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Animals, Moral Risk and Moral Considerability

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Animals, Moral Risk and Moral Considerability

Julia K. H. Tanner

Abstract

I believe that accounts of the moral considerability of animals can be strengthened in an interesting and novel way if attention is paid to moral risk and epistemic responsibility.

In this thesis I argue for a sentience-based account of moral considerability. The argument from marginal cases gives us a reason to prefer accounts of moral considerability that include animals; if we think marginal humans are morally considerable we must accept that animals are too.

Moral uncertainty gives us another reason to include animals. When we are making moral decisions we ought to minimise the amount of moral risk we take. I call this the 'cautious approach'. We cannot know for certain which account of moral considerability is correct. Given that we are trying to do what is right we should avoid any course of action that may be wrong. I will argue that accounts of moral considerability that exclude animals are taking an unnecessary moral risk: animals might be morally considerable and if they are most of our current treatment of them is wrong. When assessing risk one of the things that needs to be taken into account are benefits and losses. I will argue that conceding animals moral status will benefit humans.

I argue that we should favour a sentience-based account of moral consideration because it is the least risky and most epistemically responsible; this gives us extra reasons to prefer it. I outline respect utilitarianism, which makes provision for protecting individuals. On this account we ought to give the interests of sentient beings (at least all vertebrates) equal consideration. Animals' interests not to be eaten and/or used for testing are sufficiently weighty to dictate that most westerners ought to become vegan and testing on animals should stop.

Contents

Introduction: The moral considerability of animals - the background

In the past few decades there have been many attempts to argue that animals are morally considerable.[1] I believe that such accounts could be strengthened in an interesting and novel way if attention is paid to moral risk and epistemic responsibility.

I will argue that sentience is what makes animals (and humans) morally considerable.[2] I will offer four arguments. First, the argument from marginal cases gives us reason to prefer accounts of considerability that include animals; if we think marginal humans are morally considerable we must accept animals are too. Second, moral uncertainty gives us another reason to include animals; there is good reason to think animals might be morally considerable, denying them such status is therefore to risk wrongdoing. [3] Third, we ought to prefer epistemically responsible accounts. Fourth, the sentience account is less morally risky and more epistemically responsible than the alternatives.

I shall start by giving a background to the debate over moral considerability and define the term moral considerability. In section one I will give the background to the debate; the traditional picture of the link between moral agency and moral considerability. In section two I will explain how I will define philosophical concepts. In section three I will define moral considerability. In section four I will define moral patiency. In section five I will outline how we should approach moral considerability. In section six I will outline the structure of my thesis.

I. Background to the debate: The traditional picture - The link between moral agency and moral considerability

Philosophers from ancient Greece onwards have been concerned with how moral agents ought to treat one another. They have defined the moral sphere from the point of view of the moral agent. De Roose argues:

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[1] Cavalieri 2001; Hursthouse 2000; Jamieson and Regan 1978; Linzey 1976; Midgley 1983; Regan 1983; Singer 1995; Skidmore 2001.

[2] By animals I mean all non-human animals. Humans are animals and the term animals could, strictly speaking, encompass them. However, "animal" usually specifies non-human animals. I shall, therefore, use it to cover all and only non-human animals. There are differences between species that may prove relevant to moral considerability; these will be discussed in later chapters.

> Western moral philosophers have been predominantly concerned with moral precepts that pertain to the interaction between... moral agents. The result... is... many writings... tacitly assume... only rational moral agents are morally considerable. (1989, p. 87)

De Roose's point can be easily illustrated. Virtue ethicists like Philippa Foot, John McDowell and David Wiggins think moral life is concerned with deciding what sort of people we (moral agents) ought to become (Foot 1997, p. xiv; McDowell 1979, p. 331; Wiggins 1987). Deontologists like Elizabeth Anscombe think it consists in determining what our obligations and duties are (1981, p.36-7). Consequentialists ask what is the best result and how we (moral agents) are to bring it about. Contractarians think morality is a system of rules devised so moral agents can live together harmoniously (Gauthier 1977; Hobbes 1996; Locke 1996; Rawls 1999; Rousseau 1996).

All these theories ask questions like "How ought I to behave?" "What ought I to do?", "How ought I to be?". All these questions have the moral agent as the focus.[4] The moral agent has usually been the starting point of moral consideration and far too often the end too. The question usually in mind has been how should I (one moral agent) treat other I's (moral agents). As a result ethics has been the province of the moral agent.

There is, therefore, a strong sense in which much of moral philosophy has been agent-centred. I think more attention needs to be paid to what is morally considerable.

The agent-centred approach has reinforced the ubiquitous view that only moral agents are morally considerable (that moral agency is necessary for moral considerability).

Many have thought that moral agency is necessary for moral considerability (e.g. Blatz 1985, p. 12; Fox 1978, p. 112; Kant 1948, p. 91, 1949, pp. 128-9). The essence of moral agency is being morally responsible for moral acts and omissions. Moral agents can be held accountable for what they do or fail to do. But they are also morally considerable (see Regan 1983, p. 152). I will not give a full account of moral agency. It is the idea

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[3] I use the terms moral status and moral considerability interchangeably.
[4] McPherson makes a similar point (1984, p. 176).

moral agency is necessary for moral considerability that interests me. I shall outline some accounts that make this claim.

i. Kant's account of moral considerability

Kant places primary importance on reason in determining what is morally considerable (1949, pp. 128-9). Only those with a good will can value, it is this ability that makes them morally considerable (gives them unconditional worth): "it is precisely the fitness of his [the moral agent's] maxims to make universal law that marks him out as an end in himself" (1948, p. 99). Thus, only those who are rational are capable of being moral agents and only those who are rational are morally considerable. Kant argues that "[r]ational beings... are called persons because their nature already marks them out as ends in themselves" (1948, p. 91). And respect "applies to persons only, never to things... [like] animals" (1949, p. 184).

For Kant moral agents are the bedrock of morality.[5] He argues that only the good will has unconditional value: "[i]t is impossible to conceive anything... which can be taken as good without qualification, except a good will" (1948, p. 59).[6] For Kant there is only one unconditionally good thing: the good will. The good will is a perfectly rational will and the source of all value; without it nothing can have any real worth.

ii. Contractarian accounts of moral considerability

Contractarians argue morality is an artificial construct: "only within a social organization can the basic concepts and principles of morality arise" (Fox 1997, p. 128). Therefore, moral agents are only morally considerable because there is a hypothetical contract according to which they would agree to give one another moral consideration. The basic idea is that morality is an invention of rational beings that will be to their advantage. We enter into a contract to protect ourselves against others (Hobbes 1996,

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[5] For Kant a rational agent (what I shall call a moral agent) has the ability to act in accordance with principles; they have a good will/practical reason (1948, p. 76). And "[r]ational nature separates itself out from all other things by the fact that it sets itself an end" (1948, p. 99).

[6] By conditionally valuable Kant means things are valuable if the correct conditions are met, unconditionally valuable things are valuable regardless of the conditions. As Korsgaard puts it the "unconditioned/conditioned distinction is a distinction not in the way we value things but in the circumstances (conditions) in which they are objectively good. A thing is unconditionally good if it is good under any and all conditions, if it is good no matter what the context" (1983, p. 178).

pp. 634-5; Locke 1996, p. 766; Rawls 1999; Rousseau 1996, p. 914). My only reason for giving you moral consideration is that you will do likewise. Thus, only rational beings are accorded any (direct) moral status; this excludes animals (though they may get some indirect consideration). Only those able to enter into the contract are protected by it.[7]

Rawls thinks we should imagine a hypothetical contract and ask the rational contractors to choose principles that would be in their own self-interest. Rawls asks us to imagine ourselves in the *original position* the idea of which is "to set up a fair procedure so... any principles agreed to will be just" (1999, p. 118). We are usually blinded by self-interest. To force us to be just "somehow we must nullify the effects of special contingencies which... tempt... [us] to exploit... circumstances to... [our] own advantage" (1999, p. 118). To do this we must put contractors behind a "veil of ignorance" where they are ignorant of all facts about themselves that may bias their decisions when choosing principles of justice; they are therefore forced to choose principles that are fair to all (1999, p. 118). The contractors do not know "their place in society, class position or social status" (1999, p. 118). Because knowing your race, religion, natural assets, sex, class, social status, family background etc. may lead you to choose principles that favour those groupings. Our impartiality is modelled in our ignorance: if you do not know who you are, you have to have equal concern for all.

For Rawls the only morally considerable beings are those with a sense of justice; only those "who can give justice are owed justice" (1999, p. 510). Given this "[o]ur conduct towards animals is not regulated by these principles" (1999, p. 441). Moral agency is necessary for moral considerability.

iii. Other accounts of moral considerability

Roger Scruton argues that the fact we consider ourselves moral beings gives us our moral status. For us to get on within a community "[b]oth parties must be accepted as sovereign over matters which concern their very existence as freely choosing moral agents" (2000, p. 29). Thus, because people live together in society they have reason to treat each other as if they are morally considerable or they could not live together

[7] Some argue animals can be included in much the same way normal adult humans are (Bernstein 1998, pp 147-167). This is a controversial interpretation of contractualism.

successfully. Scruton allows animals some moral claims on us but such claims are indirect. Moral agency is, for Scruton, necessary for moral considerability.

Gewirth argues being alive and free are preconditions of being a successful moral agent. Thus, rational moral agents are logically committed to their own moral rights to such goods. This commits them to recognising the equal moral rights of other rational moral agents (1978). Moral agency is necessary for moral considerability.

iv. Non-moral agents have been neglected

Being morally responsible and being morally considerable are two different things. Failing to distinguish them causes unnecessary confusion. The focus on moral agency leads to a moral agent-centred approach to moral status. This has led to confusion about the concepts of moral agency and moral considerability. It has been thought that only moral agents are morally considerable and thus the two concepts have been treated as coextensive. This has lead to neglect of the concept of moral considerability and of those who are not moral agents; animals and marginal humans.[8] Marginal humans are those humans who, for whatever reason, are not moral agents (Regan 1979, p. 189; Narveson 1983, p. 58). Scruton identifies three different types of marginal human "'pre-moral' infants... 'post-moral' and 'non-moral' human adults" (2000, p. 53). Scruton uses the term 'moral' here to signify active membership of a moral community. But these terms are not appropriate for the current context and I will favour the terms pre-rational, post-rational and non-rational.[9] Pre-rational are those not yet fully rational but if allowed to develop normally will become so, namely, young children. Post-rational humans are those who were once rational but no longer are. Non-rational humans are those who are not, never have been and never will be rational.

Recently many have argued moral considerability is not restricted to moral agents.[10] One way of overcoming the neglect of non-moral agents has been to look at them in isolation from agents; namely, moral patients - those who are morally considerable yet

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[8] Also see: Keith 2002; McPherson 1984, p. 172.

[9] Fox makes a similar distinction (1986, p. 60).

[10] Almeida 2004; Bernstein 2002; Callicott 1990, p.121; Cavalieri 2002; Clark 1977; DeGrazia 1991; De Roose 1989; Dombrowski 1984, 1997; Fox 1987; Jamieson and Regan 1978; Leopold 1970, p. 239; Linzey 1976; McMahan 2002; Midgley 1983; Nobis 2004; Nozick 1974; Pluhar 1987, 1995; Rachels 1990; Regan 1983; Rollin 1983; Singer 1995; Warren 1997; Wetlesen 1999; Wilson 2001; Young 1988.

not moral agents. These concepts (moral considerability and moral patient) need to be defined. Before I can define them I need to say how to define philosophical concepts.

II. How to define philosophical concepts

Definition is a substantial philosophical topic.[11] Customarily the definition of a word has consisted in articulating the genus (wider class) and differentia (distinguishing features) (Pap 1964, p. 51). However, many types of words cannot be defined in this manner. Locke gave two reasons for this (1975). First an explanation may require more than the traditional genus and differentia: "[l]anguages are not always so made, according to the Rules of Logick, that every term can have its signification exactly and clearly expressed by two others" (1975, III. iii. 10). Secondly, not all words can be defined simply by using others: "if the Terms of one Definition, were still to be defined by another, Where at last should we stop?" (1975, III. iv. 5). He said some words like 'blue' "are incapable of being defined" (1975, III. iv. 7).[12]

As a result many different types of definition have been identified including: epistemological; formal; lexical; theoretical; stipulative; precising; persuasive (Pap 1964, pp. 49-54). I do not have room for an in depth discussion of such a large topic. I shall briefly state what kind of definition I am aiming at.

Persuasive definitions attempt to attach some kind of emotional meaning to a term (Stevenson 1944). This is not the kind of definition I am trying to give.

Definitions are often thought to consist in the traditional usage of words; a lexical definition (Bentley and Dewey 1947, p. 282; Pap 1964, p. 49). A lexical definition informs us how a term is already used. Its goal is to inform others of the accepted meaning. The kind of definition I want to give is not the same as identifying a term's use in ordinary language; philosophical terminology is often different to everyday terminology. Some terms are coined by philosophers in order to get across certain concepts, when such terms make it through to ordinary people their meaning is often bastardised or misunderstood. For example, one often hears reporters and broadcasters

[11] See: Bentley & Dewey 1947; Burdick 1973; Fetzer et al. 1991; Govier 1992; Horwich 1997; Locke 1975; Pap 1964; Raz 1984; Robinson 1950; Sager 2000; Stevenson 1944.

use the phrase "beg the question" by which they mean the preceding debate raises a question. When a philosopher uses the term "beg the question" they mean that the truth of the conclusion one is trying to prove has been assumed. If we went by ordinary usage when defining philosophical concepts we would often end up with a very different definition.

If we are not to go by ordinary usage how are we to come up with a philosophical definition? We should start by looking at previous philosophical definitions. Usually those who give a definition try to take into account its traditional usage. It is reasonable to insist a definition does take into account prior usage. If one does not take into account such usage one is not defining that term but a new and different one. While one's definition may differ from the traditional usage it must not differ so completely that it is unrecognisable, if one's definition does this one is defining a different concept. Similarly a stipulative definition assigns meaning to a completely new term (Pap 1964, p. 49). If a definition is stipulative the usage is novel and has not previously been used. The goal of this type of definition is to propose the use of a new term. I am trying to define a term already in use so it is not a stipulative definition I am interested in.

Where appropriate we should look at the term/concept in political, moral and legal contexts. Not all these contexts will always be relevant to philosophical meaning but examining them may shed light on it as such usages will usually be related to the philosophical one. Philosophical definitions tend to try and capture the meaning beyond the scope of philosophy.[13]

Once one has looked at previous definitions, it is usual to look at the different features other definitions have made use of. The purpose of a definition is to help us understand what a particular word or concept means. To do this it is necessary to elucidate any underlying components. Raz argues that such features tend to explain the role of the concept in question (1984, p. 195).

The reason for coming up with a definition may be to increase clarity, such that we understand the essential nature of what is being defined. This is a very important goal, if

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[12] Moore says something similar about yellow being indefinable (1993, p. 60).
[13] Raz says something similar about defining a right (1984, p. 194).

concepts are imprecisely defined it can lead to sloppiness and confusion. This kind of definition is a precising definition, it attempts to increase clarity about what a term means (Pap 1964, p. 50). It is a combination of a lexical and stipulative definition. Such definitions begin with the lexical definition but then try to sharpen it by specifying more precise limits on its use. A precising definition is the kind of definition I aim to give and I will do this, where possible, by outlining necessary and sufficient conditions.

Clarity is not the only reason for coming up with a definition. Many definitions are formed in order to further a favoured theory. While this is to be expected to some extent, there are limitations; namely, the definition should not exclude other theories. You should not define a concept such that only your theory can make use of it. A definition should be available to all theories. If a definition shows only your theory can be right it may well be question begging. In order to avoid begging any questions definitions should be theoretically neutral. When Raz defines the term "rights" he makes the following, similar, point:

> It follows that while a philosophical definition may well be based on a particular moral or political theory... it should not make that theory the only one which recognizes rights... A successful philosophical definition... illuminates a tradition of political and moral discourse in which different theories offer incompatible views as to what rights there are and why. The definition may advance the case of one such theory but if successful it explains and illuminates all. (1984, p. 195)

This type of definition is called a theoretical definition (Pap 1964, pp. 49-50). A theoretical definition is a type of stipulative or precising definition. They attempt to use a term within a broader theoretical framework. Such definitions would therefore commit us to the acceptance of the theory that it is incorporated in. Definitions need to be neutral between different theoretical standpoints. If a definition presupposes a particular philosophical position it is not neutral; it has excluded other positions.

Thus, the main points to bear in mind when trying to formulate a precising definition are: i) definitions need to be given against their traditional philosophical background; ii) definitions need to single out relevant features (where possible in terms of necessary and sufficient conditions); iii) definitions need to be theoretically neutral.

III. Moral considerability defined

The concept of moral considerability is often expressed as moral status, moral standing or having moral worth I shall use these terms interchangeably.

I shall give traditional definitions of moral considerability. Against this background I will pick the relevant features and then give my own neutral definition.

i. Previous definitions of moral considerability

Below are a limited selection of the philosophical definitions, there are many more. William May calls a morally considerable being a "being of moral worth":

> an entity that is the subject of inalienable rights that are to be recognized by other entities capable of recognizing rights and that demand legal protection by society... an entity that is valuable, precious, irreplaceable just because it exists... a being that cannot and must not be considered simply as a part related to some larger whole. (1976, p. 416)

For Evelyn Pluhar if something is morally considerable then moral agents are "directly obligated to take... [their] interests into account when their actions would affect... [them]" (1988, p. 33). If something is morally significant it is "entitled to be treated not merely as means" (1988, p. 33).

For De Roose something is "morally considerable... [if] they have moral rights and... towards them... we have moral duties and/or moral obligations" (1989, p. 87).

Peter Carruthers says if something has moral standing it has "rights... we may infringe by killing them or causing them suffering, or where there is some other way in which we have direct moral duties towards them" (1992, p. 1).

For Mary Warren moral status is an intuitive and common sense concept:

> To have moral status is to be morally considerable, or to have moral standing. It is to be an entity towards which moral agents have, or can have, moral obligations. If an entity has moral status, then we may not treat it in just any way we please; we are morally obliged to give weight in our deliberations to its needs, interests, or well-being... because its needs have moral importance in their own right. (1997, p. 3)[14]

Tom Regan says something has moral status if its status is independent of anyone else: "x has value logically independently of anyone's valuing x; thus, to treat x as if x has value if or as it served one's interests, etc., is to violate x's rights" (1979, p. 189).

Bernstein says to "develop an account of... moral considerability is to theorize why particular individuals have substance from a moral point of view, why it is that certain individuals matter morally" (1998, p. 9). He defines moral considerability as "the capacity to absorb moral consideration" (1998, p. 9).

Cavalieri argues that the notion of moral status is significant:

> Its role is... twofold. On one side, the notion performs the fundamental function of pointing out that the arrangement of the different entities within the moral community should be categorized in specifically ethical terms. On the other, however, it can be more generically employed to shed light on specific answers to the question of which beings other than the agent should have their interests protected, and to what degree. (2001, p. 27)

DeGrazia defines moral status as "*the degree (relative to other beings) of moral resistance to having one's interest - especially one's most important interests - thwarted*" (1991, p. 74).

ii. Features of moral considerability

The features of moral considerability in previous definitions are: morally considerable beings are owed obligations or direct duties; they have rights; they should be protected

[14] Wetlesen agrees with this way of defining moral status (1999, p. 289).

by law; their needs, interests or well-being should be taken into account; they matter in their own right/they are not mere means; they have the capacity to attract moral consideration. I shall discuss each and say which can form part of a neutral definition.

a) They are owed obligations or direct duties

We are not entitled to suppose those who are morally considerable are owed any duties (direct or otherwise) to do so excludes any theory that is not framed in terms of duty.

b) They have rights

Rights should not be included in the definition. If the definition is to be neutral it must be available both to theories that deal in rights and those that do not. If rights are built into the definition of moral considerability those theories that do not involve rights will have to say nothing is morally considerable for nothing has rights. Thus, a neutral definition of moral considerability must exclude rights. Morally considerable beings may have rights but this should not be assumed true by definition.

c) Their needs, interests or well-being should be taken into account

To say their needs, interests or well-being should be taken into account is to assume a particular theoretical standpoint. Many theories are not framed in terms of needs, interests or well-being so a neutral definition cannot be either.

d) They matter in their own right/They are not mere means

If something is morally considerable *it* is morally considerable. It is not considerable because of what it is related to. Some things may be morally considerable because of what they are related to, such things are indirectly morally considerable. Wilson defines the difference between direct and indirect moral status:

> a being belongs to the class of beings with direct moral status if and only if we can have at least some moral reasons to treat that being in a certain way due to the nature or intrinsic properties of the being itself. A being belongs to the class

> of beings with indirect moral status if and only if all the moral reasons we have to treat that being in a certain way arise due to the relational properties of that being. (2001, p. 137)

Thus for something to be truly (directly) morally considerable it must have direct moral status. This is something to which any theorist can agree.

e) They have the capacity to attract moral consideration

Saying something that is morally considerable has a capacity to be considered is correct. But it makes it sound like its moral considerability is something we can take or leave, a capacity that can be ignored, like we may ignore someone's capacity to play the flute. This conflicts with what was argued above. But if something is morally considerable it ought to be morally considered. Morally considerable things do attract moral consideration, but to include this in the definition would be confusing.

iii. Moral considerability defined

Those features that cannot form part of a neutral definition are: being owed direct duties or moral obligations; having rights; having their interests, needs or well-being taken into account; having the capacity to attract moral consideration.

Those features that should be included in a neutral definition are: they ought to be morally considered; they matter in their own right.

> *My definition of moral considerability:* X is morally considerable if and only if X matters in its own right, it ought therefore to be morally considered.

iv. Consensus on moral considerability

Despite the differences about moral considerability there are two areas of broad agreement. First, most agree that some beings/things are morally considerable.[15] Few ordinary moral agents would use the term 'moral considerability' but the idea that some

beings/things ought to be considered when moral decisions are made is common and intuitive.

Second, everyone who thinks some beings/things are morally considerable agrees that moral agents are (e.g. Wetlesen 1999, p. 288). Most who think that moral agents are morally considerable think that all humans are too, though some exclude marginal humans.[16] Even those who include all humans usually do so on the basis that humans in general (though there may be exceptions) have some special capacity, such as moral agency, that entitles them to moral consideration. There have been attempts to say some groups of humans are not morally considerable or are less morally considerable, for example, women, ethnic minorities, disabled people, homosexuals, transgender people etc. Few are openly willing to offer a defence for such views today. Generally those who think humans are morally considerable think all are equally considerable.

At the other end of the spectrum there is agreement that things like rocks, which are inanimate and insentient, are not morally considerable. We may give rocks moral consideration sometimes but usually because of some special circumstances, such as their meaning to individuals or communities or their scientific or cultural value. Such things are, therefore, indirectly morally considerable.

But in between rocks and moral agents there is a lot of disagreement. The disagreements are not simply over who/what are morally considerable, but about what degree of moral status they have and why they are morally considerable.

IV. Moral patients

i. Traditional definitions of moral patiency

Regan coined the term moral patient (1983, pp. 151-6).[17] Moral patients are those who:

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[15] There are exceptions. Moral nihilists, for example, deny that people/things are morally considerable.
[16] E.g.: Blatz 1985 p. 478; Frey 1977, 1980, 1983, p. 115; Gauthier 1977, pp. 268-69; McCloskey 1979, p. 31; Narveson 1983, p. 45.
[17] It is also used by: Dombrowski 2006, p. 230; Fox 1986, p. 7; Pluhar 1988, p. 33; Taylor 1987, p. 18.

> lack the prerequisites that would enable them to control their own behaviour in ways that would make them morally accountable... A moral patient lacks the ability to formulate, let alone bring to bear, moral principles... Moral patients in a word cannot do what is right nor can they do what is wrong. (1983, p. 152)

Moral patients can, however, "be on the receiving end of the right or wrong acts of moral agents" (1983, p. 154). Pluhar defines moral patients as those who are not morally responsible, yet are morally considerable (1988, p. 33). Heather Keith defines moral patients as those who are "worthy of our protection, but not themselves capable of moral deliberation" (2002).

