

chapter 4

Ethical Considerations

To use either human or non-human animals for purposes that are not in their own interests is both ethically unjustifiable and, in the long run, counter-productive.

Alex Pacheco
People for the Ethical Treatment of Animals
March 15, 1985

Fortunately there are many who, while deeply and appropriately concerned for the compassionate treatment of animals, recognize that human welfare is and should be our primary concern.

Frederick A. King
Yerkes Regional Primate Research Center
Psychology Today, September 1984

One cannot intelligently assess vivisection in isolation from animal exploitation in other areas of human life: for food, furs, leather, in so-called sports, in movies, in the wild.

Vivisection, properly seen, is simply one variation on the cultural theme of animal sacrifice.

Michael A. Giannelli
The Fund for Animals, Inc.
March 10, 1985

The use of any particular animal—say, a sheep—in medical research is more important than its use as lamb chops.

Carl Cohen
The University of Michigan
The Research News 35(10-12):9, 1984

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Ethical Considerations

The range of opinion on the rights and wrongs of using animals to satisfy human needs is as broad as the political spectrum itself. At one extreme, animals are thought to be entitled to at least a portion of the respect, individual freedom, and dignity that are considered to be basic human rights. Some say that animals should be recognized as belonging to a community that includes humans. At the other extreme, humans are thought to have broad and absolute authority over the lives and interests of animals. From this perspective, expediency alone, not morality, dictates what we may do with animals.

To illustrate the distance between these extremes, a recent legal brief for animal rights can be contrasted with a televised interview with three scientists who perform animal experimentation. According to the brief (43):

If being alive is the basis for being a moral object, and if all other interests and needs are predicated upon life, then the most basic, morally relevant aspect of a creature is its life. We may correlatively suggest that any animal, therefore, has a *right to life*.

The scientists, in a televised exchange with Harvard philosopher Robert Nozick, were asked whether the fact that an experiment will kill hundreds of animals is ever regarded by scientists as a reason for not performing it. One answered: "Not that I know of." When Nozick asked whether the animals count at all, one scientist replied, "Why should they?" while another added that he did not think that experimenting on animals raised a moral issue at all (45).

People at both extremes would probably agree that, given a choice between experiments equivalent in cost and scientific value, one that does not require the destruction of animals would be preferable to one that does. This consensus, however,

would probably evaporate if animal experimentation produced greater scientific validity or the technique that used animals had significant cost advantages.

In morals, as in politics, most people tend to shun extremes. However, a middle view is at once the most defensible and the most difficult to defend. Pitted against extreme or esoteric positions, the numbers on its side create a presumption in its favor. Yet a presumption given only by the weight of opinion will not amount to a moral justification. A belief is not shown to be true simply by counting the votes of those who accept it. Some basis for an opinion, independent of it being accepted, must be found.

Adoption of a middle view is hazardous in two respects. First, it runs the risk of inconsistency. Propositions located at polar extremes will usually contradict one another, and a position that seeks to incorporate both may find itself embracing a contradiction. In the case of toxicity testing, for example, it may not seem possible to respect the interests of experimental animals and yet use them as tools for enhancing human health and safety.

The second risk is that consistency will be secured at a price too high, by way of a theoretically unattractive ad hoc device. In principle, two contradictory propositions can be reconciled simply by making one an exception to the other. It could, for example, be stipulated that the general rule against harming animals does not hold when they are used to test for toxicity. But it is one thing to say this and another to give a reason for it. Complex rules, introduced for no reason other than to remove a particular inconsistency, muddy a point of view without shedding any light on the hard moral cases it must address. More important, they are arbitrary.

THE RELIGIOUS AND PHILOSOPHICAL TRADITIONS

Interest in the moral status of animals is by no means modern. The ancient religions had much to say about the place that animals were to occupy in the cosmic scheme of things. Oriental creeds were, as a rule, reluctant to draw a sharp distinction between humans and other species. All animal lives were judged worthy of protection and some were thought to be sacred. The doctrine of transmigration left still more room for caution—any animal body might house a soul entitled to special care. The various forms of the doctrine of transmigration share the thesis that a single, continuous, immaterial individual may pass from one body to another, which maybe of the same or a different species. If the latter, its conduct in the earlier incarnation may determine the kind of body it inhabits next. For such reasons, the prescribed dietary regimen in the Orient was frequently vegetarian. Modern influences have relaxed, but not wholly removed, the grip of these beliefs.

In the West, a different tradition took root, one that seems to have assigned value to animals only as they serve human purposes. Judeo-Christian doctrine appears to have condoned an indifferent, if not openly exploitative, attitude toward non-human animals (38,45). (For an opposing view, see refs. 6 and 49.) The Genesis account suggests that humans are the last and most perfected of God's creatures. Humans alone, of all living things, bear the likeness of God, and receive the divine commission to exercise "dominion over the fish of the sea, and over the birds of the air, and over the cattle, and over all the earth, and over every creeping thing that creeps upon the earth" (Genesis 1:26-28; all Biblical references and quotations are to the Revised Standard Version). After the flood, God rewarded Noah and his sons with this blessing: "Every moving thing that lives shall be food for you; and as I gave you the green plants, I give you everything" (Genesis 9:3). A brief Talmudic story indicates that Judaic practice was to the same effect: "A calf was being taken to the slaughterer, when it broke away, hid his head under the Rabbi's skirts, and lowed in terror. 'Go,' said he, 'for this wast thou created'" (12).

