<sup>1</sup>

<sup>1</sup> To be clear, Jaworska does not claim that we do not or cannot reflexively examine our carings. Such experiences may often shape or alter our carings. However, these reflexive evaluations are not an essential component of caring.

In “Respecting the Margins of Agency: Alzheimer’s Patients and the Capacity to Value,” Jaworska hones in on the respect that the capacity to care demands.<sup>2</sup> She asserts that caring helps an individual uphold a conception of him or herself (119). Recall that carings are invariably internal and constitutive of one’s identity. Therefore, when one threatens an individual’s caring, one threatens at least some aspect of his or her identity. We can see these principles at work in Jaworska’s example of Mrs. Rogoff. Mrs. Rogoff had been an excellent cook, and she took great pride in her culinary skills. Unfortunately, she suffered from dementia in her early eighties; yet, despite her cognitive impairments, Mrs. Rogoff cared deeply about her reputation as a great cook. When her housekeeper, Fran, took over the cooking duties, Mrs. Rogoff invariably got upset and agitated (119). To accommodate these feelings, Fran arranged for Mrs. Rogoff to complete small kitchen tasks.

It’s important that we realize why Fran did this. Fran understood that Mrs. Rogoff attached at least part of her identity to her cooking abilities. Thus, as Mrs. Rogoff’s cooking abilities faded with age and disease, she experienced great loss. If Mrs. Rogoff was simply unable to satisfy a mere appetite, such as watching her favorite TV show, the loss would not have been so profound<sup>3</sup>. However, since Mrs. Rogoff’s desire to maintain control of the kitchen stemmed from deep, internal carings, Fran realized that these wishes needed to be respected to the greatest reasonable extent. Jaworska uses Mrs. Rogoff, as well as many other examples, to demonstrate that an individual’s capacity to care exerts a claim over us. Jaworska asserts that we should do all that we can to respect the carings of others because these carings are inextricably linked to their identities.<sup>4</sup>

<sup>2</sup> To be perfectly transparent, Jaworska uses the term “values” rather than carings. However, she speaks of the two in a very similar manner, and it seems that she simply prefers to use the term “caring” to convey the same idea in her later publication, “Caring and Internality.” Moreover, in “Valuing and Caring,” Jeffrey Seidman asserts that “valuing *just is* caring” (273). For the sake of simplicity, I will refer to values as carings.

<sup>3</sup> This point is a clear logical implication of Jaworska’s claims in “Respecting the Margins of Agency: Alzheimer’s Patients and the Capacity to Value.” However, this assertion is directly made on page 533 of Jaworska’s “Caring and Internality.” Because the issue is so directly related to concepts emphasized in “Respecting the Margins of Agency: Alzheimer’s Patients and the Capacity to Value,” I have chosen to include it here.

<sup>4</sup> Obviously, there are times when it is simply unreasonable to respect an individual’s caring. Jaworska acknowledges these scenarios. However, she maintains that we must have significant justification to oppose an individual’s caring.

### Shoemaker and Marginal Agents

David Shoemaker explores the realm of marginal agents in a related, but separate manner. Jaworska is concerned with what characteristics an individual must have to maintain a special moral status that demands a moral respect for his or her carings. However, Shoemaker is interested in what characteristics make an agent a member of the moral community and thus morally responsible. Shoemaker starts with a standard account of the Moral Reasons-Based Theory of Agency and examines the characteristics of inlier and outlier agents<sup>5</sup> to establish a more fine-grained criterion for membership in the moral community and moral responsibility.<sup>6</sup> The standard Moral Reasons-Based Theory (MRBT) states that people cannot be considered members of the moral community, or in other words, moral agents, if they do not possess the capacity to understand, apply, and/or respond to moral reasons (71). Shoemaker claims that moral reasons are inextricably linked to other agents. Other people exert moral demands over us, and “what makes the moral demands important is just the importance of the moral demanders” (90). Thus, the relevant moral reasons for action are the demands other agents claim upon us.<sup>7</sup> These demands are often expressed through Strawsonian reactive attitudes.<sup>8</sup>