However, some define moral patients as all those who are morally considerable (including moral agents). For example, Feezell & Stephens say a moral patient is "whatever is the appropriate object of moral concern for a moral agent" (1994, p. 7). Fox defines moral patients as "beings that may be affected for better or worse by our acts and which we should therefore treat with care" (1986, p. 7). Bernstein says moral patients are those who "have the capacity to be morally considered" (1998, p. 10). Bernstein contrasts moral patients to amoral patients (1998, p. 20). Amoral patients are those things not morally considerable e.g. sand or tarmac. Moral patients are those:

> with the capacity to be morally enfranchised or engaged... those individuals who have the capacity to absorb moral behaviour; they are the individuals toward whom moral behaviours can be intelligibly addressed... moral patients alone can be the objects of morally right or wrong actions. (1998, p. 9)

Being passive is also involved in the notion of moral patiency. McPherson argues that we:

> may take the situation of being a patient in the sense in which the word is most commonly used, i.e. a person ill and receiving treatment in hospital... A 'patient' is someone who lies there and has things done to him which are decided upon by other people. (1984, p. 179)

ii. My definition of moral patiency

The relevant features to be drawn from the traditional view are that moral patients: are not morally responsible; are morally considerable/have moral status/moral standing; matter independently from moral agents; have rights/are the kind of things moral agents have direct duties or obligations to; are passive receivers/objects of moral actions and deliberations. I shall examine each to see which can form part of a neutral definition.

Not being morally responsible

Moral patients are sometimes defined as those who are morally considerable but not morally responsible (Keith 2002; Pluhar 1988, p. 42; Regan 1983, pp. 151-6). But to say moral patients exclude those who are morally responsible (i.e. moral agents) is not neutral. Many say moral patients are all those who are morally considerable, including moral agents (Bernstein 1998, p. 9; Cavalieri 2001, pp. 54, 57, 59; Feezell & Stephens 1994, p. 7; Warnock 1971, p. 148). But more importantly moral agents, like moral patients, can be and are the subjects of moral agents actions and deliberations. Thus, a neutral definition of moral patienthood will not specify that moral patients are not morally responsible; it will allow they may be. To divide those who are morally considerable into two groups: moral agents and non-moral agents is to beg the issue about what makes them morally considerable. A neutral definition of moral patiency cannot, therefore, specify they are not morally responsible.

Being Passive Receivers/Being The Object Of Moral Actions And Deliberations

Moral patients are passive insofar as they do not perform moral actions or make moral deliberations; they are on the receiving end of morality. This may seem to exclude moral agents. But moral agents are not solely agents; they are sometimes the subjects of other moral agents' actions and decisions. At these points they are moral patients. They are moral agent and moral patient simultaneously. If we look at the original use of the term patients (i.e. in a hospital sense) we can see moral agents can be patients (McCullough 1984). As McPherson argues the patient is:

> the promisee, the person lied to... It is impossible... to state such typical situations... without referring to patients... no promises without someone having the promise made to him, no lies without someone lied to. (1984, p. 172)

Moral agents are subject to the actions, deliberations and judgements of other agents.

Moral Considerability/Moral Status/Moral Standing

Moral patients are morally considerable; moral agents ought to consider them. This is neutral because it allows for those who say moral agency is necessary and/or sufficient for moral considerability and for those who say it is something else.[18]

Mattering Independently From Moral Agents

The traditional account has it that moral agents matter because of what they are, not because of their relationship to other moral agents; they have direct moral status. Recent definitions of moral patienthood agree that being a moral patient means mattering in one's own right independently of others; having direct moral status. To be a moral patient something must matter in its own right.

Having Rights/Being The Kind Of Thing Moral agents Have Direct Duties/ Obligations To

Some of the definitions given above said that to be a moral patient is to be the kind of thing that has rights or that moral agents can have direct duties towards. Not all moral theories include rights or direct duties so to include them in the definition would be to exclude some moral theories. A neutral definition cannot, therefore, determine that moral patients have rights or direct duties owed to them.

Moral patienthood defined

Thus, moral patients are morally considerable. They matter independently from moral agents; they are directly morally considerable. However, it cannot be said they have

[18] How much consideration they deserve and why they deserve it will be discussed in following chapters.

rights or are owed direct duties. Moral patients may or may not be morally responsible. Moral patients are passive receivers/objects of moral agents' actions and deliberations.

My definition of moral patients: X is a moral patient iff X deserves moral consideration because of what it is (rather than because of what it is related to).

V. How should we approach moral considerability?

The traditional approach marks out two distinct groups: agents and non-agents. In so doing it reinforces the idea that moral agency is a necessary condition for moral considerability, this in turn presents a psychological barrier to looking for other necessary conditions. Moral considerability needs to be considered in isolation from moral responsibility if such a necessary condition is to be found. It is the purpose of my thesis to give an account of moral considerability.

VI. Structure of thesis

In the introduction I have given definitions of the terms and then put the current debate in context by giving a brief background to it.

In Chapter One I will outline the argument from marginal cases; if we think marginal humans are morally considerable we must accept that moral agency is not the only thing that determines moral considerability. In this case animals that are like marginal humans are also morally considerable. The argument from marginal cases gives us *a* reason to prefer a more inclusive account of moral considerability i.e. one which can comfortably include marginal cases, and by extension animals.

In Chapter Two I will argue that when coming up with accounts of moral considerability philosophers have often failed to address the issue of moral risk. I will argue that we cannot know for certain which account of moral considerability is correct. Given we are trying to do what is right we should avoid any course of action that may be wrong. I will argue that any account of moral considerability that excludes animals is taking an unnecessary moral risk: animals might be morally considerable and if they are most of our current treatment of them is wrong.

Another consideration ought to be whether a theory is based on epistemically responsible premises; being epistemically responsible augurs in a theory's favour.

In Chapter Three I will outline some accounts that say animals have some moral status but it is limited. I will argue that these views fail because they fall foul of the argument from marginal cases, are epistemically irresponsible and/or are morally risky.

In Chapter Four I will outline the subjects-of-a-life account. On this account all animals are equally morally considerable. I will argue that this account is not as epistemically responsible as it could be and it is morally risky insofar as it accords too high a moral status to some animals and too low a moral status to some humans and some animals.

In Chapter Five I will argue that we should favour a sentience-based account. On this account all sentient beings are morally considerable. I will outline some problems with the account and say how they may be overcome. I will argue that the sentience account is the most epistemically responsible and least risky of the accounts examined and this gives us *extra* reasons to prefer it to the alternatives.

VII. Summary and Conclusion

The purpose of this introduction was to give a background to the debate over moral considerability and put it in context. In the first section I gave the background to the debate; the traditional picture of the link between moral agency and moral considerability. In section two I explained how to define philosophical concepts. In section three I defined moral considerability. In section four I defined moral patiency. In section five I outlined how we should approach moral considerability. In section six I outlined the structure of my thesis.

It is now possible to start arguing for the moral considerability of animals. I will start by outlining the most powerful argument in favour of the idea that animals are morally considerable: the argument from marginal cases.

Chapter One: The Argument from Marginal Cases

Introduction

Those who think moral considerability depends on rationality et al. are faced with a problem: some humans, marginal humans, are not rational et al. If marginal humans are morally considerable, despite lacking rationality et al., moral considerability cannot consistently be denied to animals with similar capacities. Therefore, either marginal humans are not morally considerable, or if they are, animals are too. This is the argument from marginal cases (hereafter AMC). The point of AMC is to demand consistency in our thinking about animals.[19]

In 1.1 I outline AMC. In 1.2 I consider initial objections. In the rest of the chapter I consider the major objection: namely, that there is a relevant difference between all humans and all animals, such that all humans are morally considerable but no animals are: in 1.3 species; in 1.4 potential; in 1.5 kind; in 1.6 similarity; in 1.7 the ability to participate in a relationship or reciprocate; in 1.8 the possession of an immortal soul. I will argue that all these objections fail to meet AMC's challenge: some fail to show all humans are relevantly different from all animals; some only show that marginal humans have indirect moral status; there are independent reasons for rejecting the other criteria.

1.1 The Argument from Marginal Cases outlined

i. AMC

AMC is a challenge to those who argue all humans are morally considerable but no animals are.[20] Support for this sharp division is drawn from the supposed fact that all humans possess some capacity no animals do, such as: rationality, language, autonomy, moral agency, the ability to reciprocate, et al. But not all humans are fully rational et al. and some animals are more rational et al. than some humans. To be consistent those who think rationality et al. is what makes humans morally considerable must admit

[19] Wilson makes a similar point (2001, p. 136).

[20] The term "argument from marginal cases" was coined by Narveson (an opponent of the argument) (1977). AMC is not, however, a modern argument. Bentham hinted at it: "a full-grown horse... is beyond

either that marginal humans have as little moral status as animals, or that animals have as much as marginal humans. AMC is a powerful challenge.[21] It has therefore received a great deal of attention recently.[22]

Most who think animals are morally considerable think AMC is a powerful argument (I count myself among these).[23] But not all concerned about animals are in favour of AMC.[24] AMC has many critics.[25] Before considering criticisms I will outline AMC in more detail, starting by saying which humans are marginal.

ii. Which humans are marginal?

Which humans are marginal will depend on which property/properties are required for moral status. Usually marginal humans are those who do not have the mental capacities of 'normal' adult humans. There are three broad categories: pre-rational (not yet fully rational but if allowed to develop normally will become so, i.e. children); post-rational (were rational but no longer are); non-rational (never have been or will be rational).[26]

Objections to the term marginal human

Some object to the use of the term "marginal humans" because it marginalizes them (Bernstein 2002, p. 525, p. 538; Nobis 2004, p. 43). I agree the term marginal humans is open to objection; it implies they are already on the fringes of moral considerability.

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comparison a more rational...[and] conversable animal, than an infant" (1948, Ch. 17). AMC has roots in ancient Greece, Porphyry was the first to make it (1965, III. 19).

[21] Frey (who opposes it) calls it "the most important... argument" for animal rights (1977a, p. 186). Supporters of AMC agree (e.g. Dombrowski 1997, p. 4; Jamieson and Regan 1978).

[22] E.g.: Garner 1993, pp. 12-16; Newmyer 1996; Talbert 2006, p. 207; VanDeVeer 1980, p. 46 (calls AMC the Extension argument); Warren 1997; Young 1988, p. 19.

[23] I have defended AMC elsewhere (2005, 2006, 2007). Others have supported AMC (some more explicitly than others): Almeida 2004; Bernstein 2002; Cavalieri 2001; Clark 1977; De Roose 1989; DeGrazia 1996; Dombrowski 1984, 1997, 2006; Everitt 1992, p. 51; Fox, M. W. 1983, p. 310; Feezell & Stephens 1994; Hartshorne 1978, 1979; Jamieson 1981; Jamieson & Regan 1978; Johnson 1991; Linzey 1976, p. 24; McMahan 2005, p. 370; Nielson 1978; Nobis 2004; Pluhar 1987, 1995; Rachels 1986, 1989, 1990; Regan 1977, 1979, 1983, 1993; Rollin 1983, p. 109; Ryder 1975; Singer 1986a, p. 306, 1993, p. 75, 1995; Sprigge 1979; Telfer 2000, p. 225; Wilson 2001.

[24] E.g.: Sapontzis 1985, p. 252; VanDeVeer 1979.

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

[26] I use rational here to stand in for rationality et al.

It might be argued that the term marginal humans is merely descriptive, that it is merely describing their position in relation to 'normal' humans. But for this description to be correct the view that moral agency (or something similar) is necessary for moral considerability has to be assumed; only if this is assumed are such humans marginal. The term marginal humans is theory laden, ideally one would come up with a more neutral term. Regan uses non-paradigmatic (1979, p. 190). But non-paradigmatic could mean any number of ways humans are unusual such as being albino or physically disabled. Such people are not what is usually meant by marginal humans, so I will not use non-paradigmatic.

It may be objected that some marginal humans are not marginal, for example babies. But the term marginal humans is meant to indicate that the individual does not possess the capacities relevant for moral status. In this sense babies are marginal.

It may be argued that marginal person would be better as this way their humanity is not brought into question. However, using the term marginal humans does not seriously undermine their status as humans. The use of the term marginal humans is widespread so I shall continue to use it.[27]

iii. Different versions of AMC

There are myriad versions of AMC. I will outline some of the most important.[28] I will then go on to give my own version. One of the earliest modern formulations is Singer's:

> human beings are not equal... if we seek some characteristic that all of them possess... [it] must be a kind of lowest common denominator, pitched so low that no human being lacks it. The catch is that any such characteristic...

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[27] Those who refer to marginal humans: Almeida 2004; Bernstein 2002; Carruthers 1992; Cigman 1981; Cohen 1986; De Roose 1989; DeGrazia 1996; Dombrowski 1984, 1997; Diamond 1978; Feezell & Stephens 1994; Fox 1986; Francis & Norman 1978; Frey 1977a; Jamieson & Regan 1978; Linzey 1976, p. 24; McCloskey 1979; Narveson 1977; Newmyer 1996; Nobis 2004; Pluhar 1987, 1988b, 1995; Regan 1979; Ryder 1975; Sapontzis 1985, p. 252; Scruton 2000; Singer 1995; Warren 1997; Wilson 2001; Young 1988.

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

> possessed by all human beings will not be possessed only by human beings. (1995, p. 237)[29]

Andrew Linzey's version of AMC is often quoted:[30]

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

Regan distinguishes two versions:

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

I will now give my own version.

iv. My version of AMC

The above formulations make basically the same point: moral considerability cannot consistently be withheld from animals if it is granted to marginal humans with similar capacities. Regan has pointed out an important difference between the weaker and the stronger versions of AMC. It is worth laying both versions out more formally.

Weaker version of AMC (hereafter WAMC):

1) If a capacity/capacities such as rationality et al. is necessary for moral considerability animals are not morally considerable, but nor are marginal humans who lack that capacity.

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[29] First published in 1975.
[30] E.g.: Frey 1977a, p. 187, 1980, p. 29; Regan 1979, p. 194.

2) Many think marginal humans are morally considerable despite lacking the necessary capacity/capacities.
3) If marginal humans are morally considerable no capacity they lack can be necessary (though it may be sufficient) for moral considerability. There must be another sufficient capacity.
4) Any capacity marginal humans have some animals will also have.
5) Therefore: if marginal humans are morally considerable so are animals that possess the relevant capacity/capacities. If animals are not morally considerable neither are marginal humans.

Stronger version of AMC (hereafter SAMC):

1) If a capacity/capacities such as moral agency et al. is necessary for moral considerability animals are not morally considerable, but nor are marginal humans who lack that capacity.
2) Marginal humans are morally considerable despite lacking the necessary capacity.
3) Marginal humans are morally considerable, therefore no capacity they lack can be necessary (though it may be sufficient), and there must be another capacity that is also sufficient for moral considerability.
4) Any capacity that marginal humans have some animals will also have.
5) Therefore: marginal humans are morally considerable and so are animals that possess the relevant capacity/capacities.

WAMC claims that *if* marginal humans have moral status animals do too. SAMC claims that marginal humans *have* moral status so animals do too. Whether SAMC is valid depends on premises 2 and 3 being sound. SAMC thus requires additional arguments that marginal humans are morally considerable. I will attempt to provide such arguments in Chapter Five. Until then I shall be concentrating on WAMC and it is this I will have in mind when I refer to AMC.

WAMC leaves whether marginal humans have moral status an open question. This leaves those who deny animals moral status a choice: either deny marginal humans are morally considerable or admit some animals are. Some philosophers have taken the

former horn of the dilemma.[31] For example, Frey says experimenting on marginal humans is permissible because they lack moral status (1983, p. 115).[32] Gauthier thinks "animals, the unborn, the congenitally handicapped and defective, fall beyond the pale of morality tied to mutuality" (1977, pp. 268-69). Narveson argues "the proper way to deal with them [marginal humans] is simply whatever way is dictated by our interest in such things", marginal humans are "mere things" (1983, p. 45).

This may seem to undermine WAMC: if marginal humans are not morally considerable then nor are animals.[33] But that some philosophers have been forced to admit that, on their position, marginal humans have no moral status shows the strength of AMC: it forces them to take a consistent attitude towards animals. But the real strength of WAMC can be seen when it addresses its real targets: those who think marginal humans have moral status. It forces them to admit animals have moral status too.

Thus, despite being "weaker" WAMC is still very strong. Those who say marginal humans are morally considerable but animals are not must show there is a morally relevant property/properties *all* humans have and no animals do. That opponents of WAMC are forced to make such arguments is an important victory. Part of the purpose of AMC is to shift the burden of proof on to those who deny animals' moral status.[34] This much, at least, has been achieved. Opponents of AMC must agree, to at least some extent, or they would not have given arguments to counter it. There have been many attempts to show there are criteria met by all humans and no animals. Before considering them (1.3 to 1.9) I will counter some other objections.

1.2 Objections to AMC

i. Moral theories do not need to account for unusual cases

Many philosophers do not even discuss marginal humans (e.g. Kant 1963). Many who do discuss marginal humans see them as awkward, exceptional or difficult cases

[31] E.g.: Blatz 1985, p. 478; McCloskey 1979, p. 31; Paske 1988, pp. 110-11 (does not think it follows that marginal humans ought to be treated in the same way as animals, though he provides no argument for this).
[32] Though he adds that because there may be side effects of experimenting on marginal humans e.g. if massive numbers of people are opposed, it may be unjustified (I will consider this in 1.2).
[33] Unless animals posses another sufficient condition for moral status, which marginal humans lacked.
[34] Pluhar says something similar (1988b, p. 100).

(Cigman 1981, p. 61; VanDeVeer 1979, p. 57; Rawls 1999, pp. 446). These difficult cases are put to one side to be returned to at a later date (which they seldom are).[35] But those who say marginal humans are morally considerable need to account for their moral status within their existing framework. If they are unable to do this they have failed to provide an adequate account.

ii. AMC is self-defeating

Frey argues AMC is self-defeating because it does not include all marginal humans e.g. the irreversibly comatose (1977a). But advocates of AMC do not need to say *all* marginal humans have moral status and many deny the irreversibly comatose do (Regan 1979, p. 202; Singer 1995). It is enough that some marginal humans are morally considerable.

iii. It is not clear what status marginal humans have

Benson says it is not clear how much moral status marginal humans have (if any) so it is unwise to use them as a basis for animals' moral status (1978, p. 535).[36] Francis & Norman, make a similar point: it may be sound to "accord a lesser moral status to very young babies" (1978, p. 510).[37]

But advocates of AMC are aware that additional arguments are needed to fill in the details about moral status. The main aim of AMC is to shift the burden of proof.

The status of marginal humans is not as doubtful as this objection implies. Most agree marginal humans should not be used as tools.[38] Marginal humans' rights have been sanctified by law in most countries and cultures (including the UN) (Dombrowski 1997, p. 141; Feinberg 1974, pp. 46-7). What status marginal humans have may not be clear, but that they have some direct moral status is.

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[35] E.g.: Mackie 1978, p. 356; MacIntyre 1999, p. 2; Rawls 1999, pp. 441-8.
[36] Benson acknowledges this point does not rob AMC "of all force" (1978, p. 535).
[37] Narveson makes a similar point regarding euthanasia and abortion (1977, p. 173).
[38] Similar points are made by: Ryder 1975, p. 3; Sapontzis 1985, p. 252.

iv. Abilities of animals in comparison to marginal humans

There are two problems when comparing the capacities of animals with marginal humans. First, it is tempting for advocates of AMC to exaggerate the abilities of animals and underestimate those of marginal humans (Fox 1986, p. 32; Francis & Norman 1978, pp. 509-512).[39] Second, it is hard to find marginal humans who are directly comparable to animals (Benson 1978, p. 535).

Francis & Norman argue that the category of permanently retarded humans is large and covers humans with widely different capacities. At the bottom end are anencephalics who suffer from "severe developmental failure of brain and cranium" (1978, p. 512). At the top end are Downs Syndrome sufferers who have IQs ranging from 20-80 (most clustered around 50) (1978, p. 511).[40] Downs syndrome sufferers typically have linguistic abilities, some can read and write (1978, p. 511). The suggestion is that these marginal humans outstrip most animals in terms of abilities. But not all animals are left behind. Some apes have greater abilities than, at least some, mentally handicapped humans. For example, the orangutan Chantek has a mental age equivalent to a two or three year old (Dombrowski 1997, p. 142). Koko the gorilla consistently scored in the 80s and 90s on IQ tests (Dombrowski 1997, p. 142). Some chimpanzees have been able to use and understand sign language (Eckholm 1989, pp. 66-72).

Francis & Norman's response is that there is evidence that with sufficient stimulation in early childhood Downs syndrome sufferers could achieve higher IQ scores (1978, p. 512). This may be true, but there are likely to be some Downs syndromes suffers (those who initially scored 20) who will never reach 80 or 90 as some chimpanzees have. More importantly a similar argument could be made in favour of animal abilities. Only recently has detailed scientific investigation revealed the complex abilities animals, not just primates, have (see 4.5 and 5.5). Who knows what discoveries may be made. Until more is known it is unwise to pronounce on the abilities, or lack thereof, of any animal.

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[39] This is an ad hominem argument, proponents of AMC need not do so. A similar charge can be laid at Francis and Norman's door, they concentrate on those with the greatest abilities.

[40] Also see Dombrowski 1997, p. 161.

One does not need to find a marginal human that is directly comparable to an animal. Rough approximations are adequate and it is not that difficult to find animals of roughly the same ability. For example, a marginal human whose brain does not develop beyond the age two or three would be equivalent to the orangutan Chantek, who has a mental age equivalent to a two or three year old. A marginal human who consistently scored in the 80s and 90s in IQ tests would be comparable to Koko the gorilla who did likewise.

But even if one could not find comparable marginal humans it would not matter. All we need do is conduct a thought experiment; would we give a marginal human with abilities like *this* animal the same moral consideration. This is the point of AMC.

Moral status does not necessarily rely on mental capacities; Regan links moral status to being a subject-of-a-life, Singer to sentience. If other plausible criteria can be found Francis & Norman's objection carries much less weight. Intelligence may have a bearing on other criteria (this will be considered in later chapters) but it will have significantly less bearing than if the criteria for moral status is rationality et al. The important point is that both animals and marginal humans differ widely in their abilities. Whenever I compare marginal humans and animals I will have in mind those with roughly equal abilities.

v. Anthropomorphism

A common criticism of those who advocate an increase in the moral status of animals is anthropomorphism (Fox 1986, p. 6; Leahy 1996, pp. 194-5). To anthropomorphize is "to ascribe human-like minds and emotions to entities that are not mentally or emotionally similar to human beings" (Warren 1997, p. 35).[41] Carruthers thinks the tendency to tell stories where animals act like humans encourages anthropomorphism (1992, p. 124). We should therefore be careful when we interpret evidence about animals (Carruthers 1992, p. 126; Garner 1993, p. 35). While anthropomorphism is a vice there is an analogous vice of assuming, without sufficient evidence, that animals are not like us; anthropocentrism (Linzey 1996, p. 183). We need to be careful of both.

[41] Similar definitions: Fox 1986, p. 29; Garner 1993, p. 9.

The degree to which supporters of AMC are guilty of anthropomorphism is exaggerated. As Griffin points out, it is "no more anthropomorphic... to postulate mental experiences in another species than to compare its bony structure, nervous system...[etc.]" (1976, p. 69) .[42] As Ristau points out that "anthropomorphizing can provide a useful beginning by suggesting potential animal capacities" (1992, p. 125). This is how we would approach the study of extraterrestrials, it is reasonable to do so with animals.

vi. The slippery slope argument

a. Outline of the slippery slope argument

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

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

This is the slippery slope argument (hereafter SSA).[43] The idea is when we see a marginal human suffer it is much the same as the suffering of a normal human (1992, pp. 163-4). Anyone who shows indifference to the suffering of a baby or a senile person shows callousness which might be transferred to rational agents (1992, p. 164). Part of the danger in saying marginal humans have less moral status is that it is open to "abuse by unscrupulous people" (1992, p. 115).

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[42] Others who object to the charge of anthropomorphism: Taylor 2003, p. 59; Wise 2000, p. 124.