These passages do not warrant the inference that humans are permitted to treat animals in any way

they please. Even when suffering is inflicted as a means to some human end, humans are subject to the condition of using the animal. Wanton cruelty would not be allowed. Nor is it clear just what human dominion includes, until the terms of a model ruler-subject relation are spelled out. Humans must presumably rule well, and the good ruler does not take authorized but unjustified actions. Much depends, too, on whether human sovereignty over nature is to be thought absolute or limited by a divine will that may have set some value on animals in addition to their utility for humans.

In a number of passages, the scriptures seem to place a rein on the use of animals. Genesis confirms that God had already judged the world as good—that is, possessed of some value—before humans were created (Genesis 1:3,10,13,18,21). And on several occasions in the later books of the Old Testament, humans are expressly directed to show kindness to the animals under their control. Thus, "you shall not muzzle an ox when it treads out the grain" (Deuteronomy 25:4). And, "a righteous man has regard for the life of his beast, but the mercy of the wicked is cruel" (Proverbs 12:10).

The most persuasive evidence for restraint may lie in the role-model of the good shepherd, often cited in both testaments. At one point, by report of the prophet Ezekiel, God becomes annoyed (Ezekiel 34:2,4):

Ho, shepherds of Israel who have been feeding yourselves! Should not shepherds feed the sheep? . . . The weak you have not strengthened, the sick you have not healed, the crippled you have not bound up, the strayed you have not brought back, the lost you have not sought, and with force and harshness you have ruled them.

God's own rule is often compared with the concern that shepherds should have for their flocks (Ezekiel 34:11-13; John 10:11; Luke 15:4-7). Designed to show that God stands to humans as they stand to animals—a kind provider even if there are no duties to provide for them—that simile would fail if the shepherds could wholly disregard the welfare of their animals.

Aside from this figurative guide, the New Testament is sparse in its references to handling animals. Saint Paul's discussion of the proscription against muzzling the ox suggests a human benefit: "Is it for oxen that God is concerned? Does he not speak entirely for our sake? It was written for our sake, because the plowman should plow in hope and the thresher thresh in hope of a share in the crop" (I Corinthians 9:9-10). Thus, the thresher was to let the ox feed from the corn being worked, not so much for the good of the ox, but because a well-fed animal would yield a larger return.

This passage suggests a shift in sentiment from the old to the New Testament. For Christians, the paramount practical concern is the condition and future of the immortal soul possessed by human beings. Animals are not believed to have immortal souls, nor be repositories for human souls. In the Christian world view, then, animals are left without the one thing that has special value in itself—a soul. An animal's welfare is a good thing only as it is good for the human being.

The letter containing Paul's reading of the Old Testament rule was written only a generation after Christ's death, when Christianity was still anew faith. The distinction between humans and other animals hardened as the creed acquired the trappings of theory, but in such a way as to raise new questions about its real source. The legacy of Greek philosophy exercised such a pervasive influence over Christian theology in its formative years that the distinction could be traced to Athens as easily as to Jerusalem.

It might be said that in theology all roads lead back to Augustine or Aquinas. On the subject of animals, the Augustinian position finds expression in his critique of a competing doctrine, which, on the premise that animals also had souls, would not allow killing them. Augustine cited the conduct of Christ as a lesson to the contrary (7):

Christ himself shows that to refrain from the killing of animals and the destroying of plants is the height of superstition, for judging that there are no common rights between us and the beasts and trees, he sent the devils into a herd of swine and with a curse withered the tree on which he found no fruit.

If Christ could use animals for his own purposes, then so apparently could we. Augustine's view, however, was tempered in two respects. First, he denied that animals were mere instruments of humans. As creatures made by God, they also possessed a good of their own (7)8). Second, animals' utility was the use to which human intelligence might put them, not the convenience or inconvenience that they might present. Augustine did not hold that humans were to treat animals according to their own pleasure or displeasure (8).

Aquinas' view of animals was more sophisticated and less sympathetic. Every natural being that underwent development had an end or perfected state that God had created it to achieve. God made humans, however, as free and rational agents, with control over their actions. People's lives took their objectives from their designs. Being neither free nor rational, an animal was merely a means to an end existing outside it (in the form of some purpose that a rational individual might have for it). Thus, the nonhuman animal was ordered, by nature and providence, to the use of humans (1).

From Aquinas' perspective, the Old Testament concern for animals had been appropriately characterized by Saint Paul. People should avoid mistreating animals not because this would be best for the animals, but because cruelty could be harmful to humans. Strictly understood, disinterested charity towards animals was impossible, since there was no common fellowship between humans and them (2).

In its essentials, this view prevails within the Catholic Church today. Its implications for research in the life sciences have not gone unnoticed. Writing at the turn of this century, Father Joseph Rickaby, the English Catholic moral theorist, denied that the suffering of animals was an obstacle to biological inquiry (42):

Brutes are as things in our regard: so far as they are useful to us, they exist for us, not for themselves; and we do right in using them unsparingly for our need and convenience, though not for our wantonness. If then any special case of pain to a brute creature be a fact of considerable value for observation in biological science or the medical art, no reasoned considerations of morality

can stand in the way of man making the experiment, yet so that even in the quest of science he be *mindful* of mercy.

Protestantism retains the thesis that humans enjoy a rightful hegemony over other animals, but suggests a shift towards a “stewardship” interpretation of that role. John Calvin, the 16th-century Reformation theologian, maintained that when God placed animals “in subjection unto us, He did it with the condition that we should treat them gently” (13). They were brute beasts, to be sure, but for Calvin as for Augustine they were also creatures of God. Calvin went a step further, however, in making this fact about animals a limitation on humans’ use of them. Here humans would seem to be less the sovereigns of nature than deputies appointed to manage God’s earthly estate. Every creature would still be subject to God’s ownership and control. A person was still worth more than any number of sparrows, yet “(no one of them will fall to the ground without your Father’s will” (Matthew 10:29). Thus, Karl Barth, a leading modern Protestant theologian, urged that people possess the right to use and sometimes to kill animals, but only because God has so authorized it in order that humans might live (9).