The conditions of the standard MRBT can be divided into epistemic and motivational components. The epistemic component involves “the power to grasp and apply moral reasons,” whereas the motivational component involves an agent maintaining “the power to control or regulate his behavior by the light of such [moral] reasons” (Shoemaker 75). Shoemaker determines that one’s caring for others provides the relevant motivation to satisfy the motivational condition of his MRBT. He determines that psychopaths are not capable of caring for others and consequently do not

<sup>5</sup> Shoemaker uses the terms “agent” and “moral agent” differently. A moral agent is an agent that satisfies the conditions of Shoemaker’s fine-grained Moral Reasons-Based Theory of Agency (71, 107). Thus it is possible for an individual to be an agent without also being a moral agent. When I use the term “marginal agent,” this does not imply that the marginal agent has satisfied the conditions of a moral agent.

<sup>6</sup> One may object to Shoemaker’s methodology of determining the boundaries of the moral community by claiming that one can only agree with the perimeters Shoemaker has set if he or she holds an antecedent agreement to Shoemaker’s categorization of inliers and outliers of the moral community. However, Shoemaker is not attempting to explain the genesis of our intuitions in this realm. He is merely attempting to refine a model so that it more accurately corresponds to our intuitions.

<sup>7</sup> Because moral reasons are shown in our interactions with others, Shoemaker often calls these moral reasons second-personal moral reasons.

<sup>8</sup> See Peter Strawson’s “Freedom and Resentment.”

qualify as moral agents. He determines that people with high-functioning autism (HFA) are unable to empathize with others in a standard manner and, consequently, are unable to directly understand the moral reasons that other agents provide. Thus, people with HFA fail to meet the epistemic condition of the standard MRBT (93). However, Shoemaker claims that because people with HFA are capable of caring for others, they are capable of taking on others' carings as their own.<sup>9</sup> He calls this sort of emotional engagement "identifying empathy" (99). The capability for identifying empathy allows people with HFA to use their emotional understanding of others to come to an understanding of the relevant moral reasons others provide. Thus, individuals with HFA may indirectly satisfy the epistemic condition of Shoemaker's MRBT and qualify as moral agents.<sup>10</sup>

Finally, Shoemaker determines that people with mild intellectual disabilities (ID)<sup>11</sup> are often incapable of recognizing the second-personal moral reasons provided by strangers. However, they are often able to recognize, through identifying empathy, the moral reasons provided by their loved ones or caregivers (105). Shoemaker explains that people with mild ID will often superimpose the understanding they have of their caregivers' moral reasons onto others as a means of understanding these unfamiliar agents. People with mild ID use their caregivers as moral representatives so that they may indirectly, yet correctly, understand the moral reasons of all the moral demanders surrounding them. Because the standard MRBT demands that moral agents directly grasp and apply moral reasons in a general sense, agents with mild ID could not be considered moral agents under the standard model. However, Shoemaker again weakens the conditions of his MRBT to allow an agent to be able to discover moral reasons via the aid of a moral representative.

Thus Shoemaker concludes with the following conditions for his Moral Reasons-Based Theory of agency and moral responsibility. First, a moral agent must have the capacity to recognize and apply second-personal moral reasons. These moral reasons, expressed through reactive attitudes, must be discoverable via identifying empathy with either the affected

<sup>9</sup> If caring involves people's emotional fortunes being tethered to the fortunes of others, then people can see others' carings as their own because the fulfillment of those carings directly impacts their own lives. This can happen even if these individuals are unable to directly empathize with other agents.

<sup>10</sup> Since people with HFA are capable of caring, the motivational condition was never in question.

<sup>11</sup> Shoemaker refers to these marginal agents as people with mild mental retardation. Because this term has been socially rejected since Shoemaker published his piece, we will use the term "mild intellectual disability" and abbreviate it as mild ID.

party or an appropriate representative. The method of identification of these moral reasons, whether direct or indirect, does not matter. Second, the moral agent must be capable of being motivated by second-personal moral reasons. This motivation is possible only if a moral agent is capable of caring about the second-personal moral reasons' source. This source can be the affected party or an appropriate representative. Furthermore, this means that a moral agent must be capable of being moved to identifying empathy (Shoemaker 107).