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

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

There are two types of SSA: logical and psychological. On the logical version if we do not say marginal humans have moral status we will necessarily slide down the slippery slope. On the psychological one if we deny marginal humans moral status it is more likely we will deny humans who have moral status their due. When Carruthers uses the word "inherently" it implies he has the logical version in mind. However, what he says elsewhere implies the psychological version (1992, p. 115). I will give him the benefit of the doubt and assume it is the psychological point he, and others, are making.

b. Drawing lines

Carruthers argues that it is possible to draw lines between different groups in theory but it is dangerous in practice (1992, p. 115).[44] But we can and do draw lines all the time. Unfortunately, it is all too easy to categorise humans into different groups. When slavery was widespread white people tolerated treatment of non-white people, which they would not have tolerated had the recipient been white. If something as trivial as skin colour is sufficient for line drawing something as fundamental (Carruthers says it is fundamental) as rationality et al. is more than sufficient to draw a line.

Carruthers' argues that though we are capable of drawing such lines "it is highly dangerous to attempt to draw distinctions within the category of human beings at all" (1992, p. 164). But it is not clear that drawing a line between normal and marginal humans is dangerous. There may be some humans it is hard to categorise but SSA, at best, offers a reason to say these unclear cases should be given the benefit of the doubt; this mitigates against any danger for those who are truly rational et al. There is no reason to exclude those humans who are clearly marginal.

SSA does not dictate where the line should be drawn. It gives us no more reason to draw a line at the species barrier then to draw it to include animals. Having one

[44] Lomasky also thinks it is problematic for normal humans to differentiate between normal children and the severely mentally retarded (1987, p. 200).

alcoholic drink may lead us down a slippery slope to getting drunk. Acknowledging this does not help decide whether we should never drink, or limit ourselves to two or three drinks. Which option we choose is not dictated by the existence of a slippery slope.

If we do need to draw lines it is not clear divisions should be made by species. A more appropriate barrier would be rationality et al.: that is what is relevant. Carruthers argues that most people are not very "deeply theoretical" (1992, p. 116). Presumably he means they are unable to make such distinctions; they would make mistakes. This line of thinking is in tension with Carruthers' whole approach. If rationality et al. matters, it is strange to pander to people's irrationality. It is hard to see why he thinks rationality et al. is so important while insisting most people are not that rational after all.

c. SSA is self-defeating

Pluhar argues that anyone who uses SSA has to do so on consequentialist grounds (1987, p. 31).[45] But, Pluhar argues, those who use such an argument must take *all* consequences into account. It must be the case that killing marginal humans or using them for medical experiments would result in net disutility. If it resulted in net utility those who advocate SSA would have to acknowledge it is not only acceptable to use marginal humans for experiments but that we ought to.

d. Prudence

Many who make SSA appeal to prudence.[46] Carruthers argues that contractors would agree to protect themselves in case they became marginal humans (1992, p. 112). Wreen says we should give marginal humans rights because "There but for the grace of God go I" (1984, pp. 48-9). Narveson argues "we generally have very little to gain from treating such people [marginal humans] badly, and we often have much to gain from treating them well" (1983, p. 58)

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[45] Pluhar calls SSA the side effects argument (1987, p. 31).

[46] Carruthers 1992, p. 112; Fox 1986, p. 61; Lomasky 1987, pp. 205-6; Narveson 1977, p. 176, 1983, p. 58; Warren 1986, p. 170, 1997, p. 207; Wreen 1984, pp. 48-9, 51-4.

But not everyone would want to be protected if they become senile, they may wish to be killed.[47] Not everyone would be interested in their future brain damaged or senile self.

It is not obvious that personal identity is preserved through such a change as becoming senile.[48] If the senile or brain damaged person you become is not you you will have no prudential reasons for protecting that person.

Prudence is not a moral reason. In order to make a case that someone/something is morally considerable one needs to give moral reasons. That it will benefit those who are morally considerable is not the right kind of reason.

If marginal humans only have moral status because normal humans may become marginal humans only post-rational marginal humans should be given moral status; there are no prudential reasons for giving moral consideration to pre- and non-rational marginal humans. Carruthers et al. may reply there are other prudential reasons for protecting all marginal humans; allowing cruelty to any humans will encourage cruelty to all humans. But if this is so there are, as I will argue below, equally good prudential reasons for saying animals are morally considerable.[49]

e. Prudential reasons for saying animals are morally considerable

Carruthers argues prudential reasons do not apply to animals (1992, p. 115). But there are good prudential reasons for extending moral status to animals; if we are kind to animals we are more likely to be kind to humans, if we are cruel to animals we are more likely to be cruel to humans.[50] Kant, who makes SSA, seems to agree:[51]

> he who is cruel to animals becomes hard also in his dealing with men. We can judge the heart of a man by his treatment of animals... cruelty grows and develops... the child's cruelty to animals... [culminates] in murder... Tender

[47] Carruthers acknowledges this objection (1992, p. 113). Feezell & Stephens make a similar objection (1994, p. 11).
[48] Carruthers acknowledges this objection (1992, p. 113).
[49] Feezell and Stephens make a similar point (1994, p. 11).
[50] Fox makes a similar point (1983, p. 314).
[51] As argued above SSA is only really open to Consequentialists – Kant is being inconsistent in using it.

> feelings towards dumb animals develop humane feelings towards mankind. (1963, p. 239-40)[52]

Evidence suggests that those who are cruel to animals are cruel to humans. Many of those convicted of violent crimes have a history of cruelty to animals. Several psychopathic murderers including the 'Boston Strangler' were extremely cruel to animals.[53] Two of four men convicted for battering and killing babies had previous animal cruelty convictions.[54] Cruelty to animals has been linked to child abuse and sociopathic behaviour (Fox 1983, p. 314). Similarly, "people who express little affection for dogs also tend to manifest little affection for other people" (Ryder 1975, p. 13).

Evidence suggests that those who are kind to animals are kind to humans.[55] Gandhi, the well-known religious leader was virtually a vegan (vegans eat nothing of animal origin (eggs, meat, milk) – Gandhi did, however, drink goat's milk) because he disapproved of the cruelty farm animals are subject to. Frances Power Cobbe was a pioneer social reformer, an ardent feminist, and founder of the British Anti-vivisection society. Lawson Tait, another anti-vivisectionist was one of those early pioneers who advocated admitting women to the medical profession. Maria Dickin who founded the People's Dispensary for Sick Animals was an early social worker who cared much about the suffering of humans and did much to alleviate it. Dick Gregory who was involved in most of the civil rights demonstrations of 1960s America became a vegetarian in 1965.

Thus, for those who accept slippery slope type arguments there are very strong reasons for extending moral consideration to animals. People who are cruel to animals tend to be cruel to humans. Kindness to animals tends to coincide with kindness to humans. According moral status to animals is thus a good way to promote kindness to humans.

Arguably there are stronger prudential reasons for extending moral status to animals then there are to extending them to marginal humans. Most people have a lot more contact with animals than marginal humans (except children). This is especially true of

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[52] Aquinas makes a similar point (1981).
[53] *Sunday Times*, 19 September , 1976.
[54] *Sunday Times*, 4 November, 1973.
[55] One notable exception is Hitler, though he was not a vegetarian as many think.

children, whose moral character is being formed. If we want to produce adults who are kind to humans we must ensure children are kind to animals. Thus, for advocates of SSA there are very strong reasons for extending direct moral concern beyond the species barrier. If SSA works it works for animals too.

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

There have been societies where marginal humans are not accorded moral status but did not slip into abusing other humans. In some societies couples with more than two children would kill any further babies because the parents would only be able to carry one child each and any further children would put the whole family in jeopardy.[56] In Eskimo societies old people, who could not look after themselves, would be expected to die (usually by staying out and dying from exposure) because the family could not support them.

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

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

g. Empirical problems

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

All SSAs suffer from a structural weakness: they are based on empirical assumptions that may turn out to be false.[57] Carruthers acknowledges this (1992, p. 115). If the empirical premises are false or even questionable this seriously weakens SSA.

h. Two tier theories

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

Wilson argues one way to accommodate the direct moral status of marginal humans in Carruthers's framework is to introduce a two-tiered moral theory. If we take first-order and second-order considerations into account Carruthers can show marginal humans have direct moral status. But animals will have direct moral status too.[58] The first level is practical and should furnish general rules for action, which are simple to help us avoid being influenced by non-moral factors (2001, p. 140). The second level is reflective and should explain what is morally relevant and why and how we arrive at rules for the first level. Second-order theories should say what the goals of moral action are. Second-level considerations are what lead Carruthers to accept contractarianism and first level rules would be those adopted by rational contractors (2001, p. 141).

Bearing these two levels in mind, we can, Wilson argues give an account of the direct moral status of marginal humans. A being has direct moral status iff some of the duties we have to them arise from intrinsic properties morally relevant at the first level (2001, p. 141). A being has indirect moral status iff none of the duties we have to them arise from intrinsic properties morally relevant at the first level (2001, p. 141).

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[57] Others have made this argument: DeGrazia 1996, p. 55; Wilson 2001, p. 138.

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

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

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

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

vii. Some criteria do separate all humans from all animals

Frey argues that AMC fails to show "each and every" criterion for moral status that excludes animals excludes marginal humans (1977a, p. 186). But proponents of AMC do not need to say this; they can accept there are criteria, which if accepted, could permit us to ascribe moral status to all humans but no animals (I consider one in 1.9). AMC seeks to show that some marginal humans will not be morally considerable given *some* criteria for moral status. I do not need to, and I do not, claim that marginal humans will be excluded by "each and every" criterion that excludes animals.[59]

1.3 Species

The most common response to AMC is that species is morally relevant; being a human is necessary and sufficient for moral status. Advocates of AMC counter with the charge of speciesism. Speciesists base moral consideration on species where species is not relevant.[60] Whether speciesism is justified has received much attention.[61] Few admit to being speciesists (some notable exceptions: Becker 1983; Cohen 1986, 2001, p. 254; Fox 1986; Wreen 1984). It is worth noting M. A. Fox changed his mind about being a speciesist and such views are "now an embarrassment" (1987, p. 56). Others have denied the charge of speciesism but argued species is morally relevant.[62] I will argue that species is not a morally relevant characteristic. I will start by defining speciesism.

i. Definition of Speciesism

Ryder coined the word speciesism: "the widespread discrimination that is practiced by man against other species... prejudice... based upon appearances" (1975, p. 5). Many have given definitions. The most notable, because it is the most often quoted, is Singer's:[63]

> Speciesism... is a prejudice or attitude of bias in favour of the interests of one's own species and against those of members of other species. (1995, p. 6)

Others have given similar definitions from which three features can be drawn (Almeida 2004, p. 27; Cavalieri 2001, p. 70; DeGrazia 1996, p. 28; Regan 1981a, p. 74). First, speciesists discriminate against other species in favour of their own; second, speciesists

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[59] Jamieson and Regan make a similar point (1978, p. 34).

[60] Some who have argued speciesism is unjustified/species is not morally relevant: Almeida 2004; Bentham 1948; Bernstein 2002; Cavalieri 2001, p. 71; Clark 1983, 1987; DeGrazia 1996, p. 60; Dombrowski 1997, p. 63; Everitt 1992, p. 50; Feezell & Stephens 1994, p. 8; Fox (M. A.) 1987; Fox (M. W.) 1983; Huffman 1993, p. 22; Johnson 1991, pp. 51-2; Linzey 1989, p. 138; McMahan 2005, p. 360; Pluhar 1988a, 1988b, p. 100, 1987, p. 33; Rachels 1989, p. 123, 1990, pp. 181-197; Regan 1978, 1983, 1993, p. 197, 2003, p. 48, 2004, p. 44; Ryder 1975; Singer 1986a, p. 293, 1995; Vallentyne 2005, p. 406; Wetlesen 1999, p. 296. This includes those against giving animals greater moral status (Fox 1986, p. 60).

[61] E.g.: Benson 1978; Garner 1993, p. 15; Gavin Reeve 1978; Machan 1991, p. 170; May 1976, p. 442; Midgley 1983; Paden 1992; Sapontzis 1985; Schmidtz 1998; VanDeVeer 1979.

[62] E.g.: Anderson 2004, p. 279-80; Blatz 1985; Carruthers 1992, p. 52; Cigman 1981; Devine 1978, p. 498; Diamond 1978; Francis & Norman 1978; Frey 1977a, 1980; Machan 1991, p. 170; May 1976, p. 442; Nozick 1983, pp. 11, 29; Narveson 1977, p. 176; Petrinovich 1999, p. 659; Scanlon 1998, p.185; Steinbock 1978; Williams 1980, p. 161.

think species is a morally relevant characteristic for moral status; third, speciesist judgements are discriminatory, prejudiced or unjustified.

First, a speciesist need not favour their own species to demonstrate speciesism, all that is necessary is that they discriminate against another individual *because* of their species. For example, westerners who eat pigs but will not eat dogs are speciesist. There is little difference in the capacities of these animals, pigs may be cleverer than dogs, so judgements about the wrongness of eating them must come down to species.

Second, that species is not morally relevant may sound like a question begging assumption, because by accusing someone of speciesism the implication is that they are treating something that is irrelevant, namely species, as if it were relevant. But to assume species is relevant is to make a question begging assumption. To charge someone with speciesism is to charge them with demonstrating that species *is* relevant.

Third, some of the above definitions imply that making any judgement based solely on species is prejudice. But to make a judgement about an individual based solely on their species is not necessarily speciesist. For example, to judge that a fish needs to be kept in water because it is a fish is not to make a speciesist judgement. There are, however, some circumstances where treating an individual in a certain manner because of their species is not relevant and therefore discriminatory, prejudiced or unjustified. One example is saying it is all right to kill cod but not trout and give the reason that the cod is a cod and the trout is a trout.

Bearing these points in mind my definition of speciesism is as follows:

> *To base judgements about and/or treatment of an individual on their species where species is not relevant.*

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[63] Quoted by: Carruthers 1992, p. 50; Cohen 1986, p. 867; Francis & Norman 1978, p. 508; Steinbock 1978, p. 247; VanDeVeer 1979, p. 60; Warren 1997, p. 67.

ii. Different forms of speciesism

Various forms of speciesism have been identified. Becker identifies: Absolute; Resolute; Weak; Moderate to Strong (1983, pp. 235-8). VanDeVeer identifies: Radical; Extreme; Interest Sensitive (1979, pp. 59-62). Rachels distinguished between radical and mild speciesism (1990, p. 182). There are subtle differences between them but the main difference is the extent to which species counts. They all have the same basic structure: they base moral status and or/treatment of individuals on their species. Only those who can show species is relevant can escape the charge of speciesism. Thus, all forms of speciesism stand or fall together.

Rachels makes another distinction with regard to the logical basis of speciesism: qualified or unqualified (1990, p. 183). Unqualified speciesism is the view that species *per se* is morally relevant (1990, p. 183). On qualified speciesism species *per se* is not morally relevant, but species membership is correlated to other criteria (rationality et al.) that are morally relevant (1990, p. 184). Qualified speciesism is more plausible than unqualified speciesism and will be considered below (1.5, 1.6, 1.7). In the mean time it is unqualified speciesism I shall have in mind.

iii. Objections to speciesism

a. Speciesism is question begging

Given that whether other species are morally considerable is what is at issue, to merely assert that species is relevant is question begging.[64] Speciesism needs to be defended.

b. Evolution

Species is usually assumed to mark off a clear boundary. But Darwin's theory of evolution implies that species is not a clear boundary. Darwin says "I look at the term species, as one arbitrarily given for the sake of convenience to a set of individuals closely resembling each other, and that it does not essentially differ from the term variety" (1968, p. 108). Darwin did not think species was immutable (as was commonly

[64] Bernstein says something similar (2002, p. 529).

thought pre-Darwin). Species evolve. If this is the case species is not as obvious a boundary as it first appeared. It may be objected that the species we are interested in is the one at this point of our development; homo sapiens as they are today. But if one point of our development has been chosen over another then independent criteria must be used to assess why this point is important and at what point *homo sapiens* became morally considerable. In which case species *qua* species is irrelevant.

c. The relevance of species

Few who advocate speciesism are able to give an account of why species is relevant. Nozick admits "[i]t is not easy to explain why membership in the human species does and should have moral weight with us" (1983, p. 11). Some do not even see the need to give an account of the relevance of species. Becker says "[t]he fact that we can find no reason for speciesism... is irrelevant" (1983, p. 238). Cargile says "it is right to give priority to people, but... I do no know why, or at least cannot think of any nonquestion-begging, sound argument for why" (1983, p. 245). Nozick says "[n]othing much should be inferred from our not presently having a theory of the moral importance of species membership... the issue hasn't seemed pressing" (1983, p. 29). AMC makes it pressing.

Carruthers offers an account of species relevance, he says "relevance is always relative to a point of view" (1992, p. 54). For example, the relevance of who wins a tennis match will depend on the perspective of those watching, the relatives of player A want A to win, the person who has put a substantial bet on player B will want B to win. Thus, Carruthers argues, in order to assess the relevance of species we need to know the point of view; how the moral point of view is being characterised (1992, p. 54). The idea that species is irrelevant depends, he argues, on a utilitarian standpoint (1992, p. 54).

But there are many non-utilitarians who object to speciesism.[65] This is an *ad hominem* argument. It does not follow that because there are philosophers who object to speciesism from non-utilitarian standpoints it is legitimate to do so. It does, however, lend this idea some support.

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[65] Almeida 2004; Bernstein 2002; Cavalieri 2001; DeGrazia 1996; Dombrowski 1997; Feezell & Stephens 1994; Fox (M. A.) 1987; Regan 1983.

Carruthers argues that given the contractualist point of view a certain level of intelligence is morally relevant; being a moral agent is sufficient for moral status (1992, pp. 54-5). But even if this is true Carruthers has only shown that species is relevant from the contractarian point of view (and there are good reasons for thinking he has not succeeded in doing this – see above). There are other points of view. Deontologists object to speciesism (Feezell & Stephens 1994, p. 8; Regan 1983). Virtue ethicists are not necessarily speciesist (Hursthouse 2000). The contractarian view is only one among several, at least equally plausible views. As I will argue that in the next chapter, the existence of so many plausible views makes it, to some extent, unreasonable to insist one is correct. That Carruthers has provided a plausible argument for the relevance of species from one point of view does not, therefore, count for that much.

d. The parallel between speciesism, racism and sexism

Ryder invented the word speciesism "partly... to draw a parallel with racism and sexism" (2000, p. 237). This parallel has been much disputed. Many agree there is a genuine parallel.[66] Others think it illegitimate.[67] Cohen calls the parallel "insidious":

> This argument is worse than unsound; it is atrocious. It draws an offensive moral conclusion from a deliberately devised verbal parallelism that is utterly specious... there is no morally relevant distinction among the races... Between species... the morally relevant differences are enormous. (1986, p. 867)

But the only way such parallels could be genuinely offensive is if those drawing them were also drawing parallels between animals' and ethnic minorities' abilities and/or levels of intelligence. This they do not do (nor need they). The comparison being made is that a certain group (women, ethnic minorities) are being unfairly discriminated against, as are animals, on the basis of morally irrelevant characteristics (race, sex,

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[66] Bentham 1948; Cavalieri 2001, p. 71; Clark 1983, p. 180, 1987, pp. 65, 66; DeGrazia 1996, p. 60; Dombrowski 1997, p. 63; Fox 1987, p. 56; Huffman 1993, p. 22; Johnson 1991, p. 51; Midgley 1983; Pluhar 1988b, p. 100; Rachels 1989, p. 123; Regan 1983, p. 227; Ryder 1975, p. 5; Singer 1995, pp. 3-6; VanDeVeer 1981, pp. 372-3.

[67] Benson 1978, p. 535; Carruthers 1992, p. 51; Cigman 1981,p. 47; Cohen 1986, p. 867; Diamond 1978; Francis & Norman 1978, p. 507; Kittay 2005, p. 119-123; Lomasky 1987, p. 224; Schmidtz 1998, p. 63; Steinbock 1978, p. 247.

species). Those who oppose racism and sexism should be heartened not insulted. Only by assuming the wrongness of sexism and racism can the argument get off the ground.

There are definite parallels between sexism and speciesism. A sexist judges people of a particular sex by a supposed norm for that group. For instance a sexist may insist women are on average less clever than men. When presented with a woman who not only out performs her "kind" (women) but also out performs all or even most men the sexist will still insist *this* woman should be judged as other women are, despite her individual abilities. Similarly, if there is a man less clever than most, or even all women, the sexist will be committed to the ludicrous position that *this* man is cleverer than *this* woman despite the fact the woman has out performed the man. What is objectionable about most forms of racism/sexism is that the individual has been judged on the basis of an irrelevant feature (e.g. sex). If we are trying to determine someone's intelligence we must test *their* intelligence not their group membership. The same goes for species.[68] If we want to know whether an individual has moral status we should look at their morally relevant properties (whatever they may be); species is irrelevant.

Midgley argues that racism is "an ill formed, spineless, impenetrably obscure concept, scarcely capable of doing its own work, and quite unfit to generate a family of descendants which can be useful elsewhere" (1983, p. 99). She defines racism as making decisions about an individual's treatment on the basis of their race (1983, p. 99). On this definition reverse discrimination is, she argues, racist (1983, pp. 99-100). This presents a problem for those who think reverse discrimination is justified (1983, p. 100). I object to racism but not to reverse discrimination. I think these views are consistent because of how I understand racism. My definition is as follows:

> *To base judgments about and/or treatment of an individual on their race where race is not relevant.*

This definition overcomes concerns about positive discrimination because in this case race is relevant. First, it is part of the job to provide a role model. Second, people from

[68] Rachels calls this "moral individualism" - individuals should be considered as individuals, not evaluated on the basis of characteristics of their group (1990, pp. 173-4, 194-7). Thus, "how an individual may be treated is determined not by considering his group memberships but by considering his own particular characteristics" (1989a, p. 101). Others make similar points: McMahan 2005; Cavalieri 2001, p. 72.

ethnic minorities are not competing on a level playing field. Minorities are not treated fairly by would-be employers because they harbour prejudices, some of which they may be unaware of.[69] But, these arguments do not give a full answer to the problems raised by reverse discrimination they do show a case can be made for it without being racist; whether it is acceptable will rely on whether race is relevant. Just taking someone's race into account when reaching a decision is not racist: doing so when race is not relevant is. Just so with species. The parallel between speciesism and racism is legitimate.

e. Thought experiments

Some who argue species is not a relevant characteristic ask us to imagine an animal which is intelligent/more intelligent than us (DeGrazia 1996, p. 60; Everitt 1992, p. 50; McMahan 2002). But the most common thought experiment involves aliens.[70] The idea is that if species is morally relevant any rational et al. alien we come across would not have moral status.[71] But if rationality et al. makes humans morally considerable it is arbitrary to exclude aliens who share these characteristics.

Speciesists might respond that there are no rational aliens. But "many scientists now believe it is very probable that intelligent life exits elsewhere in the universe" (Fox 1986, p. 55). But even if there are no rational aliens we can imagine one.[72] If it is admitted such a life-form would be morally considerable species cannot be relevant.

It might be objected that although species is relevant it is not just the species *homo sapiens*. If a species of rational et al. aliens did appear they could be added to the list of privileged species. But, independent criteria (rationality et al.) have been used to assess whether the alien species are morally considerable. It is, therefore, the independent criteria not species that is relevant.

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[69] Similarly, women's qualifications are undervalued and under appraised. A woman's CV which is identical to a man's is rated lower (Harris and Narayan 1997, pp. 456-7).

[70] Bernstein 2002, p. 530; DeGrazia 1996, p. 60; Everitt 1992, p. 50; Feezell & Stephens 1994, p. 8; Fox 1987, p. 56; Midgley 1983, pp. 98-99; Regan 1981a, p. 74, 1993, p. 197; Rollin 1983, p. 108; Warren 1997, p. 134.

[71] This kind of consideration induced M. A. Fox to reject speciesism (1987, p. 56).

[72] Feezell and Stephens make a similar point (1994, p. 8).

1.4 Potential

Some have argued potential for rationality et al. distinguishes humans from animals.[73] The idea is that because pre-rational humans will develop rationality et al. (under normal circumstances) they have moral status.[74] Scruton says pre-rational humans:

> are *potential* moral beings, who will naturally develop... into full members of the moral community... Just as an acorn is, by its nature, the seed of an oak tree, so is an infant by its nature, a potential rational being. (2000, p. 53)

i. Different kinds of potential

Many commentators fail to acknowledge the different kinds of potential.[75] There are at least three kinds. Intrinsic potential - the potential a thing naturally has. Extrinsic (relational) potential - where nothing internal changes, changes are purely external, e.g. the potential to get married. Combination potential - both intrinsic and extrinsic e.g. the potential to become the Wimbledon champion will depend partly on intrinsic potential like natural ability but also on extrinsic factors like having the facilities to train. Potential is complex and different kinds of potential indicate different kinds of developmental change. It is necessary to bear these in mind when discussing potential.

ii. Potential is not the same as realised potential

Proponents of the argument from potential may mean two things. The stronger claim is that those with potential are as valuable as those with realised potential. The weaker that potential puts babies etc. in a different moral category from animals.