There have been a few distinguished Judeo-Christian defenders of a position much closer to the oriental view. Saint Francis and Albert Schweitzer both pressed for a principle of reverence toward every living thing. But their ideal has been received as just that: a norm perhaps for saints, and something all should desire, but not binding on imperfect individuals in less-than-ideal circumstances. In the absence of mainstream philosophical support, the intellectual authority of the reverence-for-all-life rule is thought to be outweighed by the personal prestige of its practitioners (21).

Until 1600, the philosophical mainstream was Aristotelian. Using a much broader conception of the soul than the current one, Aristotle distinguished living from nonliving beings by the presence or absence of some form of a soul, or life-giving power. Its function might be nutrition, sensation, desire, locomotion, or thought. The first of these, but not the rest, was found in plants. All animals had sensation and desire as well, and most also had locomotion. Humans alone had the power of thought (4). This advantage made humans nat-

urally suited to rule over other living beings and made animals natural slaves. Aristotle reached this conclusion by generalizing from phenomena already at work within humans: Those with greater rationality exhibited an internal mastery of reason over desire and an external mastery over those who, because they lacked the mental equipment to tend to more than their bodily needs, required direction from others (5). This resulted in leadership by those most competent to rule.

Natural fitness implied that nature worked toward certain ends that together formed a master plan. The significance of the 17th-century scientific revolution lay not so much in its overthrow of church authority in the empirical realm as in its discovery of a method and a subject matter (i.e., mechanics treated as a branch of physics) that dispensed with the hypothesis that nature had purposes. Nature became simply the sum of matter in motion, mathematically describable without reference to goals that phenomena might serve.

The philosophical foundations for the new world view were supplied by Rene Descartes, who recognized only two kinds of existence, material and mental. Bodies were extended in space and time and divisible into parts, with properties of size, shape, and weight. Minds contained beliefs, emotions, and intentions, but no physical properties. The human was a composite being—the only one—with both a body and a mind (18).

Animals did not fit comfortably into the Cartesian scheme. They obviously had bodies, but did they not also have sensations and desires? Descartes answered that in a sense they did, but that their behavior could be duplicated by a machine, while human behavior could not. In their use of language and thought, humans revealed a capacity to respond to stimuli in a variety of ways, whereas animals would respond in only one, “according to the arrangements of their organs” (19).

For all their differences, the Aristotelian and Cartesian theories joined hands in making the activities that required reasoning the distinctive mark of humanity. Both defined the human being as a rational animal. That thesis was not questioned until the following century, when British empiricists criticized it as inflated claims for the power of reason. The Scottish skeptic David Hume con-

curred with Descartes that the human mind was capable of creatively entertaining a variety of possible conclusions from a given body of experience. But this, Hume argued (29), was nothing more than a habit of inference formed from repeated observations, something that dogs could do as well (30):

'Tis necessary in the first place, that there be some impression immediately present to their memory or senses, in order to be the foundation of their judgment. From the tone of voice the dog infers his master's anger, and foresees his own punishment. From a certain sensation affecting his smell, he judges his game not to be far distant from him.

Secondly, the inference he draws from the present impression is built on experience, and on his observation of the conjunction of objects in past instances. As you vary the experience, he varies his reasoning. Make a beating follow upon one sign or motion for some time, and afterwards upon another; and he will successively draw different conclusions according to this most recent experience.

The issue dividing Descartes and Hume survives, still unsettled, in current controversies over artificial intelligence and animal cognition. Recent decades have witnessed an explosion of empirical investigations into the behavior of nonhuman animals (26,35,50). Among these, various efforts to teach higher primates how to use a nonverbal language have captured the public's imagination. Inferences drawn from such studies, however, encounter two obstacles. First, to argue that chimps consciously use gestures in the same way that human deaf-mutes do is to assume a certain theory about the relation between bodily behavior and mental operations. No consensus on mind-body relations exists today. The same difficulty, it is worth noting, affects various efforts to use similarities in brain

structure and function as evidence for similarities in thought.

Even if such matters could be resolved, a greater conceptual hurdle would remain: what is the connection between language and thought? Language requires combining terms into well-formed sentences using rules of grammar and meaning. Linguistic mastery includes the capacity to create novel sentences in situations not precisely like those already encountered and the resources to express thoughts indifferent modalities (as descriptions, questions, commands, and so on) (48). It also seems to require recognition that something said is true, false, or uncertain (17,24).

Although no one knows whether other primates will ever approach human beings in linguistic performance, it would be a mistake to focus on that issue. Evidence is mounting that animals can recognize visual patterns, remember where their food is located, learn how to perform nonmechanical tasks, and foresee where a moving prey will eventually be positioned, even if they cannot master a language (26,50). In this sense, animals exhibit intelligence as defined by ability to adapt to environmental conditions. From a Darwinian (evolutionary) perspective, humans do not hold a privileged status over animals. Humans are not more highly evolved than other animals; all have evolved to fill their respective niches.

Neither linguistic nor nonlinguistic findings hold all the answers. The moral issue is not simply whether animals have some and lack other abilities that human beings possess, but whether the differences between them make for differences in how humans and animals should be treated. Sometimes the differences matter, common sense might say, and sometimes they do not.