### Synthesis and Application of Jaworska and Shoemaker

Jaworska's and Shoemaker's frameworks serve as complementary models of agency. Jaworska's model teaches us which conditions are required for an agent to be given a certain moral status and have their carings respected to the greatest reasonable extent. On the other hand, Shoemaker's model teaches us what conditions are necessary for an individual to be considered a moral agent, or a member of the moral community who is morally responsible. Equipped with both of these models, we gain a greater understanding of all marginal agents. We can see this principle in play most clearly when we apply these two models to specific marginal agents.<sup>12</sup>

Suppose Mark is a psychopath in a mental hospital who does not maintain the capacity to care for other individuals. He may not desire to harm anyone, but the moral demands that others place on him have no effect. Under Jaworska's model, we know that Mark cannot be given special moral status so that his carings are respected to the greatest reasonable extent. Any attempt to respect these carings would be paradoxical because Mark possesses no such carings. This knowledge provides us with more leeway as we try to care for Mark. If Mark requests to have some desire fulfilled, we may satisfy this desire, but not because doing so would maintain the continuity of Mark's identity. We may, in this scenario, evaluate the request, analyze the circumstances, and determine to not satisfy the desire because doing so would not lie in the best interest of all parties.

Under Shoemaker's model, we are provided with an entirely different set of realizations. We understand that because Mark is incapable of caring for others, he cannot meet the motivational condition of our refined MRBT and thus cannot be deemed a morally responsible member of the moral community. If Mark harms someone else in the hospital, we may try to prevent

<sup>12</sup> Although these agents will likely reflect some existing agents, the names and circumstances are completely hypothetical.

the harm from happening again, and we may even punish Mark. However, our punishment would not be an attempt at any sort of moral education, for we would know that teaching Mark to care about others is unfeasible. We would not hold Mark to be morally responsible for the harm he has done because Mark cannot be held morally responsible for anything. Any punishment that we enact may only be justified because Mark was causally responsible for the harm, and we hope to deter Mark from causing more harm to others in the future. In this example, we would not understand how we should hold Mark responsible if we only had Jaworska's model. Furthermore, we would not understand why we may be justified in ignoring some of Mark's requests if we only had Shoemaker's model. Both models enlighten us about facts that the other model is incapable of revealing.

Suppose Amanda is a two-year-old child who is capable of caring.<sup>13</sup> However, Amanda is too young to understand the moral demands that other agents place upon her. She wants to be nice to people, especially those whom she cares about, but she does not understand why she wants to be nice nor why she is obligated to be nice to others. Through Jaworska's model, we know that Amanda is an agent deserving of the special moral status that requires us to respect her carings. If Amanda wants to play with her friends and share her toys simply because it is fun, we may justifiably deny this request for the same reasons we can deny Mark's requests. However, if Amanda wants to share her toys with her friends because she cares about her friends and she knows that sharing her toys will make her friends happy, we must pause and take serious thought before we choose to deny her request. If we are simply hoping to leave the park with Amanda sooner, we will likely allow Amanda to play with her friends and share her toys for at least a little bit longer. We may justifiably not allow Amanda to stay and share her toys, but our reasons for not satisfying her request must be substantial because we know that denying Amanda the opportunity to share her toys with her friends poses at least a small threat to the continuity of Amanda's identity.

From Shoemaker's model, we know that Amanda is incapable of meeting the epistemic condition for moral agency because she does not consciously recognize the moral reasons that her friends impose upon her.<sup>14</sup> For this reason, we do not yet hold Amanda as a morally responsible

<sup>13</sup> For the plausibility of this example, see pg 530 of Jaworska's "Caring and Internality."

<sup>14</sup> Amanda may act on these reasons, but she does not realize them. It is also possible that Amanda fails to satisfy that motivational condition as well because two-year-old children, in general, may not be capable of identifying empathy, but this is much less clear than the failure of the epistemic condition.

member of the moral community. Amanda will likely satisfy the conditions of moral agency in the future, but until she does, we do not regard her as a moral agent.<sup>15</sup> If Amanda harms someone, we can justifiably react in a broadly similar manner to how we did in Mark's scenario, realizing that our actions are not intended to hold Amanda morally responsible but merely to dissuade future replication of harmful choices. In this example, Jaworska's model teaches us why it is important that we respect Amanda's carings, and Shoemaker's model teaches us why we should not hold Amanda morally responsible for her actions.