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[73] Not all defenders of AMC choose to answer this challenge. For the sake of simplicity Singer concentrates on orphaned mentally disabled children (1995). Even some of those who oppose AMC admit potential does not solve the dilemmas posed by AMC because some marginal humans lack potential (Becker 1983, pp. 226-7; Frey 1977a, p. 189). Frey, who opposes AMC, admits "there are serious objections to" this response to AMC (1977a, p. 189).

[74] Those who argue potential is morally relevant: Carruthers 1992, p. 110; Cigman 1981, p. 61; Fox 1986, p. 60; Francis & Norman 1978, pp. 572-3; Frey 1980, p. 31; McCloskey 1965, p. 127, 1979, p. 42; Rawls 1999, pp. 505-509. Those who think it is not: Bernstein 2002, p. 526; Singer 1993, p. 153.

[75] E.g.: Bernstein 2002, p. 526; Rawls 1999, pp. 505-509; Scruton 2000, p. 53; Singer 1993, p. 153.

If it is the stronger claim they have in mind Scruton et al. seem to overlook the fact potential is not the same as realised potential. By definition being potentially X means not being X. Scruton says "[j]ust as an acorn is, by its nature, the seed of an oak tree, so is an infant by its nature, a potential rational being" (2000, p. 53). But what this does not take into account is that an acorn is not an oak tree. It is highly likely their moral status will be different as a result. Singer points out that an heir to the throne is a potential monarch yet they are not given the powers of a monarch (1993, p. 153). There is a genuine difference between potential and realised potential. Scruton et al. will have to give a good argument for why potential is different in the case of moral status.[76]

Singer's example of the heir to the throne also undermines the weaker claim. It may be true that the heir is treated differently from others – they need to be instructed in their duties for instance. Yet they are not given the powers of a monarch. The same applies to moral status. We may treat those with potential differently. But we do not treat them the same as those with realised potential. At best having potential gives the individual a lower degree of moral status.

iii. Absurd consequences

If potential rationality is all that is required for moral status we would have to recognise the rights of everything with it, including: foetuses; sperms; eggs; zygotes; DNA.[77]

Those who think potential is important could reply that not everything that has potential has it equally. There are several different views of potential.[78] The gradualist view seems to offer a way of handling the difficulty.[79] On this view the more potential actualised the more moral status the individual has. Thus, eggs and sperm have a lot less moral status then a fertilised egg. However, there difficulties remain for those who think eggs, sperm etc. have no value because they have potential. If eggs and sperm do

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[76] Singer refers to extrinsic potential, Scruton to intrinsic potential. But the point applies equally to both.
[77] Others who make similar point: Nobis 2004, p. 49; Sumner 1981, p. 104; Warren 1997, pp. 206-7.
[78] *Total view:* being potentially X is sufficient and necessary for moral status. *Partial view:* being a potential X is sufficient for moral status and necessary for the whole range of rights. *Strict potentiality view:* potential counts equally. *Gradualist view:* the more potential actualised the more moral status the individual has. *Additive view:* being t, u or v is sufficient for moral status; the more characteristics an individual has the more significant they become (Pluhar 1988, pp. 35-6).

have potential but not moral status how can we determine at what point the potential translates into moral status? Any point one picks would be arbitrary. Those who think potential is important need to show there is a non-arbitrary line between things we think have potential but no moral status (eggs and sperm) and things we think have potential and moral status (e.g. babies).

iv. Only some marginal humans have potential

The major problem is that the argument about potential only applies to pre-rational humans; it does not apply to non- and post-rational humans who have no potential.

There have been attempts to show that non- and post-rational humans have potential that animals do not. Cigman argues "all human beings are... *candidates*... [for moral status] even though some may be unable... to realize in any significant way the capacity" (1981, p. 61). White outlines a broader kind of potential, marginal humans "may be... empirically unable to fulfil the role of a rights-holder. But... they are logically possible subjects of rights" (quoted in Nobis 2004, p. 49).[80] Bernstein calls these types of potential metapotential (2002, p. 527). All humans arguably have "metapotential" . But metapotential is not the type of potential most (including Scruton et al.) have in mind. What most understand by potential is the type that would be realised if the individual develops normally. The potential Cigman and White have in mind is unrealisable. Potential that can never be realised is not potential at all.

Metapotential cannot be realised and unrealised potential is neither recognised nor valued.[81] Imagine you are a patient in a hospital about to have an operation. You can choose: Surgeon A has reached their full potential achieving a 90% success rate for this operation; Surgeon B is extremely clever but extremely lazy, if they apply themselves they have the potential to become much better than surgeon A, however they have not and only have a success rate of 85%. Which surgeon would you choose? Most would,

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[79] Feinberg argues that a fatal logical error is committed by potentiality views. The strict view confuses having potential moral status with having moral status. The gradualist and additive views confuse almost having moral status with having moral status to a lower degree (1986, pp. 267, 269).

[80] Similarly Wetlesen argues it is the capability of being a moral agent that matters; as most humans (including marginal humans) have this, animals lack it, so it sets all humans apart from animals (1999, pp. 302-3).

[81] Bernstein makes a similar point (2002, pp. 527-8).

unhesitatingly, choose A. B's unrealised potential counts for nothing. It is realised potential that is important to the patient. This shifts the burden of proof on those who think metapotential matters to show why.

Thus, even if some marginal humans have potential others do not. AMC has yet to be defeated.

1.5 The argument from kinds

Some have argued that humans are the kind of thing that are usually morally considerable, animals are not. This separates all humans from all animals, and defeats AMC; this is the argument from kinds (hereafter, AFK).[82] The idea is that whether something has moral status depends not on an individual's capacities but on the capacities typical of its kind (Scanlon 1998, pp. 185-6). I will argue that kind is not relevant. I will start by giving Cohen's representative version of AFK:[83]

> Persons who, because of some disability, are unable to perform the full moral functions natural to human beings are not for that reason ejected from the human community. The critical distinction is one of kind. Humans are of such a kind that rights pertain to them *as humans*; humans live lives that will be, or have been, or remain *essentially* moral... The rights involved are human rights. (2001, p. 37)

The point is it is the kind you belong to not your individual capacities that matters.

i. What does kind mean?

Many proponents of AFK do not explain what they mean by kind (e.g. Cohen 1986, p. 866, 2001, p. 37). It is essential those who make AFK explain what they mean by kind;

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[82] Variations of AFK have been made by: Benn quoted in Feezell & Stephens 1994, p. 12; Cigman 1981, p. 61; Cohen 1986, p. 866, 1997, p. 95; Diamond 1978, p. 469; Finnis 1995, p. 48; Fox 1978, p. 112, 1986, p. 60; Lomasky 1987, pp. 204-5; Machan 1991, pp. 163-4; May 1976, p. 442; Nozick 1983, p. 11; Rawls 1999, pp. 442-8; Scanlon 1998, pp. 185-6; Schmidtz 1998, p. 61; Tooley quoted in Huffman 1993, p. 22; Wennberg 2003, p. 120.
Those who have objected to AFK include: McMahan 2005, p. 353, 358 (calls it the nature-of-the-kind argument); Nobis 2004, p. 48; Regan 1981a, p. 75-6.

[83] Other versions: Schmidtz 1998, p. 61; Scruton 2000, p. 54-5.

they need to show what kinds humans are and what kinds animals are in order to show humans are a different kind from animals. There are at least two things that might be meant by kind: what is normal and what is natural.

Kind may be that which is normal; that most humans are like this (Benn quoted in Feezell & Stephens 1994, p. 12). But, this makes moral status contingent on how most humans are. If moral status depends on rationality et al. and most humans lost their rationality et al. no humans (even those who are rational et al.) would be morally considerable. No one who supports AFK would be willing to accept this.

Kind may be interpreted as natural; it is natural for humans to be rational et al. so all humans (including marginal humans) are rational et al. The meaning of natural is by no means clear.[84] But even if its meaning can be cleared up the fact most humans are naturally rational et al. does not mean all humans are. Humans could have evolved differently, what is natural for our kind could have been quite different.

It may be meant that species is a natural kind. Natural kinds are naturally occurring things. Some philosophers argue that there are no natural kinds (Bernstein 2002, p. 529). Others that species is not one (Clark 1988, p. 31; De Roose 1989, p. 91). But even if there are natural kinds there is good reason to think species is not one. As was argued above (1.3) Darwin thought species were arbitrary names used for convenience, species are not immutable; they evolve. Alder argues "[m]odern theorists, with more assurance than Darwin could manage, treat distinct species as natural kinds, not as man-made class distinctions" (1968, p. 73ff). Alder is not obviously right, as Rodd points out: "[b]iologists... are not in complete agreement about the kinds of creature which should be classified as animals" (1990, p. 17). If they cannot decide what is an animal how are they to decide which animal belongs to which species?

People treating species as a natural kind does not make it one. Darwin's point is unaffected. Species is not immutable, individuals evolve to form new species. Species is not, therefore, a reliable kind. At what point on the evolutionary road does a particular creature become one species rather than another? We must either reject

[84] See Moore for a discussion of this (1993, pp. 93-99).

species as significant boundary or allow all those who preceded *homo sapiens*, homo erectus for example, including those not rational et al., also had moral status.[85]

It may be objected Darwin was unaware of DNA, which is a way of classifying species. It is not clear why DNA should matter, but even if it does an account of why only human DNA matters is needed. Even if this can be done the dilemma presented by AMC remains. Not all humans have the same DNA, e.g. humans born with genetic defects. And some animals may share more DNA with normal humans then these marginal humans. For instance, we share 98.4 % of our DNA with chimps (Rodd 1990, pp. 37-8). If DNA is what distinguishes kind some animals could be more genetically human than some humans! Speciesists must either give up DNA as a test of species or admit some animals into the moral community (see DeGrazia 1996, p. 60).[86]

ii. AFK is invalid

AFK is invalid.[87] Normal humans are different from marginal humans and can do things they cannot. As McMahan argues:

> The morally significant properties characteristic of a kind do not get to be a part of an individual's nature simply because that individual possesses the closely but contingently correlated properties that are essential to membership in the kind. Properties that are inessential to membership in the kind do not define the nature of the kind, even if they are characteristic or typical. (2005, p. 358)

If AFK is right and the norm for humans is to be blind then all humans (including those who can see) are blind; in the kingdom of the blind the one eyed man is blind!

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[85] DeGrazia makes a similar point (1996, p. 58).
[86] If human DNA matters any DNA must have the same status including: unfertilised eggs, spermatozoa, hair etc. (see 1.4).
[87] Nobis thinks it is clearly false (2004, p. 48).

iii. Racism and sexism

AFK commits its proponents to racism sexism and other isms (Huffman 1993, p. 22; Nobis 2004, p. 56). They think it is not only all right but we *ought* to judge by kind. If it is all right to judge by species it is all right to judge other kinds, such as sex or race.

They might reply that species is a relevantly different kind to race or sex. I have presented good reasons to suppose this is not the case in 1.3. Even if species is a relevantly different kind, saying we should judge an individual by their kind leads to a way of thinking that, at the very least, encourages racism and sexism.

iv. Difference in degree not in kind

Darwin argues "the difference in mind between man and the higher animals, great as it is, certainly is one of degree and not of kind" (2004, p. 151). Darwin's theory of evolution says we would expect any capacity humans have would be present in some degree in other species. We do find that all the abilities and capacities that humans have can be found to some degree in other animals (see 4.5; 5.5; Aristotle 1986, 588a18-b3; Cavalieri 2001, p. 79; Gallup 1977, p. 311; Goodall 1971, 1993; Griffin 1976; Hebb 1946, p. 104; Matthews 1978, p. 437; Plato 1975, 81d-82b, 2000, 90e-91c).

Fox argues that although some animals have some of our capacities these capacities are so developed in some of us they are qualitatively distinct, they are different in kind (1986, p. 44). It is hard to see how the difference in degree constitutes a difference in kind. Large differences in degree do not translate into a difference in kind in other areas. For example, there is a very large difference in degree between someone who is very stupid and someone who is very clever. If a difference in degree between animals and humans is sufficient to make a difference in kind why cannot the same apply to differences of degree in humans? If large degrees of difference of mental abilities are a difference in kind arguably those who have the bare minimum of mental abilities deserve less consideration then those who reach the top levels. This is something virtually no one would agree to (including those who make AFK).

Even if large differences in degree do amount to differences in kind marginal humans that are less rational et al. than animals are different in kind from normal humans. Proponents of AFK must face the dilemma posed by AMC.

v. AFK is self-defeating

Scanlon et al. argue that because humans are a kind that are rational et al. all humans are rational et al. But the same kind of argument can be used to show no humans have moral status because humans belong to other kinds (see Nobis 2004, p. 51; Cargile 1983, p. 244; McMahan 2005, p. 358). Humans are of the kind that: eats; breathes; exists; is alive; is a mammal; is sentient.

Being alive is a kind and most of this kind (plants and animals) lack rationality et al. Humans are alive. Thus, following the logic of AFK, humans are not rational et al. and so have no moral status. Defendants of AFK might argue everything is of the kind with rationality et al. and so everything has moral status. But this means everything is morally considerable. Thus, on AFK, humans do and do not have moral status. This contradiction is devastating for AFK.

vi. Status by association

Marginal humans are getting moral status by association.[88] If X is a member of a kind where most hold an MA, Scanlon et al. are committed to saying X has an MA even though X does not. According to AFK because X is of a kind that have an MA X has one. This is not only nonsensical; it is unfair to those who have earned their MA. But worse still, using the logic of AFK, it is possible to show no one has an MA. All those with an MA belong to the kind *homo sapiens* who are of a kind that do not usually have MAs. Thus, on AFK those with MAs would be robbed of their MA, and the same goes for any unusual qualification or ability. This guilt by association is as unreasonable as convicting a person of murder solely because their kind, their family, are murderers.[89]

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[88] Similar points are made by: Dombrowski 1997, p. 160; Nobis 2004, p. 53 - calls it the 'Getting a Property by Association Principle'.

[89] Others object to this kind of levelling down: McMahan 2005, p. 358; Regan 1981a, p. 76.

vii. AFK is an ad hoc addition

AFK is an *ad hoc* addition to the original argument. When someone has a theory which has a problem they cannot accommodate they have two options: either abandon the initial thesis, or add a special new clause; an *ad hoc* clause. In this case the original thesis is rationality et al. confers moral status on all humans. The problem is that not all humans are rational et al.; the *ad hoc* clause is that not only those who are rational et al. but the *kind of thing* that is rational et al. are morally considerable.

Sometimes it is acceptable to add an additional clause as this will refine the theory and make it more detailed. But there are cases where *ad hoc* clauses are added and it is not acceptable to do so. This is when the clause is added not with the intent of refining a theory so it can accommodate a new problem, but with preserving the theory without paying any attention to the new problem. AFK is such an *ad hoc* addition.

1.6 Similarity argument

A similar argument to AFK is what Frey calls the similarity argument (hereafter SA):

> in all other respects... the severely mentally-enfeebled betray strong similarities to other members of our species... it would and does offend our species horribly to deprive such similar creatures of rights. (1977a, p. 188)

On this argument those who are similar to normal humans have moral status in virtue of their similarity (1980, p. 31). Narveson makes SA:

> sentiment-generalisation... impels us to extend our sympathies on the basis of superficial similarities, perhaps even on the basis of race or species. Catering somewhat to such extensions... is reasonable because it costs us very little and there is a modest amount to be gained. (1977, p. 177)

SA may seem the same as AFK, it is, however, subtly different. SA relies on the idea marginal humans are *similar* to normal humans, AFK relies on the idea that humans are the *kind* of thing that has rationality et al. Being the kind of thing that has rationality et

al. is different from being similar to something that has rationality et al. For example, a human is the kind of thing with two legs, but not everything with two legs is of the human kind. Yet anything with two legs is similar to humans, at least in this respect.

i. SA is ad hoc

SA is an *ad hoc* addition. In this case the *ad hoc* clause is that those who are similar to those with rationality et al. are morally considerable. Such an *ad hoc* clause is unacceptable because it does not add new information.

ii. Animals are similar to humans too

If similarity to humans is sufficient for moral status some animals must have moral status because some animals are more similar to normal humans than some marginal humans (see Jamieson & Regan 1978, p. 35). For example, an adult dog is more rational than an anencephalic and is thus more similar to a normal human. SA fails to distinguish marginal humans from animals.

iii. SA is an argument from analogy

SA is an argument from analogy; because marginal humans are like normal humans in some respects they are like them in having moral status. Like all arguments from analogy it depends on those to whom it is addressed finding the similarities equally striking. This argument from analogy is very weak. There is no good reason to suppose that because marginal humans share some properties with rational humans (like DNA) they must share others (moral status). The weakness of this analogy can be shown by an example. Mattresses are usually something upon which you can get a comfortable night's sleep. A mattress with all the springs poking out is similar to other mattresses, it has springs and is designed for sleeping on etc. Yet it does not share the property that one can get a comfortable night's sleep on it, it is the opposite of comfortable. Just because it shares some features with comfortable mattresses does not make this one comfortable. The same goes for the moral status of marginal humans; it does not follow they have moral status because normal humans do.

1.7 Relationships and reciprocity

So far I have focused on the properties marginal humans and animals have. However, there are some who argue it is our relationship to marginal humans and/or their ability to reciprocate that makes them, and not animals, morally considerable.[90]

i. Relationships as the source of moral concern

Benson argues relationships are the source or moral concern:

> to think of oneself as human is not to think of the biological classification... but... a point in a network of overlapping relations... with other individuals... concern for other people begins with natural affection towards kin, friends... and is extended by recognizing other human beings as potential reciprocating objects of the same affections... The... attempt to eliminate partial affections... may remove the source of all affections. (1978, pp. 536-7)

Narveson argues animals are different to marginal humans because the latter are:

> invariably members of families, or... other groupings... the object of love and interest... [of] ... members of the moral community. (1983, p. 58)

ii. Reciprocity as fairness

Sapontzis argues the reciprocity argument has intuitive appeal because it appears to be fair (1985, p. 252). It is only fair that if I give you moral consideration, you do likewise. But this type of argument has an "Achilles' heel"; it cannot provide a basis for "obligations of powerful to powerless" (1985, p. 252). If someone is not in a position to affect you there is no reason to give them moral consideration. If reciprocity is all that is required for moral status only the strong are morally considerable. It is a boundary condition of an acceptable moral theory that it protects the weak. When the strong are dealing with the weak we need to inhibit their power or give the weak additional power

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[90] Benson 1978, pp. 536-7; Diamond 1978; Fox 1986, p. 60; Francis & Norman 1978, p. 518; Mullhall 2002, p. 18; Narveson 1977, p. 176, 1983, p. 58; Passmore 1974, pp. 88-9; Warren 1997a.

against the strong. If the reciprocity requirement does not apply between strong and weak it does not apply between normal and marginal humans.

iii. Marginal humans do not have strong relationships

Some marginal humans are excluded by the relationships/reciprocity requirement because they are not capable of having the type of reciprocal relationship required (see McMahan 2005, p. 368). For example, many autistic children are "mindblind" (i.e. they are not aware of other minds) (Baron-Cohen 1995). Francis & Norman answer thus:

> Babies are the objects of... people's emotional attachments – most usually... parents... To take the life of a young baby... would... cause extreme emotional distress... [to them]. This is an indirect reason for protecting the lives and interests of human babies, but an extremely powerful one. (1978, p. 510)

This makes the moral status of marginal humans indirect. This is something many would not accept. But even those who would be satisfied with this should not be satisfied with this argument. Some marginal humans, such as the severely mentally retarded, spend their whole life in institutions with little or no contact with their families. Staff at these institutions have some kind of relationship with them, but it is not the kind of reciprocal relationship those who oppose AMC have in mind. Some marginal humans are unable to reciprocate. That marginal humans are not capable of reciprocating is not a problem for those who place the emphasis on having a relationship with marginal humans because relationships can be one sided (but animals can also be passive receivers). Reciprocity does require both parties to reciprocate. If Benson et al. are to be consistent they will have to admit some marginal humans do not have moral status of the kind in question, or if they do, some animals do too.

iv. We do have relationships with animals that they can reciprocate

Opponents of AMC argue our relationships with animals are of a different kind or degree from those with marginal humans (e.g. Becker 1983, p. 233; Francis & Norman 1978, p. 508). But, the arguments about relationships and reciprocity will only succeed if they can show all humans and no animals can reciprocate and/or have relationships.

But animals do have reciprocal relationships with one another and humans.[91] Many people who have a pet have a stronger relationship to that pet then to a strange human.[92] Pets often reciprocate affection. If this is so animals can and should be included.

v. Relationships should not ground ethics

Grounding ethics solely on relationships/ability to reciprocate is problematic. It is commonly understood that the moral point of view is impartial.[93] If we do not act impartially we risk taking things that are not relevant into consideration. For example, in awarding the position of surgeon I should not choose my relative (who is not qualified) because they are my relative, I should choose a qualified surgeon. We should not allow our relationships to cloud our judgments about moral status. Personal relationships and affections may sometimes be morally relevant, but we should, for the most part, make our judgements about moral status on impartial grounds.

vi. It justifies racism and sexism

If we base moral status on relationships this appears to justify limiting moral concern to our relations, friends, race, sex or nationality.[94] Becker thinks the inclination to reciprocate is an element of moral virtue:

> the argument I have given is based... on the logic of various elements of moral character – namely the dispositions to reciprocate and to empathize... racism and sexism are not entailed by the logic of virtue... Quite the contrary... they come in part from a culpable failure to reciprocate (1983, p. 240)

This response comes from a virtue ethics point of view. But others are likely to make similar responses about appropriateness. First it is questionable whether prioritising human interests is a necessary part of virtue (Cargile 1983, p. 248). But more importantly Becker's response does not succeed in saying why species is relevant. If

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[91] Even those who object to AMC admit people have relationships with animals: Fox 1986, p. 60; Francis & Norman 1978, p. 510.

[92] Similar points are made by: Singer 1993, pp. 76-7; Midgley 1983, p. 109). Midgley also says the preference for our own species is neither constant, nor guaranteed, so it cannot be used to draw an absolute line between humans and animals (1983, p. 109).

[93] Dombrowski 1997, p. 112; Regan 1983, pp. 190-1; Sapontzis 1985, pp. 255-6; Singer 1993, pp. 76-7.

relationships are important species is not obviously relevant; there is no reason to suppose the moral virtues would distinguish between species. We can reciprocate and empathize with animals. And animals have reciprocal relationships with one another.[95]

1.8 The religious argument

Some argue that the relevant difference between animals and humans is that humans have souls and animals do not (Aquinas 1981; Badham 1998, p. 181; Frey 1977a, p. 189).

i. What is a soul

Before one can even embark on showing all humans have immortal souls one needs to say what an immortal soul is (Everitt 1992, p. 52). On the traditional Christian view a soul is God given. For Descartes the soul is the subject of consciousness – the essence of our identity (Badham 1998, p. 183). But much more is needed to flesh out the idea of a soul. As McMahan points out all the following questions need to be answered:

> What is the soul? Is one's conception of the soul coherent and compatible with what we know from science about the relation between mind and brain? What evidence is there of the presence of the soul in human beings?... When in the course of evolution did the soul first appear... Did its sudden appearance somewhere in our ancestry make any detectable difference? [etc.] (2005, p. 359)

If humans do have souls when do they acquire them? Giving an account of the point humans gain their soul is a serious problem. Whether these questions can be satisfactorily answered is beyond the scope of this chapter. But it is worth noting they do need to be answered before the soul can be used as a criterion for moral status.

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[94] Similar points are made by: Dombrowski 1997, p. 23; Singer 1993, pp. 76-7.
[95] Francis & Norman acknowledge this point (1978, p. 511).

ii. Can animals have souls?