THE ETHICAL QUESTIONS

How, if at all, should animals be used in research, testing, and education? Before this can be answered, a preliminary question must be asked (14,15,44,47): What moral standing does an animal have? Is it the kind of being to which humans could possibly have moral duties and obligations? Taking one side or another on the question need not include any

particular moral judgment. Whatever its resolution, the separable moral issue remains: what constraints, if any, regulate humans' use of animals? These constraints might be weaker if animals lack moral standing, but not necessarily absent altogether.

Moral Standing

Modern moral theory operates under a “law conception” of ethics (3). It judges particular human actions as right (lawful) or wrong (unlawful) as they comply with or violate some universal principle of conduct. In this, it departs from the classical theory of the virtues, which makes individual character the unit of evaluation and does not attempt to reduce ethics to a system of rules. Under the law conception, moral standing also goes to persons, but it is not conferred by an individual, institution, or community. From this point of view, an individual counts as a person because of some inherent characteristic. This is the chief reason why it is within the moral domain to speak of the natural duties and the natural rights of a person. A legal system can, of course, recognize natural duties and rights.

For obvious reasons, no one has ever argued that animals can have moral duties (40). That would require that they freely choose to act among alternatives they judge to be right or wrong—a skill as demanding as full-blown linguistic competence would be. Nevertheless, it is possible to take the view that animals have moral standing but do not have rights.

There are two broad theoretical approaches to the subject of rights. The first, sometimes called the will *theory*, would discourage efforts to attribute rights to animals. In its classical form, as given by Emmanuel Kant, it would define a right as a capacity to obligate others to a duty. Possession of a right carries with it an authorization to use coercion to enforce the correlative duty (3 I). This, in turn, implies that the right-holder’s capacity is a power of discretion, either to enforce or waive the right. A right is therefore something that a right-holder may choose to exercise or not. The choice itself will be an act of will.

H.L.A. Hart, a leading contemporary defender of the will theory, treats a right as a choice that gives the right-holder authority to control the actions of someone else. The possessor of a moral right has a moral justification for limiting the freedom of another, not because the action the right-holder is entitled to require has some moral quality, but simply because in the circumstances a

certain distribution of human freedom will be maintained if the right-holder has the choice to determine how that other shall act (28).

The will theory helps to avoid confusion between claims of right, and other, separable requirements to promote or secure some valued state of affairs (e.g., to assist someone in need). Since animals could not be said to have waived or exercised the rights they had, all references to animal rights could simply be translated into talk of human duties.

Those who would assign rights to animals have embraced the alternative *interest theory* of what it means to have a right. A right, in their view, is a claim to the performance of a duty by someone else, but the right-holder need not be in a position or possess the competence to make this claim by an act of will. It is enough that the right-holder has interests that can be represented (by others) in a normative forum (20). These interests will include things that are intrinsically good and things in which the right-holder “takes an interest,” selfish or not (40). To have a right, then, will be simply to have interests that can be affected by someone else.

The interest theory surfaces in Peter Singer’s *Animal Liberation*, among the first contemporary theoretical statements of the case for animals. In that work, Singer uses the term “right” to describe any claim that individuals may make to have their interests equally considered with those of others. It implies, therefore, nothing more than a capacity for suffering, which both humans and animals possess (45).

The modest measure of animal awareness that such a test demands has been one source of its appeal. It has not, however, been free of controversy. Some have objected that animals cannot have interests because interests require beliefs and animals cannot have beliefs in the strict sense (24, 36). This criticism suggests that pain-avoidance is not an “interest” because it is not a “belief,” a distinction that seems more semantical than useful. Nevertheless, a more serious charge remains. As stated, the interest theory shows only that having interests is a necessary condition for having rights, not that it is sufficient. Singer himself has since abandoned the attempt to show sufficiency and,

accordingly, recanted his earlier references to the language of rights (46):

I could easily have dispensed with it altogether. I think that the only right I ever attribute to animals is the “right” to equal consideration of interests, and anything that is expressed by talking of such a right could equally be expressed by the assertion that animals’ interests ought to be given equal consideration with the interests of humans.

Singer effectively acknowledges Hart’s charge that the notion of a right has lost its distinctive function in this context because it no longer refers to the discretionary control that one individual has over the conduct of another.

There is one very general consideration that appears to weigh against the will theory, if not entirely in favor of the interest theory. It underlies a form of argument so ubiquitous in the animal-rights literature that it deserves a name. The consistency *argument* is exemplified in the following passage from an essay on vegetarianism by Tom Regan. Rejecting rationality, freedom of choice, and self-consciousness as conditions for having a right to life, Regan adds (41):

It is reasonably clear that not all human beings satisfy them. The severely mentally feeble, for example, fail to satisfy them. Accordingly, *if we* want to insist that they have a right to life, then we cannot also maintain that they have it because they satisfy one or another of these conditions. Thus, *if we* want to insist that they have an equal right to life, despite their failure to satisfy these conditions, we cannot consistently maintain that animals, because they fail to satisfy these conditions, therefore lack this right.

Another possible ground is that of sentience, by which I understand the capacity to experience pleasure and pain. But this view, too, must encounter a familiar difficulty—namely, that it could not justify restricting the right *only* to human beings.

In short, given that some human beings (infants, mental defective, and senile adults) lack such capacity as well, Regan points to the inconsistency of holding both that this capacity is a condition of having a right *and* that *all* humans and *only* humans have moral rights. Any less burdensome test, however, will presumably admit animals as possible right-holders (33)45). (For an opposing perspective, see refs. 22 and 24.)