Suppose Grace is twenty-three years old and is diagnosed with high-functioning autism. She cares deeply for her family members; when her father lost his job, she experienced great sadness. She was sad not because her family would have fewer resources, but rather because she knew that this event caused her father great pain. Through Grace's identifying empathy for her family members, she has come to understand the second-personal moral reasons attached to her family members.<sup>16</sup> She is capable of being motivated by these moral reasons because she genuinely cares about her family members. From Jaworska's model, we know that Grace is an agent that qualifies for the special moral status which requires that her carings be respected to the greatest reasonable extent. If Grace wants to go to the store to buy a Christmas present for her brother, then her mother, Heather, will likely satisfy this desire because Grace's desire is a manifestation of her caring for her brother. If Heather feels that going to the store is inconvenient or she is unable to take Grace to the store, it is likely that she will still arrange for Grace's carings to be satisfied in the interest of protecting Grace's identity. From Shoemaker's model, we learn that despite Grace's impairments, she should still be considered a member of the moral community who is morally responsible. If Grace lies to her mother in order to get away with some mischievous act, Heather may justifiably hold Grace morally responsible. Rather than simply attempting to deter Grace from lying again in the future, Heather knows that Grace can understand the moral truths that should govern her actions. Thus, Heather will likely sit down with Grace

<sup>15</sup> It's possible that we still treat Amanda as a moral agent in the hope that she will more quickly develop into one, but we do so only for educational purposes and not as a means of reflecting the reality of the circumstances.

<sup>16</sup> These second-personal moral reasons have been expressed through reactive attitudes.



and remind her why lying is wrong.<sup>17</sup> In this example, Jaworska's model shows why we must respect Grace's carings, and Shoemaker's model shows us why we can hold Grace morally responsible.<sup>18</sup>

As we can see from these examples, both Jaworska and Shoemaker's models are incredibly important in our understanding of marginal agents. Because we are equipped with both models, we can determine whether an agent has qualified for the special moral status that requires us to respect their carings and whether an agent should be deemed a morally responsible member of the moral community.

### **Implications of Jaworska and Shoemaker in Legal Guardianship**

Jaworska's and Shoemaker's models of agency may also carry implications in regard to the issue of legal guardianship.<sup>19</sup> In any guardianship case, an individual, known as the guardian, seeks to take away the legal agency of another individual, known as the ward, in an attempt to protect the ward. In taking away an individual's legal agency, we take away many basic rights. For example, a ward under a full guardianship does not have the right to vote, get married, choose where they live, make medical decisions, sign financial documents, etc. However, there are many times when these guardianships are absolutely essential. Suppose that a woman named Julia suffers from acute Down Syndrome and has no sense of who or where she is. In this case, allowing Julia to refuse life-saving medical treatment because she does not like needles seems absurd, and allowing Julia to marry someone who wants to steal all of her money seems equally absurd. Clearly, a guardianship is in Julia's best interest. However, many cases are not so obvious. In order to accommodate these less obvious cases, individuals can also obtain a limited guardianship over a ward. Limited

<sup>17</sup> While Heather is unlikely to use the philosophical language we have employed here. What she will, in effect, be telling Grace is, "I am a moral demander, and there are second-personal moral reasons attached to me. These moral reasons hold a claim on you, and they require that you do not lie to me in order to get away with a mischievous act."

<sup>18</sup> I recognize that not all cases of marginal agents are as simple as the ones I have provided. In reality, agents may drift in and out of the moral community, and their capacity to care may vary from situation to situation. I have used such simplistic examples merely to demonstrate the substantive areas of both Jaworska's and Shoemaker's model of agency. Shoemaker also makes a similar qualification to the examples he presents. See pgs 106-107 of "Moral Address, Moral Responsibility, and the Boundaries of the Moral Community."