How can we know animals do not have a soul? Whether they do will depend on what a soul is. If souls are just consciousness or individuality animals have souls too. Many mentally subnormal humans display little or no individuality, those in a coma, for instance. Such humans would lack a soul on this understanding. The stoics thought animals had souls (Newmyer 1996, p. 42). The Christian tradition says they do not (Aquinas 1981; Badham 1998, p. 181). On Aquinas's understanding animals did have sentient mortal souls but, only humans have immortal rational souls (1981).

iii. Burden of proof

Even if it can successfully be argued that only humans have souls the claim souls exist cannot be taken for granted. It is highly contentious, even amongst religious believers.

Most who argue humans have souls link it to belief in God/Gods. If souls are linked to God/Gods arguments that God/Gods exist need to be furnished. No conclusive arguments for this have yet been put forward. But even if such arguments were forthcoming there are many different religions. How can we know which is correct? We cannot. Even if we did there are problems over translations and interpretations of religious texts and knowing whether such texts are genuinely authored by God/Gods. The burden of proof for the existence of souls is with those who claim they exist.

iv. Why is a soul a relevant difference?

Why is the possession of an immortal soul relevant in determining moral status (Everitt 1992, p. 52; Feezell & Stephens 1994, p. 11)? If having a soul is relevant arguably we should give those without a soul more moral consideration because they will not reap the rewards of heaven (Feezell & Stephens 1994, p. 11; Rollin 1983, p. 107).

When the soul is mentioned as a criterion for moral status we end up asking a list of very difficult questions (see above). The answers to many are unverifiable e.g. if souls exist or if God does (see Becker 1983). If we cannot ever really know the answers to these questions it is risky basing moral status on them, many of which do not even have

satisfactory answers to start with. These problems should make us chary of denying animals' moral status due to their supposed lack of a soul.

v. Only the truly religious can adopt this argument

This argument is only open to a limited number of people; those who think moral status depends on the possession of an immortal soul. For those who think it is some other criterion, rationality et al., this is an *ad hoc* addition. As Frey puts it wanting to save marginal humans is a "strange reason for taking on religious beliefs" (1983, pp. 115-6). The burden of proof rests on the religious and the rest of us have plenty of reasons to be cautious about accepting their arguments.

1.9 Summary and conclusion

I have argued that moral status cannot consistently be denied animals if it is granted to marginal humans. In 1.1 I outlined AMC. In 1.2 I considered some initial objections. In 1.3 to 1.8 I considered the major objection: there is a relevant difference between all humans and all animals such that all humans are morally considerable but no animals are. The differences I considered were: species; potential; kind; similarity; the ability to participate in a relationship or reciprocate; the possession of an immortal soul.

I argued that while the possession of an immortal soul may distinguish all animals from all humans there are independent reasons for rejecting it as a criterion for moral considerability. The rest of the criteria either fail to show that all humans are relevantly different from all animals and/or are only able to show marginal humans have indirect moral status. These arguments give those of us who think marginal humans are morally considerable a reason to think that animals are too. The WAMC does not, and is not meant to, show that animals are morally considerable. Rather it gives us *a* reason to think they are. If plausible accounts of moral considerability that include animals can be found AMC gives us *a* reason to prefer them. I will examine such accounts in chapters three to five. But first I will argue that there are other reasons to prefer accounts of moral considerability that include animals; namely, it is less risky and more epistemically responsible to do so. It is to such considerations that the next chapter will be devoted.

Chapter Two: Moral uncertainty, risk and epistemic responsibility

Introduction

When choosing a moral theory we can never be certain we have chosen the correct one.[96] Philosophers have given this uncertainty insufficient attention (Lockhart 2000, p. vii). This is especially true of theories of moral considerability.[97]

I will argue that we cannot know for certain which account of moral considerability is correct. By advocating any account we are running the risk we have chosen the wrong one and that we may be acting wrongly as a result. Choosing accounts of moral considerability that exclude animals is morally risky. Animals might be morally considerable. If they are, most of our current treatment of them is wrong. The least risky course of action is to choose an account that accords animals moral status. This gives us *a* reason to prefer accounts of moral considerability that include animals.

In 2.1 I will outline what is meant by moral uncertainty. In 2.2 I will argue that we ought to take moral uncertainty into account because we cannot be certain which theory is correct. In 2.3 I will outline the cautious approach. In 2.4 I will argue that our moral uncertainty gives us a reason to think animals have moral status. Choosing accounts/theories of moral considerability that exclude animals is morally risky because animals might be morally considerable. In 2.5 I will discuss the risks and benefits of according animals moral status. In 2.6 I will consider some objections. In 2.7 I will give some reasons why moral uncertainty has been overlooked. In 2.8 I will discuss another criterion for assessing theories about moral status: epistemic responsibility.

2.1 What is moral uncertainty?

Moral uncertainty is uncertainty about moral issues. Moral uncertainty includes things like uncertainty about whether: Kantianism is correct; there are moral facts; what are moral values; whether the killing of innocents can be justified; how to apply

[96] This is not to say we cannot have degrees of certainty. Some theories may be more certain than others. But no matter how certain we are, some uncertainty always remains. To what degree we are uncertain is what needs to be addressed.

Kantianism; are animals morally considerable, etc. Moral uncertainty is uncertainty about anything that can properly call itself moral.

There are various grounds for moral uncertainty. Including i) uncertainty about theories themselves, e.g. is Kantianism or utilitarianism the correct moral theory?; ii) uncertainty about the application of the theories, iii) uncertainty about the empirical basis of the theories.[98] I shall consider uncertainty about empirical facts in 2.8 and doubts about application will be considered in subsequent chapters. However, the grounds for uncertainty that is my primary interest is uncertainty about which moral theory is correct and this is what I will discuss throughout this chapter, unless otherwise stated.

Philosophers acknowledge that there is uncertainty in this area; for example, Regan says there are no strict proofs (2003, p. 74). But he, like many others, does not take moral uncertainty into account to any greater extent; it is not part of his theory.

2.2 Why we should take moral uncertainty into account

Moral uncertainty has not been given sufficient consideration (in 2.7 I give some reasons for this). I will now give some reasons it should be taken into account. In 2.3 I will say how this should be done.

Moral uncertainty is present in most (if not all) moral thinking. Given that moral questions have been under discussion for thousands of years and many still have no clear answer (many have plausible ones) moral uncertainty is often (if not always) not only likely but appropriate (uncertainty is appropriate because certainty would be inappropriate). There are respected philosophers and myriad plausible accounts on different sides of many of the chief moral problems. To insist one is certain a particular theory or account of moral status is correct under these circumstances shows a lack of appreciation for the difficulty involved. Because there are respectable arguments in favour of all the plausible theories we can never be sure which is correct. We should take moral uncertainty into account precisely because we are uncertain.

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[97] A moral theory is any attempt to systematise morality. In the case of moral considerability it is any systematic attempt to account for moral status.

[98] Some philosophers acknowledge uncertainty. E.g. Sprigge says, when assessing animal consciousness: "Clearly one must go on probabilities where there are not virtual certainties" (1979, p. 135).

2.3 The Cautious Approach

By advocating any account of moral considerability we run the risk we have chosen the wrong one.[99] A cautious approach is, therefore, appropriate; we should try to minimise the risk of wrongdoing.[100] Choosing the wrong account will, in all likelihood, lead to wrongdoing, in this case not giving something that is morally considerable (e.g. animals) any moral consideration or not giving them enough. Excluding anything from the realm of moral considerability is risky. The cautious approach is characterised by acknowledging we should try to minimise the risk of wrongdoing entailed by our moral uncertainty, especially if the potential wrong in question is sizeable.[101] I will now outline some reasons for the cautious approach.

i. First, do no harm

We might take our lead from the medical profession. *Primum non nocere* - first, do no harm is one of the first things physicians are taught (Cohen 2001, p. 73). A doctor's objective is to make patients better (either by curing them or alleviating their suffering), this includes not making them worse. Not making them worse has priority over making them better because making someone sicker would be contrary to the doctor's objective of curing and/or alleviating suffering. This means doctors should only perform operations/prescribe drugs if they can be reasonably sure the treatment will not make their patient worse. Suppose a doctor has to choose between treatment X and Y. X may

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[99] Several ways of making rational choices under uncertainty have been suggested (Lockhart 2000, p. 23; Luce & Raiffa 1957, pp. 278-280; Rawls 1999; Resnik 1987, pp. 27-43). 1) Maximax - the principle of the unrestrained optimist: "maximize our maximums" (Resnik 1987, p. 32). The assumption is "that no matter which act we choose the best outcome compatible with it will eventuate, and accordingly... would urge us to aim for the best of the best" (Resnik 1987, p. 32). 2) You should maximise expected utility (Lockhart 2000; Harsanyi 1976). 3) Maximin - try to ensure the best worst outcome – maximise the minimum. Maximin "tells the agent to... choose an act whose minimum is the maximum value for all the minimums" (Resnik 1987, p. 26; also see Luce & Raiffa 1957, p. 278; Rawls 1999, p. 133). 4) Minimax regret rule - suggested by Savage as an improvement on maximin (1951). Minimax depends on how much risk or regret is associated with each choice. This criterion is based on risk payoffs rather than utility payoffs. Minimax enjoins us to choose "that act which minimizes the maximum risk for each act" (Luce & Raiffa 1957, p. 280). It tells us that "in some situations it may be relevant to focus on missed opportunities rather than on the worst possibilities" (Resnik 1987, p. 28). 5) Optimism-pessimism rule - reduce the excessive conservatism of maximin by combining it with maximax (Resnik 1987, p. 32).

[100] Similarly, Carter says "[t]he mere fact... [animals] might feel pain ought to be sufficient to affect our deliberations" (2005, p. 17).

[101] My approach is similar to maximin (see above). Rawls argued we should use maximin to determine the principles of justice because of the special nature of the choice. (1999, p. 133).

cause harm but, if it works, will be more effective. Y will do no harm but will be less effective than X. Using the simple principle of avoiding harm they should choose Y.

Correspondingly, assuming a moral agent's objective is to do the right thing, it is reasonable to insist they give priority to avoiding wrongdoing. If one is interested in doing right, the last thing one wants to do is wrong. Thus, when assessing competing theories of moral considerability a significant consideration should be which would result in the least wrong. Moral agents should, therefore, pursue a policy similar to the physicians'; the moral agent's motto should be *first, do no wrong.* Suppose a moral agent is faced with two options: X and Y. X might cause great wrong but, if right, will yield a morally good outcome. It is fairly certain Y will not cause any wrong but, if right, will not yield as much rightness as X. Like the doctor the moral agent should choose Y. Like the doctor they must weigh up the risks of wrongdoing against the possible benefits: the cautious approach has support in our ordinary practices.

ii. Principle of non-maleficence

The principle of non-maleficence supports the cautious approach. The principle of non-maleficence (or harm avoidance) is an important basic principle of any moral theory. It tells us we have a prima facie obligation to avoid causing harm to others (Fox 1987, p. 57). Regan outlines a similar principle, the harm principle:

> we have a direct prima facie duty not to harm individuals... to say the duty is prima facie means that though this duty may be overridden in some cases... the burden of showing why and how it may be justifiably overridden must be borne by those who override it. (1983, p. 187)

iii. The cautious approach and moral status

Excluding those who have moral status from moral consideration is terrible. History is littered with such tragedies. Ethnic minorities, women, homosexuals, religious minorities, the physically and mentally disabled have been, and in some cases still are, denied the moral consideration they are due. This results in appalling wrongs including slavery, imprisonment, persecution and subjugation. In these cases it is clear these

groups were, or are, treated very badly. The extent of the wrongs done have been, are, horrific. These wrongs are a result of not according them the moral status they are due. These catastrophes might have been avoided if those making judgements about moral status had been more cautious. If slaveholders had considered their moral uncertainty, if they had considered the possibility slaves were morally considerable they would have seen that the least risky option, assuming they wanted to avoid wrongdoing, was not to enslave people. The cautious approach could have saved untold misery.

These real life examples are not the only reasons to urge caution. Hypothetical cases reinforce the point. Imagine we encounter a new species, similar to us in many respects. They look physically similar, they are sentient, they seem to have beliefs and desires, an emotional life and interests. However, we are unable to communicate with them. We are unsure whether they are morally considerable. If we decide they are not we may derive great benefits from them, we can use them to labour at menial tasks, and as experimental subjects because of their physical similarity. If they turn out to be morally considerable treating them in these ways would be grossly immoral. There are plausible arguments to suggest the new species is morally considerable. What should we do? If we want to minimise the risk of wrongdoing we should accord them some moral status.

Suppose we enslave them and use them for experimental subjects. We find they are very like us, they have a language and are rational et al. and thus morally considerable. By being incautious, we have done great wrong. With hindsight we should have tried to minimise risk; we should have adopted the cautious approach.[102] This example highlights the grave nature of the risk of excluding others from moral concern.

2.4. Why the cautious approach should be applied to the moral status of animals

i. First, do no harm and the principle of non-maleficence

Whether the cautious approach applies to animals depends on whether animals can be harmed. To harm someone is to reduce their welfare either by inflicting something on them, like physical pain, or depriving them of benefits, like freedom or opportunities for

fulfilling preferences (whether animals can be harmed will be discussed in 4.1 and 5.1, whether they have a welfare in 4.5). If they can be harmed we have an obligation to avoid doing so, otherwise the charge of speciesism applies. The principle of non-maleficence only applies to those who are innocent. Whether animals are innocent will depend on what we mean by innocence. On one understanding one can only be innocent if one is a moral agent and has avoided wrongdoing. It is doubtful whether animals are moral agents. On this understanding animals are not innocent (but nor are they guilty). However, the more common understanding of innocence has children as the epitome. Children are innocent because they are not capable of wrongdoing. Nor are animals. If children are innocent so are animals. As was argued in the last chapter a relevant difference needs to be found, if no such difference can be found saying children are innocent but animals are not is speciesist and arbitrary.

ii. The benefit of the doubt

Several philosophers have argued that we ought to give animals the benefit of the doubt when assessing their abilities (Fox 1986, p. 73; McCloskey 1965, p. 127; Regan 1983, p. 396, 319-20, 2003, p. 83; Rollin 1992; Singer 1993, pp. 119, 165, 1999, p. 323). Very little has been said about giving animals the benefit of the doubt when it comes to their moral status. There are a few exceptions. For example Singer says:

> I am not certain it would be wrong in itself to kill the pig; but nor am I certain that it would be right... Since there is no pressing moral reason for killing... it would seem better to give the pig the benefit of the doubt. (1986a, p. 313)

McCloskey argues it may be appropriate to act *as if* whales and dolphins have rights because it may turn out that they have the capacity to have rights (1979, pp. 42-3).

Fox argues we should give marginal humans the benefit of the doubt:

> All underdeveloped, deficient, or seriously impaired human beings are to be considered members of an immediately extended moral community and

[102] It may be objected that animals are not like us in these ways, not rational etc. The point is not that animals are really rational etc. and we have yet to find that out. The point is to highlight the enormity of

> therefore as deserving of equal moral concern. To whatever degree seems reasonable, they should be treated according to either (a) their potential for full agency (and hence as potentially full participants in the moral community, taking into account their past participation, if any) or (b) the degree to which their behaviour and capacities approximate what is generally considered to be characteristically human... and the extent to which their behaviour and capacities permit full participation in the moral community. (1986, pp. 62-3)

Fox does not extend this principle to animals and acknowledges it "might be looked on by critics as speciesist, but... charity, benevolence, humaneness, and prudence require such an extension [to marginal humans]" (1986, pp. 62-3).[103]

All these positions acknowledge our uncertainty about the margins of moral status. But none of them give our moral uncertainty more than a cursory mention. That we are unsure gives us equally good reason to extend the benefit of the doubt to a whole class of beings that may be morally considerable, namely, animals.

iii. The risks of denying animals moral status

To deny those who are morally considerable the consideration they are due is to do great wrong. There are good reasons to think animals are morally considerable (see below). The cautious approach tells us to choose the least risky option, which in this case is an account that says animals are morally considerable. The cautious approach gives us *a* reason to prefer accounts of moral considerability that include animals (which animals are included and to what extent is the topic of the following chapters). The risk of excluding animals from moral consideration is, therefore, great.

a. The AMC

The arguments of the last chapter have provided us with one very strong reason for thinking animals are morally considerable. Those who think marginal humans are morally considerable, must think animals are too. To ignore AMC is to run a great risk.

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the wrong we do to animals if it turns out they are morally considerable.

[103] Fox changed his mind and now thinks we should give animals some moral consideration (1987).

b. Plausible accounts of animals' moral status

All moral theories agree animals deserve at least some indirect moral consideration (see Chapter Three). And many plausible accounts accord animals direct moral status (see Chapters Three to Five). These accounts give us a reason to take the idea animals are morally considerable seriously; to acknowledge that it is risky to exclude them.

c. Animal pain and suffering

Over 45 billion animals suffer and die every year (I will argue that animals are capable of suffering in Chapter 5 and elaborate how they suffer in the Summary and Conclusion). Every year billions of animals suffer and are killed for food, millions suffer and die in laboratories, and millions of wild animals are killed or allowed to starve because humans destroy their habitats. Denying animals moral status is risky; if they are morally considerable most of our current treatment of them is wrong.

2.5 What risks and benefits are there in including animals?

How great a role moral uncertainty about animals' moral status should play depends in part on the risks and benefits associated with giving them moral consideration. I will argue that the risks have been overestimated and the benefits underplayed. In addition to the benefits animals will derive (not suffering and being killed) there are several ways humans will benefit if they give animals more consideration (even if it is more than they are strictly due). Giving animals moral status will mandate a vegan diet (nothing of animal origin, i.e. no meat, fish, eggs, dairy products) and an end to animal testing. This will yield the following benefits: medical care will improve from safer drugs; humans health will improve from a better (vegan) diet; it will be easier to feed starving humans; considerably less damage will be done to the environment. Of course, we could attain these benefits without according animals moral status (we could stop using them anyway). But it will be easier to attain the benefits if we do accord animals moral status because we will have an additional reason to stop using them for food and experiments; we ought not to. But, the most important point is that stopping our exploitation of animals is *not* risky (it will benefit us).

i. Higher moral status for all (including marginal humans)

By according higher moral status to animals we all stand to benefit. As argued in 1.2 those who are kind to animals are more likely to be kind to humans, those who are cruel to animals are more likely to be cruel to humans. If we encourage kindness towards animals, something that would be achieved by according them direct moral status, we all stand to benefit from other humans treating us better. Marginal humans are likely to benefit the most; we can hardly justify treating them badly if we treat animals well. But there are good reasons to stop using animals *even if* they have no moral status.

ii. The dangers of animal experimentation and the benefits of the alternatives

Cohen claims that "virtually every modern medical therapy is due, in part or in whole, to experimentation using animals" (1986, p. 868). But the fact animals were used does not mean they had to be. If all cars had been tested using real humans instead of crash dummies it would not have been *necessary* to use real humans.

A growing number of medical professionals want to see an end to animal experimentation.[104] This is because evidence suggests that animal experimentation is dangerous for human health; differences between humans and animals means animal experimentation is poor at predicting toxicity and potential benefits (see Appendix 1). Alternative methods and preventative measures would serve human interests much better (see Appendix 1). We stand to benefit greatly from ending animal experimentation.

iii. Health

All the nutrients that are required for a healthy diet can be gained from a vegan diet (see Appendix 2). But what is more, there is a lot of evidence that a vegan diet is healthier than the alternatives (see Appendix 2). It has even been used to cure disease such as diabetes, blood pressure, cancer and arthritis (see Appendix 2). And there is a lot of evidence to suggest that meat and dairy products are positively unhealthy leading to cancer, heart disease, osteoporosis and other common diseases (see Appendix 2).

iv. Starving people

If we become vegan this will benefit the world's starving people. Animals do not produce food they waste it (see Appendix 3). A varied vegan diet (fruit and vegetables, grains and legumes) uses half the amount of land a vegetarian diet uses and one fifth of the land needed for a European omnivorous diet (Gerbens-Leenes et al. 2002). Westerners becoming vegan is not enough to solve world hunger. But if westerners continue their present diet there simply will not be enough food to go round.

v. Environment

Most agree that the environment matters at least instrumentally. It matters to the people and animals that live in it whether their environment is clean or dirty, whether it is polluted, whether there is global warming, whether there is enough clean water. Farming animals for food uses huge amounts of land, creates pollution, contributes to desertification and deforestation, wastes and pollutes water and destroys wildlife (see Appendix 4).[105] Becoming vegan will significantly reduce our impact on the environment.

2.6 Criticisms of the cautious approach

i. Objections to taking moral uncertainty into account

a. Taking moral uncertainty into account is impossible

Hudson thinks hedging for uncertainty in ethics and uncertainty about values is unnecessary (1989, pp. 221-229).[106] He argues that it is impossible because different values (like self-realisation and utility) are incommensurable, so "there can be no way for... uncertainty to be taken into account in a reasonable decision procedure" (1989, p. 224). He asks us to imagine we must choose between an act which produces nine

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[104] E.g. Doctors and Lawyers for Responsible Medicine (DLRM); Nurses' Anti-Vivisection Movement; Physicians Committee for Responsible Medicine.

[105] Those who argue that should we should be vegetarian for environmental reasons: Rifkin 1992, pp. 183-230), Frances Moore Lappe, World watch institute; Singer 1980, p. 334.

[106] Axiological uncertainty is uncertainty over intrinsic value. For example is it utility or self-realisation that are intrinsically valuable.

hedons (measures of utility) and thirty reals (units of self-realisation) (1989, p. 224). Hudson asks which should we choose? Is a difference of 28 reals greater than a difference of one hedon? What is a common measurement for the two?

Hudson's problem appears to be that there is no common measure for different values, no universal scale or common denominator. Hudson may be right that we cannot get exact measurements on a universal scale, but we can come up with rough comparisons. For example, we could ask an individual how much utility (maybe using money) they would be prepared to trade for doing a higher education course (a kind of self-realisation). The amount of utility they would be prepared to trade for the course would give us a rough comparison between utility and self-realisation.

But even if Hudson is correct, even if there are incommensurable values, it does not follow we cannot minimise the risk brought about by moral uncertainty. Imagine one is trying to decide whether to become vegan and there are two theories to choose from: utilitarianism and Kantianism. These theories are based on incommensurable values. Yet there are two ways one might hedge against uncertainty. Firstly, one can try and use the cautious approach when assessing the theories themselves. Using considerations such as consistency, precision, conformity to intuitions, simplicity to assess a theory's likelihood of being right. Another consideration should be the risks a theory carries if it is wrong. It might be argued that utilitarianism is a less risky theory than its competitor because if Kantianism is wrong we would have denied moral status to those who are morally considerable (animals). If Utilitarianism is wrong we may have given too much moral consideration to those who did not deserve it, but as long as this did not result in too great a harm to those who we can be surer are morally considerable (moral agents) the risk calculation comes out in favour of utilitarianism. Thus, despite the incommensurable values there is a way of hedging against uncertainty. Secondly, with regard to this particular moral decision, to become vegan, there is another way of hedging against moral uncertainty. If one looks at both theories utilitarianism would say that for most of us veganism (or at least vegetarianism) is obligatory; that not being a vegan would be wrong. Kantianism would say one is under no obligation to be vegan, however, nor does it say it would be wrong to be vegan. One theory says not being vegan is wrong and another that it is all right (neither right nor wrong). One way of hedging when making individual decisions of this nature is to go with the theory that

will avoid wrongdoing. Even if the Kantians are pretty confident their theory is correct they must accept there is some doubt. Given this, assuming they wish to avoid wrongdoing following utilitarianism's prohibition against using animals for food would be a way to hedge against this uncertainty. There is a way of hedging against uncertainty in spite of incommensurable values. It is the first kind of hedging the cautious approach advocates when assessing claims about moral status.

b. Taking moral uncertainty into account is unnecessary

Hudson argues taking moral uncertainty into account is unnecessary because the purpose of a moral theory is to tell agents how to act when uncertain (1989, p. 224). He acknowledges we are uncertain. He is right that we still have to make decisions under such uncertainty and that a moral theory should tell us what to do even if we are not sure it is right. However, this does not show we should ignore that uncertainty. As I argued above there are two ways of taking moral uncertainty into account. First, we can use considerations about uncertainty to assess the theory itself. If taking moral uncertainty into account is unnecessary it is only because it has already been taken into account. Second, even if it has not been taken into account in formulating a theory it can be taken into account at the decision-making level where it will guide our actions. Thus, taking moral uncertainty into account is not unnecessary, at least not on the grounds that doing so cannot help inform the agent how to act under uncertainty. Moral uncertainty can and should inform agents' moral choices.

c. Taking moral uncertainty into account is itself uncertain

It might be objected that which strategy we use to overcome moral uncertainty is uncertain so we are left with the same problem; what do we do when we are uncertain?