This reasoning appears to overlook a significant difference between an incompetent human being and an animal. In most cases, human beings have the capacity for rationality, freedom of choice, and self-consciousness, whereas in all cases animals do not. If most humans have these characteristics, it might be appropriate (or at least convenient) to treat humans as a homogeneous group, even though some members lack these characteristics. If all animals lack certain characteristics, it maybe similarly appropriate to treat them as a group, regardless of whether some humans also lack these characteristics.

Furthermore, if rights do not imply present possession of the qualifying condition (as suggested by the way that people treat those who are mentally incapacitated only for a time), then babies who have yet to mature and people who have become incapacitated after a period of competence will still have rights. The animal, as far as can be ascertained, has never met and will never meet this qualification. The rare human being whose deficiency is complete over a lifespan is nevertheless differently situated from the animal. The condition is a disability—the loss of some skill the person would normally be expected to have. The animal’s condition is not disabling, even though it lacks the same skill. The very fact that the human has been deprived of an ability implies that the person has been harmed; a human’s failure to acquire an ability means that person is in need of help. The condition of the animal does not call for either inference. This difference, to be sure, makes no mention of rights. Yet it creates a special duty to meet the human need that would not extend to animals. Because the animal without a will has not lost what it was biologically programmed to possess, it “needs” a will only as a human might “need” to fly. In neither case does the condition give rise to a moral demand for assistance.

Ironically, the consistency argument contains a basic inconsistency. On the one hand, the argument asserts that humans are not superior to animals; animals should therefore be treated *like humans*. On the other hand, the very nature of the moral argument is promotion of morally superior behavior: Humans should refuse to exploit other species, even though the other species exploit each other.

The consistency argument nevertheless succeeds to the extent that it shows that the general reason for moral concern in the cases discussed cannot be limited to humans. Other things being equal, the fact that a condition is harmful or threatens harm to an individual—human or animal—creates amoral reason to intervene. That reason need not take the form of a duty owed to the victim, with a correlative right that this would entail. It need not always be a duty of any sort. The highest approval is often reserved for the good deed that, like the good samaritan's, goes beyond what duty strictly requires.

There is a spectrum of possible positions, beginning at one end with a strict prohibition against the cruel infliction of suffering, moving to a still powerful requirement to lend help when the individual alone is in a position to provide it for someone in great need, and then to the milder requirements of charity and generosity when the individual can provide them without great personal sacrifice (even if others can do the same), and finally, at the other extreme, to the highly praised but not binding act of genuine self-sacrifice that distinguishes the moral saint. The moral vernacular covers this spectrum with a single term. The act in question is called the '(humane)' thing to do, and sometimes failure to perform it is labeled inhumane.

The term itself refers to the actor, not the recipient. Humane treatment, following the Oxford English Dictionary, is "characterized by such behavior or disposition toward others as befits a man." This meaning, which dates back to the 18th century, applies to conduct marked by empathy with and consideration for the needs and distresses of others, which can include both human beings and animals.

This does not mean that animals will generally command the same degree of affection and attention as humans. The attitude of empathy, which is the psychological spring for humane treatment, consists in '(feeling like)' the object of sympathy, and the basis for this response must be a certain understanding of what it is like to be in the other's position. Other human beings are much more accessible in this respect, not only because they are structurally and functionally like each other, but

because they can communicate their feelings in ways that animals can scarcely approach. In such areas as the capacity for experiencing pain, however, the differences across species are by no means so great as to make empathetic identification impossible. Here the mark of the humane individual will be the extent to which sympathy jumps the barrier between species (11).

There are differences among animals, too, in the capacities they have, the things they do, and the relations they have with humans, all of which affect the moral weight that humane considerations will have. A gorilla will gather more sympathy than a trout, not so much because it is more intelligent as because it exhibits a range of needs and emotional responses to those needs that is missing altogether in the trout, in which evidence of pain can barely be detected. Predatory animals and wild rodents rarely elicit affection because their characteristic activities do not mark them as helpless and in need. Even within one species, the regard an animal may receive will rise with the social ties and responsibilities that human beings have developed with it. As a possible recipient of humane treatment, the garden-pest rabbit will stand to the pet rabbit much as the stranger does to an acquaintance.

Each of the morally significant differences among animal recipients of humane treatment builds on an analogy to the human case. Thus, whatever the merits of the consistency argument on the score of rights, it applies here because the humane treatment principle crosses the species border. Mary Midgley has put the point eloquently in another context (33):

[Animals] can be in terrible need, and they can be brought into that need by human action. When they are, it is not obvious why the absence of close kinship, acquaintance or the admiration which is due to human rationality should entirely cancel the claim. Nor do we behave as if they obviously did so. Someone who sees an injured dog lying writhing in the road after being hit by a car may well think, not just that he will do something about it, but that he ought to. If he has hit it himself, the grounds for this will seem stronger. It is not obvious that his reasons for thinking like this are of a different kind from those that would arise if (like the Samaritan) he saw an injured hu -

man being. And he too may feel about equally justified in both cases in being late for his uncle's party.

Humane treatment is the most commonly cited standard in Federal legislation concerning animals. Its wide range of application due to its lack of precision, however, leads to a temptation to dismiss it as a pious but essentially vacuous sentiment. A theory of moral constraints is needed to determine whether this or some other standard is sufficiently precise to serve as a guide for legislation regulating the use of animals.

Moral Constraints

A rule that allows an individual to do whatever that person wished would not be a moral rule. Morality by its very nature operates as a check on the tendency to go wherever desire leads. The constraints it imposes can be applied prospectively, contemporaneously, or retrospectively. Prospective analysis looks ahead to the possible consequences, while retrospective analysis may restrict the results it is permissible to promote (37). Before the action is taken, it can be said that the action that morally ought to be performed is the one with the best consequences. An individual succeeds in this objective to the extent that an action produces as much benefit and as little harm as possible. During the course of the action, conditions concerning the intention of the individual and the consent of the recipient may have to be met before a moral license to pursue the best consequences is granted. The fact that a lie will produce more benefit than the truth will not necessarily make it the right thing to do.