<sup>19</sup> Here, I want to make it absolutely clear that moral responsibility and legal responsibility are very different things. I only seek to raise the question of what weight an individual's capacity to care and qualification for moral responsibility may hold within the realm of legal guardianship.

guardianships allow the ward to retain some of his or her rights if a judge determines that doing so is in the ward's best interest.<sup>20</sup>

Perhaps if an individual is capable of caring, this capability shows that he or she should retain at least some rights in a limited guardianship. Let's suppose that a nineteen-year-old man named Danny cares about voting. He suffers from an intellectual disability and does not satisfy the conditions of Shoemaker's MRBT, but he loves going to the poll center with his family. When Danny votes, he proudly wears the sticker he receives, and he feels that he has contributed to society. In full transparency, he does not know much about the candidates he is voting for,<sup>21</sup> and he will always follow the political example that his parents set. Suppose that Danny needed a guardianship to protect himself. It seems reasonable that a judge would allow Danny's caregiver to obtain a limited guardianship so that Danny could retain the right to vote because this activity contributes significantly to his happiness. Jaworska's model can provide some insight into our hypothetical judge's reasoning. Danny cares about voting, and consequently, the act of voting is entangled with his identity. If the judge is going to take away Danny's right to vote, there must be strong reasons leading the judge to believe that providing Danny the opportunity to vote would be harmful. Since, in this scenario, allowing Danny to vote causes minimal—if any—harm, the judge may reasonably allow Danny to keep the right to vote.<sup>22</sup>

Suppose that in the same scenario, Danny asked to not be put under a guardianship of any kind. Recall that Danny does not satisfy the conditions for moral agency; he does not understand that other agents exert a moral demand on him. He is capable of caring for others, but he is not capable of translating that care into an understanding of the moral reasons attached to others. Danny does not understand why it is wrong to say mean things to people. Rather, he only knows that he gets in trouble when he does say mean things. In this scenario, the judge would reasonably be hesitant before allowing Danny to walk away without any sort of guardianship.

Through Shoemaker's model, we may again gain insight into the judge's reasoning. Our interactions with others, and the moral implications

<sup>20</sup> There are some rights that a judge is very unlikely to allow the ward to retain. If a guardian is requesting that a ward retain the right to marry, the judge is going to ask why the ward can make such a monumental decision about marriage but cannot make other essential decisions. Other rights, such as the right to vote, are more frequently retained in a limited guardianship.

<sup>21</sup> But then again, even people without intellectual disabilities know almost nothing about the people they vote for.

<sup>22</sup> In actuality, judges allow people who aren't morally responsible under Shoemaker's conditions the right to vote all the time.

those actions hold, are fundamental parts of life. Consequently, if one cannot understand the moral foundation of our interpersonal interactions, it seems highly probable that he or she would require close supervision and protection. In other words, if someone cannot understand the fundamental reasons why it is wrong to harm someone, such a person is likely to harm others or be vulnerable to harm from others. Thus, it seems that, although the judge may allow Danny to retain the right to vote because this right does not pose any significant threat to himself or others, the judge is unlikely to allow Danny to retain other fundamental rights. Danny's lack of moral understanding underpins his lack of understanding of the world in general, and this lack of understanding indicates the need for guardianship. Here I suggest one way of interpreting Jaworska's and Shoemaker's framework within the realm of legal guardianships. If an individual cares about a right in the Jaworskan sense, that gives us a powerful reason<sup>23</sup> to allow him or her to retain that right. Furthermore, if an individual is unable to satisfy Shoemaker's conditions for moral agency, it seems unlikely that this person should be allowed to struggle without the protection of a guardian.

### Conclusion

In humanity's pursuit of connection, moral agents invariably realize the innate importance of moral interactions. Marginal agents present a fascinating and nuanced set of these interactions. In order to understand how we can productively and humanely interact with marginal agents, we must do all we can to understand them. Jaworska's treatment of marginal agents helps us understand that the capacity to care imbues an agent with the special moral status that requires us to respect the agent's carings if at all possible. Shoemaker's treatment of marginal agents yields a fine-grained adaptation of the Moral Reasons-Based Theory of Agency and provides us with the criterion to qualify individuals as morally responsible members of the moral community. While these models retain separate emphases, they work together to guide our interactions with marginal agents. Finally, these models also provide conceptual tools for those who question whether pursuing a full or limited guardianship for a vulnerable individual is the right thing to do. Armed with these discoveries, we are equipped to help marginal agents find meaningful interactions in a way that is best for them and the world as a whole.

<sup>23</sup> Again, such a reason may be outweighed by other considerations, but it is compelling nonetheless.

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