This criticism is unreasonable. Those making it ask for a rational decision procedure to resolve uncertainty over rational decision procedures: this is an unreasonable request. We are uncertain and given this uncertainty we still have to make choices about which theory is the most reasonable. While this process may itself be subject to similar uncertainties we still have to make a choice.

d. We should get rid of uncertainty

It may be objected that we should aim to get rid of all uncertainties. But it is unrealistic to think we can do this. When time is short we must choose a theory. Many factors have to be taken into account when choosing a moral theory, including facts about the world, possible consequences, assigning value etc. It is not likely we can ever reach complete certainty about all, or even any, of these factors. Thus, getting rid of all uncertainty is an unrealistic goal. Once the impractical nature of this goal is brought out the need to take moral uncertainty into account becomes more apparent. But even if removing all moral uncertainty is realistic there is uncertainty at the moment. Given this we must take moral uncertainty into account.

e. Taking moral uncertainty into account is not necessary because morality is not paramount

It may be objected that we only need to take moral uncertainty into account if morality is paramount and it is not (or is not very important). If morality does not matter we do not have cause to take our uncertainties into account. However, while ethical nihilists and amoralists may be content that morality has no role moral considerations will, for most of us, be of some importance, we therefore need to consider them.

f. Taking moral uncertainty into account is unnecessary because we may be mistaken about our moral beliefs

It can be objected that we may be mistaken about our moral beliefs and philosophy should help us eliminate such mistakes rather than using them as a basis for decision-making. It is probably true that some, or even all, of our moral beliefs are mistaken. However, while it is true we should do our utmost to correct our mistaken beliefs it is unlikely we will eliminate all mistakes. When it comes to making choices about theories of moral status the beliefs we have, mistaken or otherwise, are the ones we have to use. Even if it turns out we were mistaken and so made the wrong decision, we would still have made a reasonable decision. This is the case with non-moral beliefs, and there is no good reason for thinking it should be different with moral beliefs.

g. Too conservative

It may be objected that the cautious approach is too conservative insofar as it would mean we took virtually no risks even when the benefits are potentially great. If we only concentrate on risks we would have to be a lot more conservative about a lot of things, for instance the cautious approach would suggest we enforce speed limit of 5mph in built up areas. But risks must be assessed in the context of the potential benefits. I have argued that in the case under discussion the risks outweigh the potential benefits.

Similarly, the cautious approach may be criticised on the grounds it may lead to missing opportunities for doing right when potential losses are only small. But the cautious approach is only appropriate under circumstances where the risks are great, and the probabilities indefinite (this will be discussed at greater length in the section below).

I am not advocating never taking risks, rather that there are certain special circumstances (which will be described below) where it is wise to avoid risk, and that assessing theories about moral status are such circumstances.

The cautious approach applies to large scale (macro) decisions not small scale (micro) decisions. While caution may seem inappropriate in some small decisions, in large decisions where a lot turns on them, such as decisions about moral considerability, caution is not only desirable, it is necessary. Caution is sensible in one-off decisions. Taking risks may be advisable in a long run series. For example, if one goes to a fair every week and buys a £50 raffle ticket with a 50% chance of winning £1000 it would be sensible to play every week because the probability is you would win every other week giving you an average profit of £900. But the decision about which account of moral considerability is correct is not one in a series of choices – it is one-off, animals either are or are not morally considerable. As such caution is highly advisable.

h. Why should moral uncertainty mean caution

It may be objected that being cautious is not the obvious course to take in cases of uncertainty. It might be argued we should be the opposite of cautious if we are not sure, after all we are not sure we are wrong about the status of animals. But I have given

several reasons why we are cautious in other areas and why we should, therefore, be cautious in our assessment of moral status. It should be noted that I am not arguing moral uncertainty gives us an overriding reason for according animals moral status, rather it gives us *an additional* reason; there are others.

i. How can we assess risk?

In may be objected that assessing the risk of any theory is difficult, if not impossible. I acknowledge it is difficult, but it is by no means impossible. There are several criteria that might be used to assess risk.

First, we can be more certain about a particular position if others agree with it. For instance we can be fairly certain gratuitously torturing or killing someone is wrong. Part of our reason for such certainty is virtually everyone agrees. Agreement is not the only grounds for, or a guarantee of moral certainty. Rather agreement adds to the strength of a plausible argument and gives us additional reason in favour of it.[107]

Second, conformity with our intuitions can be viewed as a reason in favour of a theory.[108] Regan describes intuitions as:

> those moral beliefs we hold *after* we have made a conscientious effort... to think about our beliefs coolly, rationally, impartially, with conceptual clarity, and with as much relevant information as we can reasonably acquire. The judgements we make *after* we have made this effort are not our "gut responses,"... they are our considered beliefs. (1983, p. 134)

Those who advocate the use of intuitions do not advocate blindly following them:

> some of our intuitions might stand in need of revision or even abandonment if, as is possible, they conflict with principles that are otherwise validated. What

[107] It may seem as though I am undermining my own position insofar as a lot of people agree with eating and testing on animals. But agreement is only one criterion. There are others such as consistency – many of those who agree with eating animals do not agree with eating marginal humans and so there agreement with eating meat is inconsistent and should be rejected on this basis.

[108] See for instance: Bernstein 1998, p. 5; Narveson 1977, p. 164; Norman 2000, p. 120; Rawls 1999, p. 18; Regan 1983, p. 133.

> we seek...[is] "reflective equilibrium" between our intuitions... and our organizing general principles. (Regan 2001a, p. 45)

Rather they argue intuitions have a role to play.

Some argue we should not use intuitions (e.g. Dancy 1991, p. 411; Hare 1993, p. 147f; Singer 1993, 2005). Narveson argues the appeal to intuition is "theoretically bankrupt" (1987, p. 33). Because "two mutually contradictory proposed moral principles could each pass it" (1987, p. 34). Singer argues that if intuitions are the result of evolution we have as little reason to trust them as we do our taste buds (2005). Evolution means we like salt, sugar and fat but to eat as much as we like now is suicide. It is like committing moral suicide to blindly follow our intuitions as we do our taste buds. However, even those who object to using intuitions would presumably agree that the fact an intuition agrees with a theory does not actively count against it; if intuitions do not count they do not count for or against. Intuitions can be viewed as a reason in favour of a theory in spite of the controversy surrounding them, though not necessarily a decisive factor.

Third, an important condition any theory should meet is consistency. This is relatively uncontroversial, few would advocate inconsistent theories or argue inconsistency is to count in a theory's favour.

Fourth, is how easy it is to apply the theory; can it be applied to most, or all, situations one might expect and does it provide practical guidance. This is fairly uncontroversial: a theory that does not apply to many situations or does not provide guidance to the moral agents would be considered wanting by most.[109]

Fifth, simplicity is a reasonably uncontroversial virtue theories should display. The principle of parsimony, or Ockham's razor, is a widely accepted methodological principle, which states that theories should be as simple as possible.[110]

Sixth, impartiality is an important factor that deserves greater consideration in assessing moral theories. Someone having a vested interest in something is, in everyday life,

[109] Regan makes a similar point (1983, pp. 132-3).

considered a reason against arguments they might offer in favour of that interest. For instance, when a slave owner argues that slaves have less moral status we should treat their arguments with caution because we know it is highly likely their arguments are motivated, at least in part, by self-interest. The same is true of moral theories. If a moral theory works out in favour of those who advocate it this is *a* reason, and a strong one, to view it with caution. Conversely, if a moral theory goes against the interests of those advocating it, this should be a reason in its favour.

Seventh, and perhaps most important, is the potential benefits and losses. If the losses are great we should be less willing to take the risk even if it means sacrificing something we want. For instance, in Japan some restaurants serve blowfish, which if prepared incorrectly can be fatal (several people die from it every year). Should one eat blowfish? The potential losses here are great, one may die. The potential benefits are great (imagine one has eaten blowfish before, unaware of the risk, and it is the most delightful food one has ever tasted). Most people would not, under these circumstances, eat blowfish. Even those who do so, do so knowing that the risk of dying is quite small. If there were say a 50% chance of dying few would eat blowfish.

ii. Objections to the cautious approach applied to animals' moral status

a. All theories are equal

Some may argue we cannot assess risk because all moral theories are equal because they all have points in their favour as well as points against them. Lockhart suggests the Principle of Equality among Moral Theories (PEMT):

> The maximum degrees of moral rightness of all possible actions in a situation according to competing moral theories should be considered equal. The minimum degrees of moral rightness of possible actions in a situation according to competing moral theories should be considered equal unless all possible actions are equally right according to one of the theories (in which case all of

[110] White questions how we can justify our preference for simplicity "without knowing in advance that the world is more likely to be simple" (2005, p. 205). Even he concludes it is reasonable to favour simplicity.

> the actions should be considered to be maximally right according to that theory). (2000, p. 84)

PEMT puts us in a better place to judge the relative merits of different theories. However, PEMT is not without problems. PEMT relies on the equi-probability assumption: in situations of uncertainty we should assume all possibilities have an equal probability of being right (Harsanyi 1976, p. 45).[111] The equi-probability assumption is, in turn, based on the principle of insufficient reason: when we are making decisions under conditions of ignorance there is no reason to suppose one state more probable than any other (Resnik 1987, p. 35). Thus, if we are really ignorant, we should, according to the principle of insufficient reason, assign equal probabilities to all states.

One need not object to the equiprobability assumption *per se* (where probabilities are used). What is objectionable is the use of probabilities in cases where probabilities are not based on empirical evidence. We have no reason for picking one particular assignment of probability rather than another, as the principle of insufficient reason states. But there is no reason to assume all are equal; there is no reason to assign one set of probabilities rather than another, no reason to think them equiprobable.[112]

There is a great deal of merit in PEMT in that it enjoins us not to be arrogant or naïve in thinking one theory holds all the answers: no theory is likely to do that. However, it is not obvious that all theories are equal. But if we do not know which theories are right and which wrong it is equally the case that we do not know they are equal. To insist that all moral theories are equal is arbitrary. I have given seven criteria for judging moral theories (doubtless there are others), it is these criteria we should use to assess them, we should not just assume they are equal.

b. How can we maximise agreement

Given there is so much disagreement about moral status, it might be objected we cannot use agreement as a test of risk. But I think we can. As was said above the benefit of PEMT is that it stops us doggedly sticking to one theory regardless of what others say.

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[111] Also known as the Laplacean rule for choice under uncertainty/the principle of insufficient reason (Rawls 1999, p. 148).

The drawback is that it arbitrarily gives all theories equal weight. If it is wise to take all available moral theories into account how are we to do this without being arbitrary? As I have argued our goal should be to minimise the risk of wrongdoing. This means we should try to choose options where there is maximum agreement among plausible moral theories. Because if all theories agree something is right, or not wrong, there is a greater chance, and so lesser risk, it is not wrong. I shall call this the principle of maximising agreement among moral theories (PMA).[113] PMA rests on the idea that when we have agreement among different moral theories we have a significantly lower risk of being wrong. For example, all accounts of moral considerability agree moral agents are morally considerable and stones are not. Thus, according to PMA the risk of our being wrong about their moral status is very low because all theories agree. Similarly, there are some theories that say trees have moral status. Most do not, however. We, therefore, have *an additional* reason for thinking excluding trees from moral consideration is not very risky.

PMA gives us a reason to favour theories that accord animals moral status because there are plausible theories that say animals are morally considerable, but most who do not accord animals moral status would not say those who do are wrong in doing so (so long as it does not involve according humans less moral status).[114]

By following PMA we greatly reduce the risk of wrongdoing, but it would mean massive changes to our current practices. PMA is a strong claim and many might be chary of accepting it.

There are good reasons for being sceptical of PMA. Agreement may give us reason to suppose we are closer to certainty, but it is no guarantee. Even if everyone agrees we may still be wrong. We should be sceptical about moral theories and this scepticism can be reduced by broad agreement, but it should never be entirely eliminated.

But even if PMA is not accepted the risks that overlooking animals' potential moral status carries still give us a reason to accord them moral status.

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[112] Rawls makes a similar point (1999, pp. 152-3).

[113] Lockhart suggests something similar: we could try to "*minimise* conflict among rival theories" (2000, p. 150).

[114] PMA can also be used for individual decisions.

c. Probability

It may be objected that we should not only look at all the options' costs and benefits but at its probabilities (Lockhart 2000, p. 23). For Lockhart, ideally we would choose the option of which we are certain but because we cannot be certain we should maximise the probability of doing right (2000, p. 26). Given that we cannot be sure of the outcomes of our actions we should maximise expected moral rightness (EMR) (2000, p. 27).[115] We do this by calculating the probability each action has of being right.[116]

There are several problems with this approach, and any other that involves using probability sums, to assessing moral status.[117] First, the kinds of sums Lockhart (and others) uses are beyond the reach of many, if not most, moral agents. A theory about moral status, which is meant to guide moral agents' actions, will be all but useless if ordinary moral agents cannot understand it.

Second, such calculations are very time consuming and while it is true that agents have more time to choose theories than make decisions about particular actions, the need to arrive at such an account is extremely urgent. Urgent because individual moral actions will nearly all depend on judgements about the moral status of those involved. Time is a significant factor in such deliberations.

Third, there is a degree of arbitrariness in the probabilities Lockhart assigns to the options in his examples. The probabilities are supposed to be based on the agent's own beliefs. But it is not clear how an individual agent is meant to come up with a particular

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[115] The EMR of "action x would be the weighted sum of the degrees of moral rightness that would result from the performance of x under various possible sets of morally significant conditions, where the weights are the respective probabilities that those conditions would obtain if x were performed" (2000, p. 27).

[116] Lockhart outlines the general implications this would have in terms of a decision-maker trying to decide whether or not to have an abortion:

> I have proposed the following *practical* resolution of the abortion issue: In the vast majority of situations – that is, those in which there is greater certainty about the moral rightness of *not* having an abortion than about the moral rightness of having an abortion – the rational choice is *not* to have an abortion. If I am right, then much of the debate that rages in public discourse and in philosophical discourse on abortion – that is, whether or when it is morally right to have an abortion – is for practical (decision-making) purposes irrelevant. (2000, p. 72)

[117] Several other approaches advocate the use of probabilities: Harsanyi 1976; Luce & Raiffa 1957, p. 280; Resnik 1987, p. 32.

probability (see Lockhart 2000, p. 26).[118] It is not clear how numerical values can be attached to moral theories with any precision. For example, how can one go about setting a numerical value on the probability whether act or rule utilitarianism is right? This is an impossible task when there are only two contenders, the task becomes even more daunting if one is to include all moral theories. All plausible accounts have some strong arguments in their favour, and they all have weaknesses. Given this it is not clear how numerical values can be attached to moral theories with any precision.

It is not possible to calculate probabilities accurately but even if it were it would be very hard. Given this it is reasonable to be sceptical of probability calculations unless there are no alternatives. It does not make sense to use probabilities where none are available.

Fourth, the cautious approach is more practical because it requires less information to get started. Lockhart points out that "[s]ome ethicists believe that any attempt to find moral algorithms or to "reduce" moral problems to mathematical ones is wrongheaded" (2000, p. 66). I agree. But, Lockhart argues, you first have to reject utilitarianism on these grounds. This depends, however, on why you think such an approach is wrongheaded. If it is because it will not be feasible for ordinary moral agents to do complicated sums, as I do, then one can take an alternative approach, as rule utilitarians do. It is arguable that qualitative non-mathematic deliberation is what is required.

Lockhart's second reply to this objection is that he is trying to say what is rational, not what is morally right. But he is trying to say what is rational given that one wants to do what is morally right and so moral rightness has a big part to play after all.

One suggestion might be that philosophers do what they already do, namely argue about the relative merits of different theories. But this approach is problematic for two reasons. First, it is doubtful whether philosophers could reach a strong consensus about which theories are the most plausible and which points are those to be counted in their favour and which are to count against them. But even if this could be achieved it is hard to see how this could be translated into numerical probabilities.

[118] He later acknowledges the problem of knowing exact probabilities (2000, p. 37).

Another option might be to give each account an equal probability. But, as was argued above, this would be arbitrary. There are many different versions of each account. Just to count up the numbers for animals having moral considerability and those against would not give us an accurate picture of whether they do or not. Thus, using probabilities in this kind of decision would be inappropriate.

d. Insufficient attention is given to potential benefits

It may be objected that insufficient attention is given to potential benefits. But my point is that moral agents' primary concern is not to do wrong. We are not obliged to perform supererogatory actions (though there may be obligatory actions that are not supererogatory). The minimum we are, and should be, concerned with, is not doing wrong. We are not concerned about what we may gain above the minimum so it is not worth risking the minimum. Risking the possibility of not doing right (a possible benefit) is not worthwhile when it may be the case that one ends up doing great wrong.

e. We would lose the benefits of using animals

Some might argue that if we give animals moral consideration we would lose the benefits of using them for medical research and food.[119] Minimising risk, they might argue, would involve giving animals little or no moral consideration (at least in these circumstances). But there is a risk of wrongdoing by giving animals insufficient moral consideration. The risk to animals is significant. As argued above (2.5) there are great benefits to be gained from granting animals moral status: better health, safer drugs, better environment, more respect for the moral status of all humans. All these risks and benefits need to be taken into account.

As was argued earlier according to the principle of non-maleficence the presumption is that we should not do harm. If we are to benefit people at the expense of harming animals a sufficient justification for the harm done is required. It is not clear we are obliged to benefit people by using animals as experimental subjects or farming animals to give people food they like the taste of (humans do not need to eat animal products -

[119] McCloskey argues it would be irresponsible to abandon animal experimentation given the potential benefits (quoted in Dombrowski 1997, p. 46).

see Appendix 2). It is arguable that our moral obligations to other humans are confined to not harming them. If we are required to do more, like finding a cure for a disease they have, arguments are required to show this (and it needs to be accounted for which of us non-cancer suffers owe them this cure). This is not to say such arguments cannot be provided, but it does show that even if animals are not morally considerable it is not obvious we should be using them to benefit humans.

That we would lose the benefits of using animals can been seen as a strong argument in favour of according them moral status. At the moment we do receive benefits from using animals. Narveson admits he "like[s] steak and hamburgers" (1977, p. 163). This is true, to the best of my knowledge, of all those who defend the use of animals for food. Given these facts we should treat the arguments of those who "like steak and hamburgers" with a great deal of scepticism.

That we would lose some benefits by giving animals consideration is not necessarily a point against theories that say animals are morally considerable. That slave owners would lose the benefit they derive from having slaves is not, most would agree, a sufficient reason to keep the institution of slavery. If animals are morally considerable then it is just our tough luck that we can no longer use them.

f. Where do we stop: Insects and Plants

It might be objected that where caution should end is a problem for the cautious approach. Once you start being cautious – where do you stop? What about plants or insects? Carter makes the same kind of objection:

> There might, for all we know, be fairies living harmlessly in our gardens. They might be very fragile to the touch. Were we to walk to the bottom of our gardens, we might step on one... But such a possibility provides no compelling reason at all for our refraining from walking down our garden paths. Mere possibilities of this sort cannot carry any weight with regard to our moral deliberations. (2005, p. 18)

But we should not take every possibility into consideration. There is no evidence for fairies. Rather, we should take our lack of certainty as a reason to be cautious. We cannot be sure whether animals are morally considerable, if we want to avoid wrongdoing our uncertainty gives us *a* reason to accord them moral status.

It might be objected, what about insects and plants? Should we not extend the cautious approach to them? We cannot be sure that plants do not have moral status so we should avoid harming them and therefore my position commits us to avoiding harming all insects and plants. I acknowledge that we cannot be certain insects and plants are not morally considerable. But the risk we take in not according them moral status is much slighter than in the case of animals. There are three reasons the risk is much reduced in the case of insects. First, AMC gives those of us who think marginal humans are morally considerable reason to think animals are too, it provides no such support for insects. Second, there are not many plausible accounts that accord insects moral status. Third, those accounts which suggest insects are morally considerable tend to rely on their being sentient or intelligent to some degree. There is little empirical evidence to support these claims, while there is much evidence to support the claim animals such as mammals, birds, fish and reptiles are sentient. There is risk involved in not according insects moral status, but the risk is much smaller then in the case of animals. Some caution would be wise, we should avoid gratuitously harming insects (they should be accorded moral status, but it should be lower than that of animals).

What about plants? It is true that we cannot be sure that plants do not have moral status. But the risk plants may have moral status is even smaller than in the case of insects. First, AMC offers no reason to think plants are morally considerable. Second, there are few plausible accounts that accord plants moral status. Third, there is no empirical evidence that plants have any of the abilities or capacities that are usually thought to be prerequisites for moral status (e.g. rationality or sentience). Caution in this case would mean nothing more than avoiding needlessly destroying plants.

g. Redundant

It might be objected that the argument is redundant, that if one spells out what might confer moral status on animals there is no need for the cautious approach. But the point

is that when these reasons are taken together they give us a further reason to be cautious. Our lack of certainty and the attendant risk give us *a* reason to prefer accounts of moral status that include animals. It is not meant to be an overriding reason.

h. Symmetrical risk

There is a symmetrical risk of giving moral consideration to things that do not deserve it. While I acknowledge this is a risk it is only a small one once all the other factors have been taken into consideration (the AMC, plausibility of theories, empirical evidence). And so long as we do not harm those who we can be relatively sure are morally considerable (moral agents) then the risk is worth taking for we will do less harm by giving too much consideration to something that does not deserve it than we do by giving not enough to something that does.

i. There will always be doubt

It may be objected we will never get rid of doubt. But this is not as much of a problem as it might first seem. We face doubt in most, if not all, decisions we make in daily life. We have developed ways of dealing with our doubt in other areas. Such models might be applied to the cautious approach. One model for dealing with doubt is provided by the conventions of law courts. When a jury is asked to decide whether a defendant is guilty or not they are in a similar position to a moral agent deciding what to do; namely, both have evidence/arguments in favour of both sides and both are uncertain which is right. In a court of law the jury are instructed to find a defendant guilty only if it is beyond reasonable doubt. The idea is that no matter how good the evidence there is likely to be some lingering doubt in jurors' minds that the defendant might, after all, be innocent. The jurors should overcome this doubt because such doubts will usually be present. There is recognition that even when we have strong evidence we cannot fully eliminate doubt. We should not be sorry such doubts exist, they attest to our modesty, we should however learn to deal with them. We should, and do, overcome them. The law accepts we can never be certain, that there will always be doubt, but we have to do

our best. The same might be said of moral agents.[120] Similarly, because of the reasons outlined above it is reasonable to give animals the benefit of the doubt.

Moral agents should only choose a theory or course of action if it is beyond reasonable doubt it is not wrong. If there is more than reasonable doubt they should not choose it. Again we must accept that there will be doubts, but we have to do our best under the circumstances. If the "beyond reasonable doubt" criterion is acceptable for a court of law it is reasonable to think it acceptable for moral agents. In this context this means we should assume something is morally considerable unless it is beyond reasonable doubt it is not; it is worse to deny something morally considerable its status than to give consideration to that which is not considerable (unless this conflicts with consideration of something that is reasonably supposed morally considerable). Some may object to the "beyond reasonable doubt" criterion even in a court of law. But the fact it is so well accepted means the burden of proof is on them to show it is unacceptable.

j. We should not choose any theory

It may be objected that if we are uncertain about different alternatives we should choose none. But, it is, very hard to act morally without being able to give reasons why a particular individual should/should not be given consideration. How are we to decide what to do if we cannot decide who or what matters? Even if one can get by without an account of moral considerability choosing none of them is still a choice. A choice we will be equally uncertain of.

k. Circularity

It may be objected that my argument is circular insofar as I am arguing that one of the grounds for uncertainty about the moral status of animals is the existence of plausible accounts that accord them moral status and that such accounts are lent support by our uncertainty. But I do not think my argument is circular, or at least not viciously circular because both these claims have independent reasons supporting them.