Moral theories divide according to the weight they give to one or the other kind of constraint. In its purest form, the prospective approach holds that an action or policy is right if it has better consequences, for everyone affected by it, than any available alternative. The language here is carefully drawn. "Better" does not mean "morally better." A good consequence is simply an outcome that someone finds desirable. If an action gives pleasure to someone, the enjoyment is a good thing; if it causes pain, the person's suffering would be a bad thing. It is not necessary to ask whether the pleasure or pain is morally fitting.

Intuition will ideally play no part in determining an outcome. One consequence will count as better than another if, after assigning positive numerical values to its good elements and negative values to its bad ones, the sum of positive values exceeds that of negative values (10).

Better for whom? The utilitarian principle, still the most influential formulation of the forward-looking approach, holds that actions and policies are to be evaluated by their effects, for good or ill, on everyone, not just the individual alone or some select group of individuals. Between an individual's own good and the good of others, "utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator" (10,34). The interests of each affected individual are to count equally. Any two experiences that are alike except that they occur indifferent individuals are to be given the same value. Among utilitarians, enjoyment is a good and suffering an evil, and so every animal with the capacity for such experiences will also count as one individual. Sentience suffices for possessing this value, even if it does not confer rights. "The question," as Bentham once put it, "is not, Can they reason? nor Can they talk?, but Can they suffer?".

Because it extends the scope of moral concern to animals without committing itself to a vulnerable theory of animal rights, utilitarianism has become the theory of choice among those who would press for more constraints on humans' treatment of animals. Singer derives the credo that all animals are equal from the utilitarian conception of equality (45). If the principle of utility requires that suffering be minimized, and if some kinds of suffering are found in animals as well as humans, then to count human suffering while ignoring animal suffering would violate the canon of equality. It would make a simple difference of location—in one species rather than another—the basis for a distinction in value. Like racism, such "speciesism" enshrines an arbitrary preference for interests simply because of their location in some set of individuals (45). (For arguments that speciesism is not immoral, see refs. 16,23,51,52.)

As a general moral principle, utilitarianism is subject to several objections, the most serious being that its standard of equality is much too weak to

satisfy the demands of justice (25,37,39). Since it only requires that individuals with interests be given the same consideration, but in its summation of interests allows the claims of any one individual to be overridden by the sheer weight of numbers on the other side, it seems to sanction a tyranny of the majority that permits violations of individual rights. This may not, however, undermine the utilitarian case for animals if animals have doubtful standing as right-holders.

Some commentators have suggested that there may be an acceptable double standard in morals, consisting of a nonutilitarian principle for agents with standing as persons and a utilitarian rule for handling individuals with interests but not rights (21,37). The use of different rules for different kinds of individuals is already well established. Rules that would be objectionably paternalistic if applied to adults are admissible if restricted to children. The dangers are that inconsistent standards might hold for the same individual or that differences between the two classes of individuals might be arbitrary.

The suggestion that the adult-child and human-animal distinctions are comparably rational and justifiable (21) is superficial for two reasons. First, it does not seem to be arbitrary to distinguish between the adult and the child, because human society understands that children may be intellectually and experientially unable to make wise choices. Thus, society can choose for children that which society believes is in their best interests. The problem with the human-animal distinction is that an animal may in fact be able to make and communicate a decision that expresses the animal's self-interest: It wants no part of any scientific procedure that results in pain or distress. Even if the animal could not make or communicate a decision, it may be arbitrary to distinguish between such animals and humans who are similar in their inability to make such decisions (the profoundly mentally handicapped), allowing society to use the former but not the latter as research subjects.

The second difference between the adult-child and human-animal distinctions relates to the *purpose* for distinguishing between two groups. The first distinction is permissible because it allows society to *protect* the interests of the child, while

the purpose of the human-animal distinction is to allow society to *ignore*, or at least *diminish*, the interests of the animal.

The device of a double standard is often used to explain the sharp differences in the constraints governing the treatment of animals and humans as experimental subjects. For animals the standard is humane treatment, which forbids unnecessary suffering but otherwise allows experiments that harm and even kill the animal. That same rule, proposed for human subjects, is generally considered unethical. There are many experiments in which perfectly reliable results can only be obtained by doing to a human what is now done to an animal. Nevertheless, without the subject's informed consent—indeed, sometimes even with it—such experiments are absolutely impermissible, no matter how beneficial the consequence might be. They would violate the rights of the human subject.

The proscription against unnecessary suffering is best understood as a corollary of the principle of utility. Since suffering is a bad consequence, there is an initial utilitarian onus against behavior that would produce it. Such treatment calls for justification. To meet this burden, a bare appeal to some offsetting good consequence will not be sufficient. The principle of utility, as formulated, is comparative. It requires that an action or policy have better consequences than any available alternative. Among the alternatives will be uses that do not involve animal suffering. If one of them has consequences at least as good as or better than the one proposed, the suffering will be unnecessary. Other things being equal, then, it should prove harder to establish necessity than the contrary, since the former must rule out all the alternatives while the latter need find only one.

Necessity is a relation between a means (an action or policy) and an end (its objective). *Restricted necessity* takes the end as given—that is, not subject to evaluation—and asks only whether the course of action suggested is an indispensable means to that end. For example, in an LD₅₀ test for toxicity that uses 40 rats as subjects (see chs. 7 and 8), if no alternative procedure using fewer or no rats could get the same results with the same reliability, that test would be necessary in the re -

stricted sense. In *unrestricted* necessity, the end is open to assessment on utilitarian grounds:

- How likely is the objective to be met, in comparison with other possible goals? If the LD₅₀ test yields unreliable results, its necessity in the unrestricted sense would be open to challenge.
- Assuming that the objective will be met, how beneficial will it be? Suppose, for instance, that an LD₅₀ test were to be run on a new cosmetic not significantly different from those already on the market. The test may be considered unnecessary because the objective is unnecessary.

Unrestricted necessity is more difficult to prove, because it always includes restricted necessity and more. Thus, a stringent standard of necessity, one that lets fewer procedures through, would require that a procedure be necessary in the unrestricted sense. In addition, since necessity is more difficult to establish than the possibility of substitution, the burden of proving both the existence of necessity and the absence of alternatives could be placed on those who would use the procedure. A more lenient test could invert these priorities by presuming that the procedure is necessary and that alternatives are lacking unless shown otherwise. This approach would not expect the user to show beforehand that no other alternative was available; it is generally followed when a research proposal is reviewed by a scientist's peers or an institutional animal care and use committee (27).

Nonutilitarian positions on the use of animals have one feature in common: Although virtually none ignores consequences, they unite in denying that a course of action can be justified wholly by appeal to the value of its consequences (39). This leaves room for substantial variation, with the differences traceable to the considerations they would add in order to complete amoral assessment.

Ironically, both extremes in the animal treatment debate are nonutilitarian. The hard line supporting unlimited exploitation of animals builds from the premise that animals lack moral standing. Without rights, they cannot be recipients of a duty owed to them. On some theories of value, moreover, enjoyment does not count as a good thing in itself, nor is suffering per se an evil. Kant, for example, thought that the only unconditional good was a

will whose choices are undetermined by desire for enjoyment or fear of punishment (31). Not having a will, animals could not have this value. Morally, they were indistinguishable from inanimate tools—mere means to be used for the purposes of beings who do have a will. Like Aquinas, however, Kant did acknowledge an *indirect duty* of kindness, given that “tender feelings toward dumb animals develop humane feelings toward mankind” (32).

The indirect duty theory stumbles in the attempt to explain why there should be any empirical connection at all between people's feelings for animals and their feelings for other humans. Some similarity must be seen in the objects of the two sentiments if one is to influence the other; yet the theory says that there is no such likeness in reality. Thus either a person's motive is proof by itself that humans have a direct moral interest in animals, in which case the theory is mistaken; or the theory is correct and the individual has misunderstood it, in which case the person will be free, once educated in the theory, to abuse animals without fear that this will tempt abuse of human beings. Kant cannot have it both ways: He cannot require individuals to act on a belief that his own theory alleges to be false (33).

The Kantian position could be turned on its head if animals had moral standing after all. In *The Case for Animal Rights*, Regan gives the most cogent defense to date for that view. He concedes that animals are not moral agents: Since they are unable to choose freely among impartially determined moral alternatives, they cannot have any moral duties. At least some animals, however, have beliefs, desires, memory, a sense of the future, preferences, an identity overtime, and an individual welfare of their own (41). In these respects, they are indistinguishable from human infants and mental defective, who also fail to qualify as moral agents. Nevertheless, these animals possess an inherent value, independent of the value that their experiences may have, that gives them standing as “moral patients” — that is, as individuals on the receiving end of the right and wrong actions of moral agents. They have this value equally, and equally with moral agents (40). Inherent value in turn gives them a claim, or right, to certain treatment.

Regan's major thesis is that, as moral patients, animals enjoy a presumptive right not to be harmed. He considers this principle a radical alternative to utilitarianism. But once the reference to rights is filtered out, the utilitarian might find Regan's theory quite congenial. Both Regan and utilitarians would hold that harm to animals is a bad consequence and so it would be wrong, in the absence of an overriding consideration, to harm them. The conflict between the two theories, therefore, lies in the kind of justification that each theory would permit to overturn this presumption.

Regan offers two guiding principles (40). By the first, when the choice is between harm to a few and harm to many and when each affected individual would be harmed in a comparable way, then the rights of the few ought to be overridden. As Regan acknowledges, the utilitarian commitment to minimize suffering would have the same result. By the second principle, when the choice is between harm to a few and harm to many, if a member of the affected few would be worse off than any member of the affected many, the rights of the many ought to be overridden. This "worse-off" rule parts company with utilitarianism in setting aggregate consequences aside and protecting minority interests.

In view of this possibility, it is surprising to find that Regan calls for a blanket prohibition against the use of animals in research and toxicity testing. That conclusion would follow only if his two rules for defeating the right not to be harmed could never be successfully invoked in these areas. Regan is apparently drawn to this result by a constraint he attaches to the rules: They hold only for harms suffered by innocent victims. Animals are always innocent, in the sense that Regan gives

to that term (41). But human patients will be, too, and at least sometimes human agents will also be. Regan would have to show that these occasions can never arise in research, testing, or education, or that, if they do, the human agent/patient never faces the greater harm. His analysis does not show this.

This difficulty aside, Regan's theory can be read as holding, first, that the necessity standard cannot be applied until the innocence of all parties has been established and, second, that when it does apply, the worse-off rule should replace the utility principle in cases where they diverge.