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[120] It may be objected that this principle could be used to defend the opposite to my position. Suppose a person is charged with cruelty to animals. Their defence in court could be that it cannot be proven that animals are morally considerable and so it cannot be proven cruelty to them is wrong. A jury might feel

l. This level of caution is not necessary

The idea that we should incorporate risk and be cautious is criticised by Devine:

> no one is under any obligation to eat meat, so that one does not, by becoming a vegetarian, violate any requirement of morality. In the circumstances, one ought to take the safer course and abstain from meat. Let us call this the 'tutiorist argument'. (1978, p. 493)

He argues that most people most of the time are not tutiorist:

> The thought that the Roman Catholic Church is just possibly right about contraception is not for most people a persuasive reason for giving up the practice... (No one is under any obligation, surely, to enjoy sexual intercourse or enter into a relationship in which participation in sexual intercourse is a duty to another.)... There are... excellent reasons to reject tutiorism... [First] the danger that someone overburdened with moral claims will rebel against all moral requirements whatever has to be taken into account. (1978, p. 493)

But our reasons for giving animals moral consideration are more than it just might be the case they have it. Not giving animals moral status involves great risks, and many benefits can be gained from it. The main "burdens" of giving animals moral status will be that we stop eating meat and stop experimenting on them. As argued in 2.5 we all stand to benefit from this (in terms of health, safer drugs, better environment etc.).

2.7 Why has Moral Uncertainty been ignored?

There are several reasons ethicists may not have taken moral uncertainty into account when discussing theories of moral considerability.

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compelled to acquit them. However, this is where the reasonable doubt comes in. Virtually no one thinks cruelty to animals is permissible. It is beyond reasonable doubt that such cruelty is wrong.

i. It is not the task of philosophy

Moral philosophers think it is the job of philosophy to answer moral questions, they therefore try to overcome doubts as much as possible. The idea is that it is the job of philosophy to get rid of uncertainty altogether. But as I argued above this is unrealistic. Even if it is possible the fact remains there is uncertainty now.

ii. Morality is subjective or relative

Some philosophers take our lack of certainty, our disagreements about morality, as evidence morality is inherently relative or subjective (e.g. Mackie 1977).[121] If this is correct, if morality is subjective or relative, there are no moral facts about which we can be uncertain.

But there is a sense in which it does not matter whether ethics is subjective or objective because moral theories do not necessarily assume any particular meta-ethical position. Subjectivists contend that an individual's adherence to a particular judgement is what makes it true for them. But such an individual still needs to assess competing accounts and unless they are to choose their theory randomly they are still faced with the same choices as someone who thinks there are objective facts. Some may still hold that for subjectivists and relativists there is no uncertainty once they have made their choice. My thesis is not addressed to such people. My thesis is addressed to those who are interested in coming up with the best possible account of moral considerability.[122]

iii. The solution is implicit: the answers they give are provisional

Some philosophers may think the solution to the problem of moral uncertainty is implicit because what they say is meant to be provisional.[123] This is probably the main reason philosophers have not explicitly addressed the question of moral uncertainty; they think they have already taken it into account.

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[121] Lockhart makes a similar point with regard to decision-making under moral uncertainty (2000, p. 17).

[122] Ethical nihilists may object that no judgements about whether a theory is right or wrong are justifiable. I shall not attempt to answer these concerns here. First, because it is an implausible doctrine. Second, my thesis is not addressed to those who hold ethical nihilism.

I have some sympathy with this view. However, I think we need to make some significant adjustments to it. First, we should pay more attention to our uncertainties about the empirical premises upon which arguments are based. A lot turns on whether empirical premises are true and philosophers are often too ready to take it for granted that animals do *not* have certain abilities (like rationality, tool use, language).[124] But such negative assertions have not been proved and so we should be extremely wary of them. This is especially true given that new evidence about animals' abilities is emerging all the time (see Chapter Four). Second, we should acknowledge not only implicitly, but explicitly that our theories about moral considerability are provisional. Doing so will mean we are less likely to stick doggedly to one theory (as has been the tendency) to the exclusion of the merits of others. These adjustments will have important implications in terms of how we arrive at the theories in question.

2.8 Epistemic responsibility

Most claims about whether animals are morally considerable are based on empirical claims about what they are like (i.e. whether they are rational, conscious, sentient, have interests, have souls, are subjects of a life et. al.). Given this it is important we should take great care when we make empirical claims.[125] We need to give such claims very careful consideration; we need to be epistemically responsible when assessing them. Being epistemically responsible entails at least three things.

i. Care when assessing empirical claims

There are some animal abilities that can be agreed on. For instance, it is pretty certain some animals are sentient (see Chapter Five). Despite this agreement there are a lot of empirical claims that are hotly disputed including whether animals have language, have emotions, are intelligent and able to communicate. We should be a lot more careful when assessing empirical claims because we have been wrong on occasions in the past. Thus, when evaluating any theory, not only those about moral status, one consideration ought to be whether it is based on premises it is epistemically reasonable to hold true.

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[123] Lockhart makes a similar point about decision-making (2000, p. 21).
[124] With the exception of having a soul as this is not an empirical matter.

Where we have empirical evidence about animals we should favour those accounts based on claims it is the most reasonable to hold true.

ii. Limits to our knowledge

We should acknowledge that even if we can reach agreement and/or relative certainty about all the animal abilities, there are limits to what we *can* know; we can never really know what it is like to be an animal. As Garner says "[w]e cannot ask animals what they feel and think, and observing their behaviour is an inadequate, albeit useful, substitute" (1993, p. 9). We cannot know for sure how rational they are or how they think or how they experience consciousness. Thus there are limits to what it is *possible* for us to know about animals.

We should bear this in mind when investigating accounts of moral status. We might be wrong about how animals experience the world. Thus, the most epistemically responsible accounts will acknowledge there are limits to our potential knowledge.

iii. Proving a negative

Given the significance of empirical claims we should be especially wary when philosophers make negative claims. By negative claims I mean those that animals *cannot* do something or *do not* have certain capacities. Proving negatives like this is very hard if not virtually impossible. For example, a statement that there are no paper clips in Antarctica would be extremely hard to disprove because one would have to search the whole of Antarctica. Positive claims, like the claim that a paper clip has been found in Antarctica, are better. Similarly, statements like 'animals are not rational to a high enough degree to deserve moral consideration' should be treated with caution. I will use these three criteria as a basis for judging epistemic responsibility.

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[125] Lockhart says something similar: it is false to assume when we make moral arguments we do not need to "take into account how certain or uncertain we are about the premises of our arguments as long as we have sufficient reason to accept those premises" (2000, p. 21).

2.9 Summary and Conclusion

I have argued that uncertainty pervades our moral choices. This uncertainty brings with it a grave risk of wrongdoing. When we are assessing differing accounts of animals' moral status we should try and avoid this risk. Any theory that denies animals moral status runs a grave risk of being wrong. We should, therefore, be cautious. I have called this the cautious approach. The cautious approach gives us *a* reason to favour accounts of moral considerability that accord animals moral status.

I argued that we should be more epistemically responsible. Accounts of moral status that are more epistemically responsible ought, therefore, to be preferred to less responsible accounts.

Along with the AMC (Chapter One) there are now three criteria that may be used to assess competing accounts of moral considerability. First, does the account provide an account of animals that is consistent with its account of marginal humans. Second, how much risk does the account run? Third, how epistemically responsible is it?

Armed with these criteria for assessing theories of moral status I will look at some of the main contenders. First, I will examine those theories that assign animals a fairly weak moral status (Chapter Three). I will then examine those that argue animals have a much stronger moral status (Chapters Four and Five).

Chapter Three: Weak accounts of the moral considerability of animals

Introduction

In Chapter One AMC gave us one reason to accord moral status to animals. In Chapter Two it was argued that considerations of moral risk yield the cautious approach, which means we have *another* reason to favour accounts of moral considerability that include animals. I argued we need to be more epistemically responsible. I now have three criteria with which to assess competing accounts of moral status.

Some think animals are morally considerable, but such consideration should be limited. It might be argued that these accounts satisfy the concerns raised in the previous chapters. I will discuss representative versions of such accounts in this chapter.

In 3.1 I will consider the most moderate view; that all we need do is refrain from cruelty to animals. In 3.2 I will discuss views that hold all moral status is relational, including animals'. In 3.3 I will discuss views that hold humans' moral status is non-relational (direct) but animals' is relational (indirect). In 3.4 I will discuss views that say animals' moral status is non-relational.

I will argue that these moderate accounts (and those they represent) fail to satisfy either the concerns about risk, epistemic responsibility, or marginal humans or all three.

3.1 Cruelty

Virtually every theory agrees cruelty to animals is wrong.[126] Different theorists have different explanations for why it is wrong – some argue it is a direct wrong to the animals themselves, others that it is wrong only indirectly, insofar as it will affect our actions towards other humans.[127]

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[126] E.g.: A Catholic Dictionary 1989, p. 133; Aquinas 1981; Basson 1981, p. 65; Carruthers 1992, p. 156; Cigman 1981, p. 47; Cohen 1986, p. 866, 2001, p. 50; Fox 1986, p. 195; Francis & Norman 1978, p. 508; Johnson 1989, p. 259; Kant 1963; pp. 239-41; Leahy 1991, p. 205; Lomasky 1987, p. 225; Machan 1991, p. 171; Noddings 1984, p. 150; Nozick 1974; pp. 40-1; Rawls 1999, p. 448; Scruton 2000, pp. 20-1, p. 48; Steinbock 1978, p. 250; Warren 1997, p. 152; Williams 1980, p. 161.

[127] I discuss cruelty in my forthcoming paper "Why is it Wrong to be Cruel to Your Cat?" in Hales, Steven (ed.) "What Philosophy Can Tell You About Your Cat".

i. Anti-cruelty principle

It may be argued that some kind of anti-cruelty principle is sufficient to account for animals' moral status.[128] Warren suggests one:

> Sentient beings are not to be killed or subjected to pain or suffering, unless there is no other feasible way of furthering goals that are (1) consistent with principles 3-7 [3) The Agent's Rights Principle; 4) The Human Rights Principle; 5) The Ecological Principle; 6) The Inter-Specific Principle; 7) The Transitivity of Respect Principle]; and (2) important to human beings, or other entities that have a stronger moral status than can be based on sentience alone. (1997, p. 152)[129]

This is a representative version of the idea about the wrongness of cruelty.[130] The essential point is that animal suffering is to be alleviated only when doing so does not interfere with human needs or wants.[131]

ii. Criticisms of the anti-cruelty principle

a. Difficulties of interpretation

What counts as cruelty needs to be specified. Is it cruel to dock a dog's tail for aesthetic reasons? Is it cruel to use animals in circuses? Is it cruel to keep animals in factory farms? Is it cruel to experiment on animals? These questions need clear answers, or at least a method for answering those like them.

We can distinguish two types of cruelty: indifferent (or brutal) cruelty and sadistic cruelty (Regan 1980, 1983, p. 197, 2001, p. 177, 2003, p. 53). Indifferent cruelty is when someone lacks sympathy for the suffering of others and sadistic cruelty is when they take definite enjoyment in it. Further to this there are two ways cruelty can be

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[128] Regan calls this kind of view the cruelty-kindness view (2001, pp. 177-80).
[129] Warren argues moral status is tied to both intrinsic and relational properties (1997, p. 149.
[130] Other variations: Cigman 1981, p. 47; Devine 1978, p. 503 (overflow principle); Fox 1978, p. 113.
[131] Some argue a prohibition on cruelty is sufficient to require vegetarianism (Clark 1977, p. 52; Engel 2001, p. 89; Rachels 1990, p. 212). However, most who advocate an anti-cruelty principle think cruelty should only be avoided when it does not conflict with human interests (such as enjoying food).

manifested: actively or passively (1980, p. 535). Passive behaviour "includes acts of omission and negligence" (1983, p. 197). Active behaviour includes "acts of commission" (1983, p. 197). So there are at least four possible kinds of cruelty: (1) active sadistic cruelty; (2) passive sadistic cruelty; (3) active indifferent cruelty; (4) passive indifferent cruelty (1980, p. 535; 1983, pp. 197-198). Which kind of cruelty is it that is wrong, or is it all four? But even if we assume the advocates of the anti-cruelty principle have all in mind there are still problems regarding interpretation.

Those who oppose cruelty only oppose "unnecessary" or "unjustified" pain (Scruton 2000, pp. 147-64; Williams 1980, p. 161). What is "unnecessary" cruelty?[132] 'Necessary' could mean necessary to human life, necessary to live well or necessary to anything a human wants (including enjoying torturing animals). The most reasonable interpretation is that 'necessary' means necessary for humans to live well. To interpret necessary as anything humans want is far too weak. If this is what is meant by cruelty the anti-cruelty principle would be meaningless because it would prohibit nothing.

Presumably those who think we should not be cruel to animals think there are *some* things we ought not do to them (like torturing them for fun) so necessary cannot mean necessary to *anything* humans want. Yet to interpret necessary as necessary to human life is probably too strong. Many who endorse the anti-cruelty principle think it is all right to use animals for food, transport or entertainment such as racing or fox hunting despite the suffering the animals endure.[133] There are perfectly adequate non-animal foods that will yield a diet as healthy (arguably healthier – see 2.5) as one that includes meat, fish, eggs and dairy products, there are other forms of non-animal entertainment and transport. If someone endorses both the anti-cruelty principle and thinks it is alright to use animals in these ways (even where it involves great suffering as in the case of factory farming, circus or working animals) then if they are to be interpreted charitably (i.e. one is to assume they are being consistent), they must mean that unnecessary cruelty is that which is unnecessary to humans living well. But having established this definition, problems of interpretation remain. It needs to be explained what living well includes. Does living well include eating a wide range of different-tasting foods

[132] McGinn interprets unnecessarily as "unless there is some benefit derived that is at least equivalent to the cost inflicted" (1999, p. 151).

[133] For example, Scruton argues the cruelty caused by blood sports like fox hunting is justified because of the important social role (which cannot be easily substituted) it plays for some humans (2000, pp. 147-64).

(assuming we do not need to eat animal products for nutritional reasons), wearing make-up, having new cleaning products, being entertained at a dog race?

Humans tend to be over generous in estimating what they "need" to live well, anti-cruelty principles give little guidance. As Benson puts it:

> Lip-service is paid to the obligation to cause no unnecessary suffering, but human necessity is interpreted so generously that this is a negligible constraint. (1978, p. 529)[134]

For instance, Scruton says the fact animals feel pain "is enough for us to take account of their experience, even if we do not weep like the walrus as we scrape the raw oyster from its shell and sting its wounds with lemon juice" (2000, p. 9). But in what sense has he taken their pain into account if he can so callously disregard causing it pain for a minor interest like enjoying the taste of its flesh? These difficulties of interpretation offer one reason to view the anti-cruelty principle with scepticism. There are others.

b. It assesses character

The anti-cruelty principle fails to assess the actions that are cruel or kind, rather it assesses the character of the people performing those actions.[135] If we judge the treatment of animals on the basis of whether they are cruel or kind we end up with a judgement about the virtue/vice displayed by the person performing the act not whether what is done is right or wrong. It may be objected that this is question begging insofar as it begs the question against virtue ethicists. But many who endorse the anti-cruelty principle are not virtue ethicists (e.g. Warren). They do not want to characterise ethics solely in terms of virtues and vices. For them, at least, this is a problem.

c. Speciesism and marginal cases

It might be objected that this version of the anti-cruelty principle is speciesist. As was argued in Chapter One a good reason needs to be given for species to form a dividing

[134] Rollin makes a similar point. He says human necessity overrides animals' interests in anti-cruelty legislation making that legislation toothless (1983, p. 113).

line. This is especially the case when those who are being speciesist want to attach a higher moral status to marginal humans with the same capacities (as most do).[136] The anti-cruelty principle could be formulated in such a way that it applied to marginal humans and animals alike. But in practice there are few, if any, that hold that *the only* moral consideration marginal humans deserve is not be treated cruelly unnecessarily. The anti-cruelty principle violates AMC. This is another reason to consider it insufficient to account for animals' moral status.

d. Risk

Using the criteria for assessing risk outlined in the previous chapter I will assess how risky the anti-cruelty principle is. First, treating the anti-cruelty principle as if it is the sum total of consideration animals deserve is risky because many, arguably most, theories mandate that they require a lot more consideration.[137] Even those who think animals have only relational value think we need do more than refrain from cruelty (Carruthers 1992, p. 153; Kant 1963). For instance, Kant says it would be wrong to get rid of a dog after long service – this has nothing to do with cruelty. Given that even those views that say animals have a very low moral status require more than the absence of cruelty it is risky to advocate a position that goes against almost all existing theories.

Second, our intuitions tend to suggest there are many instances where we would condemn acts against animals that could not be described as cruel. For instance, painlessly killing a pet that has been with someone for years because they have become inconvenient would be considered wrong by most.

Third, the anti-cruelty principle cannot stand-alone. Its consistency depends upon the theory it forms part of: AMC sheds doubt on the consistency of any theory that limits moral consideration for animals to the anti-cruelty principle but does not do the same for marginal humans (e.g. Warren and Cigman). Its consistency relies upon its being

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[135] Regan makes a similar point (1980, p. 535, 1983, p. 198, 1983a, p. 27, 2003, pp. 52-4).

[136] E.g.: Carruthers 1992, p. 156, Cigman 1981, p. 47, Cohen 1986, p. 866, Francis & Norman 1978, p. 508, Kant 1963, pp. 239-41, Nozick 1974, pp. 40-1, Rawls 1999, p. 448, Warren 1997, p. 152.

[137] E.g.: Bentham 1948; Bernstein 1998, 2002; Cavalieri 2001; Clark 1977; DeGrazia 1991, 1996; Dombrowski 1997; Feezell & Stephens 1994; Fox 1987; Hursthouse 2000; Jamieson and Regan 1978; Midgley 1983; Nobis 2004; Nozick 1974; Pluhar 1988; Porphyry 1965; Rachels 1986; Regan 1983; Ryder 1975; Sapontzis 1985; Singer 1995; Skidmore 2001; Wilson 2001.

applied equally to marginal humans; something few do. Fourth, it is not easy to apply due to the difficulties of interpretation discussed above. Fifth, it is simple. Arguably, too simple. Moral relations are complicated, usually more complicated than this. Sixth, it lacks impartiality. As was pointed out above it starts by assuming human interests shall receive priority, and even greater problems are likely to arise when the principle is applied because humans will often overestimate the importance of their needs/desires. The anti-cruelty principle is partial in principle and in practice.

Seventh, if we limit our moral consideration for animals to the anti-cruelty principle there is much to be lost and little to be gained by adopting it. Doing so means we are more likely to suffer poor health, be exposed to dangerous drugs, allow people to starve and contribute to the destruction of the environment (see 2.5).

e. Epistemic responsibility

It is highly questionable whether blood sports, eating tasty food, new kinds of toiletries etc. are necessary to live well. Such claims need to be backed up. On first sight, these claims are exaggerated. Most people never go hunting, many never wear make up, billions of people (mainly Hindus) do not eat meat and millions more are vegans. Can it reasonably be said that such people have not lived well? I do not think it is obvious. As such the burden of proof lies with those who think living well requires such activities. Until they do such claims are epistemically irresponsible when so much hangs on them.

3.2 Indirect/Relational views of moral status

Some philosophers argue all moral status is relational.[138] Some of these views offer a moderate view of the moral status of animals.

i. All moral status depends on relations

Those who think relations are what matter in morality tend to think we do not have to give equal consideration to all, rather we should prioritise those close to us: family, friends, neighbours, etc. There are disagreements about the extent to which animals can

enter into such relationships. Some think they cannot enter them at all because they are incapable of reciprocating in the right way. Others think our relations to animals give rise to obligations in us but only to those individuals we live with and then the obligations are minimal. I shall outline a couple of relational views and say why they do not meet the concerns raised in previous chapters.

ii. Nel Noddings's Ethics of Care

Noddings argues only those we care for, and who can reciprocate care, can have a moral claim on us.[139] For Noddings moral status is a function of the emotional relationship she calls caring (1984). The 'one-caring' is receptive to the feelings and needs of those 'cared-for' and is motivated to meet those needs. But "both parties contribute to the relation; my caring must be somehow completed in the other if the relation is to be described as caring" (1984, p. 4). But the kind of reciprocity Noddings has in mind is not the contractual sense, the cared-for does not have to return all they get from the one-caring (they do not have to be one-caring) (1984, p. 69-71). The cared-for must acknowledge and respond to the one-caring (1984, p. 72). They may share "aspirations, appraisals, and accomplishments" with the one-caring (1984, p. 72). The cared for reciprocates by "receiving the efforts of one-caring, and this receiving may be accomplished by a disclosure of his own subjective experience in direct response to the one-caring or by a happy and vigorous pursuit of his own projects" (1984, pp. 150-1). The cared-for *must* complete the caring relationship. Ethical caring depends "completely... upon both our past experience in natural caring and our conscious choice" (1984, p. 157). Thus, we can choose who to have a caring relationship with.

Animals cannot be the one-caring. But can animals be cared-for? Noddings thinks not. We have obligations not to cause animals pain (1984, p. 150). We have some additional obligations to our pets, obligations we have incurred. But animals cannot, Noddings argues, complete the caring relationship in the right way. A cat is:

> a responsive cared-for, but clearly her responsiveness is restricted: she responds directly to my affection with a sort of feline affection – purring, rubbing,

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[138] E.g.: Becker 1983, p. 225; Callicott 1989, p. 25; Leopold 1970, p. 239; Noddings 1994, p. 83.
[139] Benson says something similar (1978, p. 536).

> nibbling. But she has no projects to pursue. There is no intellectual or spiritual growth for me to nurture. (1984, p. 156)

But, we have no obligations to rats because we cannot receive them as one-caring – we cannot enter into a reciprocal relationship with them (in part because we choose not to). Because humans differ significantly in their capacity to respond emotionally to animals there is no universal obligation to care for animals. We only have obligations if we form relationships. But relationships to animals are never as strong because the caring relationship is incomplete (because animals cannot reciprocate in the appropriate way).

iii. Objections to Noddings's view

a. Speciesism and marginal humans

Noddings thinks marginal humans should be given the same kind of moral consideration as normal humans because "[a]n ethic that forces us to classify human infants with rats and pigs is unsettling. We feel intuitively that something must be wrong with it" (1984, p. 151). But marginal humans, like animals are unable to reciprocate in the appropriate ways. Infants will be able to reciprocate in the future and those who have lost the ability to reciprocate once had it. But there are some humans who cannot, never have been and never will be able to reciprocate. Yet Noddings thinks these humans are morally considerable. If these marginal humans are morally considerable, there is no non-arbitrary reason for excluding relevantly similar animals. Noddings has an answer to this:

> Locating our primary obligation in the domain of human life is a logical outgrowth of the fact that ethicality is defined in the human domain – that the moral attitude would not exist or be recognized without human affection and rational reflection upon or assessment of that affection. It is not "speciesism" to respond differently to different species if the very form of response is species specific. (1984, p. 152)

But this does not overcome the problem. If ethics is defined by the caring relationship and animals are excluded because they cannot enter fully into this relationship marginal

humans must be excluded too. If marginal humans are to be included so must animals. Any other view is speciesist. As was argued in Chapter One speciesism cannot be accepted. This is a very strong reason against Noddings's account.

It can be objected that not all relational views need be speciesist. But those who want to exclude animals or say they have lesser moral status while including relevantly similar marginal humans can justifiably be charged with speciesism. Those who hold relational views could just exclude all marginal humans. But few are prepared to do this. Those who do are still open to objection; namely, they exclude marginal humans and all the problems that go with this (see Chapter One).

b. Risk

Noddings's view, and by implication other relational views, is risky because it is a common and fundamental principle of most theories, and an intuition of most moral agents, that we have moral obligations to all humans. For Noddings's theory to be consistent with this she must say we have the potential, at least, to care for *all* humans. It is not obvious all humans are capable of such caring. There may be some who are incapable of caring for others. The perpetrators of rape, murders and torture do not care for their victims. On Noddings's view rapists and torturers are without moral obligations to their victims because they do not care for them. Given that this principle is unable to satisfactorily account for the moral status of moral agents, we should be very wary of accepting it as an account of animals' moral status.

Other risks arise from Noddings's account. What if a relationship only works one way? For example, a mother cares for her son but he cares nothing at all for her. On Noddings's account, the mother has no moral duties to him (the relationship is incomplete). But the mother would presumably reject this. The point carries across to other marginal humans and animals with whom we may have very loving one-way relations in which they do not fully reciprocate.