It is unclear whether the worse-off rule is preferable to the utilitarian principle for the purposes of animal use. But the notion of innocence, with its judicial implications, appears to have no place in the issue of experimental-subject rights for three reasons. First, the notion that animals are always innocent because they cannot be otherwise is problematic. Innocence makes sense only when guilt does, because innocence means that one has done no wrong *though doing wrong was an option*. If animals are not rational decisionmakers, if they cannot choose between right and wrong, then the concept of innocence has little meaning. Second, most human subjects are probably innocent in the sense that Regan uses the term, so that the concept does little to advance the theory that experimenting on humans is preferable to experimenting on animals. Finally, even a guilty person may have certain rights. While a person guilty of a crime against society maybe imprisoned or otherwise punished, society holds that the guilty have a right to avoid cruel and inhumane punishments. Bioethics similarly rejects the involuntary use of guilty prisoners in medical experiments.

SUMMARY AND CONCLUSIONS

The present debate over animal use in research, testing, and education is marked by a cacophony of voices. A critical survey of the religious and philosophical backgrounds to the debate yields some hope that, if the competing voices were muted by reflection, they would begin to coalesce as variations around a single theme. That theme would be the standard of humane treatment, extended to animals as well as to humans.

Much has been made of the historical contrast between Western and Oriental religious views on animals. The biblical and theological texts in the Judeo-Christian tradition do not give us a principle of unconditional respect for animals. Humans alone are accorded inherent value as being created in the image of God, and this gives them a license to use animals for their own purposes. Not, however, to abuse them. Cruelty and callous in-

difference to the needs of animals find no scriptural support, and virtually all religious thinkers condemn them. If God is a good shepherd, treating humans kindly without being bound to, humans can be as much to the animals in their care. The Christian position thus amounts to a synthesis of two elements in tension. On the one hand, animals are inferior in worth to humans, as the body of a person is inferior to the soul. On the other hand, they are not so inferior that their own welfare cannot stand in the way of unbridled use of them.

Modern religious and philosophical patterns of thought are branches of the same ancestral trunk. It should not be surprising, then, that the philosophical tradition exhibits the same tension on the subject of animals. Humans have standing as persons—that is, as individuals who can assume duties and enjoy rights. To join them, animals must at least be capable of possessing rights. But they cannot assume duties and do not have the power of discretion that gives rights a distinctive role in morals. Consistency suggests rights should be ascribed to animals once rights are given to infants and mentally handicapped humans who also lack discretion. Yet it would be inconsistent to assert that humans are not superior to animals while suggesting that humans should refuse to exploit other species, even though other species exploit each other.

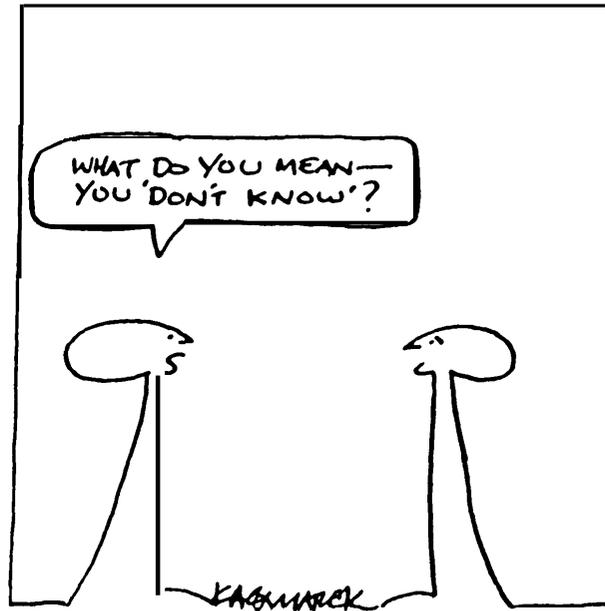
Even if animals are not moral persons, however, it does not follow that they are mere things, morally indistinguishable from machines. They are sufficiently like humans in one morally relevant respect—their capacity for suffering in basic forms—to generate a moral claim on humans. It would be inconsistent to hold that, other things being equal, human suffering ought to be relieved, but animal suffering ought not.

Because it extends the scope of moral concern to animals without committing itself to a vulnerable theory of animal rights, utilitarianism has become the theory of choice among those who would press for more constraints on humans' treatment of animals. If the principle of utility requires that

suffering be minimized, and if some kinds of suffering are found in animals as well as humans, then to count human suffering while ignoring animal suffering would violate the canon of equality. It would make a simple difference of location—in one species rather than another—the basis for a distinction in value. Like racism, such “speciesism” enshrines an arbitrary preference for interests simply because of their location in some set of individuals.

The rule that suffering ought to be relieved, in humans or animals, is the principle of humane treatment. It covers a large and heterogeneous range of situations; the most germane, for the debate over animal use, are those in which someone inflicts suffering on someone else. The humane treatment principle establishes a presumption against doing this, but that presumption can be overcome—always in the case of animals, and sometimes even in the case of a human—by showing that the harm done is necessary. Necessity here is not bare utility, but necessity overall. The harm must not only be a means to a good end, it must be the only means. A broader definition of necessity might also require that the harm be a means to an end whose value is considered in light of the degree of harm necessary to achieve that end. In addition, necessity always implies a comparison with available alternatives.

Animal use in research, testing, and education creates a conflict of interests between the liberty that humans have to use animals for human ends (knowledge, health, safety) and the need that animals have to be free of suffering. There is no reason why either one of these broad interests should always prevail over the other. The fulcrum on which they are balanced is the necessity standard itself. That is, when the suffering inflicted on animals is not necessary to satisfy a desirable human objective, the animal interest will prevail. And when the suffering is unavoidable, the human interest will be controlling. Animals are morally entitled to be treated humanely; whether they are entitled to more than that is unclear.



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