Relational views can be viewed as risky on the grounds they lack impartiality. According to Noddings we can decide whom to enter into ethical relationships with. This makes our moral duties a matter for individual conscience. If I do not care for

people who are guilty of violent crimes do I have no duties to them? Virtually all theories agree our duties are not a matter of individual choice (acquired duties may be, but there are universal unacquired duties).

Relational views are centred around the moral agent (in Noddings's case the "one-caring"). It may be argued the fact it is centred round the moral agent does not necessarily show it is partial, if the moral agent is what grounds moral considerability. This may be true, but it does gives us reason to be suspicious as it means the moral agent and those they care about are the only ones that matter. Most moral agents, and most theories, think nepotism is wrong (unless there are unusual circumstances), that people should be treated equally. If they cannot satisfy the basic requirement for impartiality among humans it is unlikely relational theories will be able to satisfy concerns about impartiality with regard to animals (given we have even stronger reasons for denying them moral status).

If we assume Noddings's view (and similar relational views) is correct it is true we have a great deal to gain insofar as it narrows our scope of moral consideration, making morality less burdensome. However, if relational views, of the type discussed above, turn out to be wrong we will have failed to give enough moral consideration, not only to animals, but to many humans too. Continuing to use animals as we do will mean we lose out on a healthy vegan diet, we contribute to starvation, destroy the environment and expose ourselves to dangerous drugs (insofar as according animals moral status gives us reason to stop using animals and thus gain these benefits - see 2.5). These losses are great making the relational view risky.

c. Epistemic responsibility

Noddings's claim that we can potentially care for all humans is epistemically irresponsible because it is unlikely we will be able to care for all humans in the right way. Bigotry is not uncommon. Some think people of a particular sex, race, culture, sexuality or religion are inferior and as such do not care for them (at least not in the necessary way). Noddings may argue that the bigot at least has potential to care for such people (in the necessary way). This is, at best, psychologically implausible.

Noddings's account is epistemically irresponsible in her assumption that people *cannot* care for animals in the same way they care for people. First, it is a negative claim and so hard to prove. Second, there is evidence some people care more about animals than about other humans. Many people prefer animal company (usually a dog or cat) and others devote their whole lives to looking after animals. It may be objected there are different kinds of care, but Noddings needs to say what they are and how they are relevantly different if the kind of care we have for an animal does not count ethically. It may be that different kinds of relationship generate different kinds of obligations.

These problems suggest relationships cannot be the whole story about moral status as such we should be wary about excluding animals on the basis we do not have the right kind of relationship with them.

iv. Virtue ethics relational view

a. Hursthouse and virtue ethics

Very little has been written about the application of virtue ethics to animals (Hursthouse 2000, p. 164). But Rosalind Hursthouse gives one account. She argues our treatment of animals should be judged by whether it displays virtues or vices (2000, p. 149). Thus, for instance, helping an injured dog would show the virtue of compassion; leaving them unaided would show callousness. Virtue ethics tells us to look at the particular circumstances and act in the way the virtuous person acts. It tells us to look at the motives/reasons and emotions that attend a particular act.

Hursthouse gives an example of a person keeping a large dog pent up in a city flat and only giving them short walks (2000, p. 153). She asks whether this is virtuous? At first it seems selfish and irresponsible. But suppose the dog belonged to the person's recently deceased mother and they have been trying to find the dog a home in the country. Hursthouse says if "*those* are the... circumstances... virtue ethics would presumably say there was nothing wrong with it" (2000, p. 153).

In general, however, Hursthouse seems to imply that animals deserve a lot more moral consideration than other theories have afforded them. For instance, she is a vegetarian

and a virtue theorist. She does not spell out the basis for vegetarianism under virtue theory. But presumably the justification goes something like this: a virtuous person is not the sort of person who allows death and suffering to go on (by eating meat) when they are able to do something about it (become vegetarian). The same argument could presumably be rendered in favour of veganism because the production of eggs and dairy products involve suffering and death.

b. Becker, virtue and social distance

Not all who discuss animals in relation to virtue ethics agree it mandates better treatment and/or higher status for animals. Becker argues human interests should be prioritised over animals':

> There are certain traits of character... people ought to have – traits constitutive of moral excellence or virtue. Some of these traits order preferences by "social distance" – that is, give priority to the interests of those "closer" to us... Animals are typically "farther away" from us than humans. Thus... people ought (typically) to give priority to the interests of their own species. (1983, p. 225)

Thus, according to Becker it is humans who display the virtues and we may display virtues towards animals but usually it will be the case that because of their social distance their interests will be less important than those of humans who are usually closer to us. Becker acknowledges his arguments do not show that humans are morally superior to animals. He does not deny we should give consideration to the interests of animals, or that animal interests can override human ones. He is not defending the cruelty in factory farming or experimentation. However, he thinks it is not clear we cannot use some animals for some food and experiments (1983, p. 226).

v. Criticisms of virtue theory

a. Interpretation

These different interpretations highlight the major difficulty with virtue ethics; namely, different people place differential amounts of importance on different virtues. This may

arise in part because its application to animals has been so little discussed and some of the difficulties may work themselves out given time. However, trouble of interpretation is a wider criticism of virtue theory. One person's virtue is another's vice. There is no guarantee virtue theorists will see eye to eye on the status of animals.

b. Marginal humans and speciesism

If Becker is right in his interpretation then virtue ethicists face AMC (Becker's response to AMC was discussed in Chapter One). The virtuous person could refuse the priority of humans over animals and thus avoid the problems faced by Becker.

c. Risk

Becker's account carries great risks. Sexism and racism increase with social distance. If the facts about social distance justify speciesism, they justify sexism and racism too. Sexism and racism are almost universally condemned (by moral theories and intuition). Any theory that advocates, or even supports, them is therefore risky. Becker argues that his account does not support sexism and racism because:

> they result from a lack of moral excellence... they come in part from a culpable failure to reciprocate and to empathize across racial or sexual lines. The failure is culpable... because it is based on false beliefs... about the inappropriateness of reciprocating and the futility of trying to empathize. (1983, p. 240)

But why should not empathy cross species lines as well? It is a lack of moral excellence that makes people speciesist. It is a culpable failure to reciprocate across species lines (this is something Becker would agree to for he opposes cruelty). Speciesism is based on false beliefs about the inappropriateness of reciprocating and the futility of trying to empathize. All (even Kant) agree cruelty to a loyal dog is wrong, it is therefore appropriate to reciprocate. It is not futile to try and empathize with animals. People do it all time. Becker must come up with a relevant difference. If he cannot he must concede that animals are morally considerable or that racism and sexism are permissible.

Remember Hursthouse's example about the dog. It is true we would judge the person looking after the dog less harshly once we hear of the circumstances, but the dog is in cramped conditions with insufficient exercise and company. Virtue ethics cannot satisfactorily account for why this is wrong.

Virtue theory is inconsistent in its treatment of marginal humans and animals. It is very hard to apply as was argued above. It oversimplifies morality, insofar as it makes morality all about virtue, without allowing for other components.

Virtue ethics is partial insofar as it centres around the virtuous person, on this view marginal humans (and animals) only have moral status if they are related to virtuous people in the right way; they have no independent moral status. Not only does this go against our intuitions, it offends against our sense of impartiality. Moral status should not depend on circumstances. A dog kept in a city flat because of an owner's selfishness suffers as much as Hursthouse's dog. Virtue theory cannot take this into account.

Virtue theories carry many losses. Even if problems about application can be overcome it seems likely to increase racism, sexism and other prejudices. It may secure a better moral status for animals but this depends on one's conception of the virtues. On Hursthouse's view we should be vegetarian but her interpretation is not necessarily the correct one. It may still allow using animals for food and experimenting on them. On Becker's view we should carry on in much the same way meaning we risk not giving their animals their due and as a result risk poorer health, hazardous drugs, making it harder for those who are starving, continuing to devastate the environment (see 2.5).

d. Epistemic responsibility

Becker's account is epistemically irresponsible insofar as it relies on unsupported empirical claims about relationships between humans and animals.

3.3 Only animals' status is relational (indirect duty views)

Some theories hold the status of humans is non-relational, but animal status is relational. I shall examine a couple of representative views.

i. Contractualists: Carruthers & Rawls

Contractarians argue morality is an artificial construct; we enter into a (hypothetical) contract to protect ourselves against others. Thus, only moral agents are morally considerable (Carruthers 1992; Hobbes 1996; Locke 1996; Rawls 1999; Rousseau 1996). For contractarians the only reason to give someone moral consideration is that they will do likewise. Only rational beings are accorded any (direct) moral status, "only rational agents will be assigned direct rights on this approach" (Carruthers 1992, p. 98). This excludes animals (though they may get some indirect consideration) (Carruthers 1992, p. 98; Rawls 1999, p. 441). Animals have indirect moral status in virtue of the "qualities of moral character they may evoke in us" (Carruthers 1992, p. 165).[140]

In order to reach a just set of principles Rawls asks us, rational contractors, to imagine we have stepped behind a veil of ignorance where we do not know what sex, race, religion we are or what natural abilities we have. We are then asked to choose principles that would be in our own interest. The veil of ignorance is meant to yield impartiality. Only rational beings are protected by the rules because they are the ones who make them. Thus, he says "equal justice is owed to those who have the capacity to take part in and act in accordance with the public understanding of the initial situation" (1999, p. 505). For Rawls the only morally considerable beings are those with a sense of justice, only those "who can give justice are owed justice" (1999, p. 510).[141] He continues that the "capacity for a sense of justice is necessary in order to be owed the duties of justice, it does seem that we are not required to give strict justice anyway to creatures lacking this capacity" (1999, p. 512).

ii. Kant's account of animals

Kant argues humans alone have direct moral status and animals' status is indirect:[142]

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[140] Rowlands argues animals can have direct rights on a Rawlsian view (1997). However, this interpretation is controversial.

[141] Rawls is giving an account of justice not of morality. But his account can be broadened to provide and account of moral status (see also Rowlands 1997, p 236).

[142] Contemporary Kantians (Wood and Korsgaard) have given alternative explanations of our treatment of animals but the usual interpretation is that animals can only have indirect status (Skidmore 2001, p. 541).

> so far as animals are concerned, we have no direct duties. Animals are not self-conscious and are there merely as a means to an end. That end is man. We can ask, 'Why do animals exist?' But to ask, 'Why does man exist?' is a meaningless question. Our duties to animals are merely indirect duties to humanity. Animal nature has analogies to human nature, and by doing our duties to animals in respect of manifestations of human nature, we indirectly do our duties to humanity... If then any acts of animals are analogous to human acts and spring from the same principles, we have duties towards the animals because we cultivate the corresponding duties towards human beings. If a man shoots his dog because the animal is no longer capable of service, he does not fail in his duty to the dog, for the dog cannot judge, but his act is inhuman and damages in himself that humanity which it is his duty to show towards mankind. (1963, pp. 239-40)

Kant is arguing we should treat animals with kindness because to do otherwise would cultivate a flaw in our characters and thus increase the chance of failing in our duties to human moral agents:

> If he is not to stifle his human feelings, he must practise kindness towards animals, for he who is cruel to animals becomes hard in his dealing with men... Tender feelings towards dumb animals develop humane feelings towards mankind. (1963, p. 240-41)

There is, for Kant, no other reason for according them moral status.

iii. Criticisms of indirect views of animals moral status

a. Speciesism and marginal humans

Marginal humans are a problem for Kantians and contractarians because they are not rational. They are not rational in the Kantian sense or in the sense required to enter into a contract. But contractarians and Kantians want to say marginal humans have moral status. Carruthers argues that advocates of AMC seriously underestimate:

> the resources available to contractualists, through which they can explain how all human beings should be accorded the same basic moral rights, whatever their mental capacities. (1992, p. 101)

Carruthers' resources (slippery slopes and species) were shown to fail in 1.2 and 1.3.

One way Rawlsians may be able to include animals is to cast the veil of ignorance wider such that participants do not know their species (Regan 1983, p. 172; VanDeVeer 1983, pp. 152-3). Carruthers thinks doing this would "destroy the theoretical coherence of Rawlsian contractualism" (1992, p. 102). This is because morality is, for a contractualist, a construction of rational agents. But this means Carruthers is left facing AMC; marginal humans are not rational agents.

b. Risk

Indirect duty views run a risk insofar as many other plausible theories assume we have direct duties to animals, that at least some of the moral consideration they are due is direct.[143] There are circumstances where those who think animals only have indirect status would be unable to give an account of what is wrong with cruelty to animals. If animals have only indirect status and I am the last person alive there is no moral reason not to gratuitously torture them. This is risky because it is in contention with other views that say it would be very wrong to torture animals under these circumstances.

Contractarianism is risky because it can even exclude rational humans if they are not party to the contract. No other moral theory can consistently exclude rational humans. Contractarianism is therefore very risky.

Indirect duty views are counterintuitive. Most of us think if we are cruel to an animal it is a wrong *to* that animal, not to their owner or any person one might be more likely to be cruel to. This is supported by statistics. A recent MORI poll found that in Britain 65% of people say that all animal circus acts should be banned, 80% say that we should ban all wild animal circus acts, and 90% are against whipping and beating when

[143] E.g.: Bentham 1948; Bernstein 2002; Cigman 1981; Clark 1977; Midgley 1983; Nozick 1974; Rachels 1990; Regan 1983; Ryder 1975; Schweitzer 1929; Singer 1995; Warren 1997.

training circus animals.[144] Unless it is supposed that these people think circus trainers are all very cruel to humans as a result of their activities (and there is no evidence for this) the objection is to the treatment of the animals *per se*, not to anything that may result for humans. There are many other examples: 80% say they would like to see better welfare conditions for Britain's farm animals;[145] 69% are willing to pay more for a product which comes from a humanely reared animal;[146] 66% are willing to pay more for meat/food produced by "cruelty-free" methods;[147] 68% agreed "it is not right to export veal calves to the continent";[148] 78% agreed "it is not right to keep veal calves in crates";[149] 86% believe all animals have the right to a life free from cruelty and abuse.[150] It is highly unlikely these judgements, especially the last one, are based on any indirect wrongs to humans. The most plausible interpretation is that most people think cruelty to animals is wrong because of the direct affect on the animals themselves; it directly wrongs the animals.[151]

Indirect duty views are inconsistent in their treatment of marginal humans and animals. If rationality et al. are what make humans morally considerable then marginal humans must only have indirect moral status too. Yet contractarians insist their status is direct.

Given the confusion over the status of marginal humans it would be very hard to apply these theories in practice. Indirect duty theories are simple; too simple. They oversimplify the nature of our relationship to animals and marginal humans and the way we think about their moral status (they tell only part of the story about our relations to animals and marginal humans).

Indirect duty theories are partial insofar as everything revolves around us, humans. On indirect duty views animals are, for the most part, tools to be used. The few restrictions there are on our treatment to them relate back to us.

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[144] Carried out in 2005 on behalf of Animal Defenders International.
[145] Taylor Nelson Poll for the RSPCA, June 2000.
[146] NOP poll for the RSPCA June 1997. Survey of 1941 adults aged 15 and over.
[147] NOP poll for the Danish Bacon and Meat Council October 1995.
[148] Gallup Poll for the Daily Telegraph August 1995. Survey of 1037 over 16-year olds in Great Britain.
[149] Ibid.
[150] NOP poll for Animal Aid May 1998. Survey of 1004 adults aged 15 and over.
[151] Kant may not give much weight to moral intuitions. But many people do and to ignore them so wholeheartedly is to take an unreasonable risk.

A lot of potential losses attend indirect duty views. First, they accord animals (and by implication marginal humans) an extremely low moral status. Second, they encourage a lack of regard for moral agents, because as was argued in Chapter One our behaviour to animals is linked to our treatment of humans. The better we treat animals the better we are likely to treat humans. By according such low status to animals it is likely to undermine our respect for human moral status. If humans continue to use animals the way we do, something indirect duty theories allow, we will suffer: ill health; poor medicine; contributing to human starvation; damaging the environment (see 2.5).

c. Epistemic responsibility

Carruthers claims contractarianism is epistemically responsible when it comes to animal cognition (1992, pp. 69-70). But, indirect duty views are epistemically irresponsible insofar as they rely largely on negative claims. They say there is some property, such as rationality, humans have and animals do not. But we should be careful about categorically claiming animals *do not* have certain capacities. Proving negatives is virtually impossible. It might be replied that those who hold indirect animal status views are not claiming animals' lack of an ability/capacity has been proved, rather that it is a reasonable assumption. Though such claims are seldom couched in these terms, there is no reason they should not be. But more importantly it is not clear what would be taken as evidence in favour of animals being rational et al. We can test animals intelligence in some ways but there is still a sense in which we can never know *how* animals think. If we *cannot* know whether animals are rational et. al. it is irresponsible to deny them direct moral status on this basis.

3.4 Non-relational (direct) views of animal status

i. Albert Schweitzer – the will to live

Albert Schweitzer argues that all living things have a will to live and as such have equal moral status (moral value). Living things' value is based on "the most immediate fact of man's consciousness... I am life that wills to live, in the midst of life that wills to live" (1933, p. 157). From this he thinks it follows we have "responsibility without limit

towards all that lives" (1929, p. 248). He calls his ethic 'Reverence for Life' (1933, p. 156). Someone who respects this ethic:

> tears no leaf from a tree, plucks no flower, and takes care to crush no insect. If in the summer he is working by lamplight, he prefers to keep the window shut and breathe a stuffy atmosphere rather than see one insect after another fall with singed wings upon his table. (1929, p. 247)

Not only, he argues, should we avoid harming things we should, if we revere life, try and save it where possible (1929, p. 250). One might expect his ethic to lead to a great many changes in our way of life such as becoming vegan. However, he does not reach this conclusion. He says it is unavoidable to harm other living things:

> The necessity to destroy and to injure life is imposed upon me... In order to preserve my own existence, I must defend against the existence which injures it. I become the hunter of the mouse which inhabits my house, a murderer of the insect... a mass-murderer of bacteria... I get my food by destroying plants and animals. (1929, p. 254-5)

All life is equal. It is up to each moral agent "to decide for himself in each case how far he can remain ethical and how far he must submit himself to the necessity for the destruction of and injury to life, and therewith incur guilt" (1933, p. 233).

ii. Objections to Schweitzer's view

a. Marginal humans and speciesism

In theory all life is equal. We have no more or less reason to kill humans than animals. However, in practice it supports the status quo – eating meat etc. He does not mention eating humans, in theory he should be happy eating them as all life is equal. Yet I doubt he did. In this sense it is speciesist. Animals are equal in name only.

b. Risk

Schweitzer's view fails to reach agreement with other positions or our intuitions in that it accords far too much moral status not only to sentient animals but to plants and bacteria. If all life is equal then Schweitzer's view has some absurd consequences. If all life is equal we can do virtually nothing without harming something morally considerable. It means killing a human would be on a par with cleaning one's house (where one inevitably kills bacteria). These are faults with any view that says all living things have equal moral status. The fact the consequences of such a view are, to most people, absurd is not sufficient to show the theory is wrong. It does, however, provide a reason for treating it with caution.[152]

If every living thing is morally considerable then we will constantly be destroying morally considerable things; we will constantly feel guilty. It may be objected that if killing things such as bacteria is necessary for us to live, or live well, we have no reason to feel guilty. But people do not necessarily feel guilty just when they have done something wrong, they often feel guilty even when they have not. And if we think all living things are morally considerable if we are to display the appropriate feelings towards them, we must feel bad if we destroy them, even if doing so is necessary.

If all life is equal we should do as much as we can to protect it. Schweitzer says if a cow is equal to a plant you may as well eat the cow; you need to eat something. But if all life is equal it should all be protected, even if we accept we must kill some things to live we should kill as few as possible. To feed the cow we have to kill many plants. If we eat only plants many fewer things die. I cannot understand why Schweitzer does not advocate veganism. If we were all vegans many billion fewer things would die (plants and animals). Schweitzer's view is not consistent: if all life is equal we should protect it all (as much as is feasible).

Schweitzer's view is hard to apply. Nothing in particular follows from the fact all life has equal moral status. Schweitzer's view does not give us any guidance.

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[152] Not all who claim living things are morally considerable claim they are equal. Some may claim there are degrees of moral status. But in order to make such distinctions clear arguments need to be given.

Schweitzer's theory is over simplified. He cannot account for the differences we accord to human life over bacteria, or animal life over plant life.

Schweitzer's view is in theory impartial – every living thing is equal. But in practice it supports killing and eating animals.

Schweitzer's view is risky, possibly the riskiest view so far. It supports the status quo. And allows the continuation of dangerous medicines, poor health and the destruction of the environment (see 2.5). There are good reasons, then, to look for alternatives.

c. Epistemic responsibility

Saying that every living thing has a will (desires) to live strikes most as wildly implausible. Willing requires mental capacities many living things, most notably bacteria and plants, simply do not have.[153]

iii. Animals are virtuous

It has been argued that some animals display at least some virtues and have moral status in light of this (Bernstein 2002, p. 532).[154] Bernstein argues some animals are braver than some humans. For example, a dog called Blackie tried to drag a baby from a blazing house but failed and died in the attempt (Reeve 1978, p. 562). Another virtue often ascribed to dogs is loyalty (Bernstein 2002, p. 535). Darwin thought animals display some virtues (see Sapontzis 1985, p. 254).

What implications does this have? For Bernstein we may be obliged to prioritise a more morally significant being (more morally virtuous being) over a less significant (less virtuous) being. For example, if we only have one heart available and it is a choice between saving Gandhi or an ordinary person, Gandhi should get the heart (2002, p.

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[153] The equality of living things need not be based on their having a will to live. But further arguments are needed to say what it does depend on.

[154] Bernstein argues moral virtue is a good candidate for a morally relevant property, and a property (P) is relevant iff "insofar as an individual possesses P, that individual warrants its welfare be given preferential consideration (treatment) vis-à-vis an individual who lacks P or has it to a lesser degree" (2002, p. 531).

536). But, Gandhi is not entitled to your healthy heart.[155] He thinks the same applies to a person versus a mouse. This means that animal experimentation, and presumably farming and killing animals for food, is not allowed. This means (virtuous) animals have a much higher moral status than is usually accorded to them.

iv. Objections to non-relational virtue view

a. Marginal humans and speciesism

This view is the least speciesist so far identified. It attributes moral status on a species neutral basis.

b. Risk

Bernstein's account gives virtues too great a role. Most do not think virtue should be the sole basis of moral consideration. Many think people still deserve moral consideration even if they have committed heinous crimes (for example those who taunted Saddam Hussein moments before his execution were widely condemned). Likewise, most of our intuitions tend to put virtue in a more auxiliary position.

Many marginal humans are incapable of acting virtuously. For Bernstein these people have no moral status. This is at odds with both intuitions and most other moral theories.

Bernstein's account is risky in that there are circumstances where he gives too much consideration to animals; where animals are more virtuous their interests will be prioritised. For example, if we think of the usual lifeboat example, imagine we have only one space (certain death awaits anyone who does not get on) and we have to choose between a dog who has been a loyal companion all their life and a petty criminal (someone guilty of stealing, burglary etc). Bernstein's view says we should choose the dog. Most people's intuitions and most theories would agree this is the wrong choice. In addition it implies if animals can display virtues they can display vices (see Grandin 2005, p. 150-2 for examples of animal vice). If they are to be rewarded for the virtues

[155] Bernstein does not explain why this is the case.

then unless there is an asymmetry (which needs to be explained) they should be punished for their vices.[156] This is highly counterintuitive.

Bernstein's account is consistent. However, there are problems with applying it. First, there are problems of interpretation. It is not clear that Bernstein's interpretation of virtue ethics is the correct one. It depends largely on which virtues one has in mind. Are their some virtues that are more virtuous than others? These problems need to be resolved. Bernstein's theory is simple. It appears impartial.

Bernstein's view carries many losses; it allows the continued use of many animals for food and medicine and so does not attain the benefits of stopping using animals (better medicine, health and environment – see 2.5).

c. Epistemic responsibility

This account is epistemically irresponsible; it is not obvious animals can be virtuous. The idea of animal virtue is obscure. To be virtuous an action is usually thought to have to be done for the right reasons. Animals do not seem capable of understanding such reasons.[157] It may be argued that animals only act as if they are loyal, brave, etc., they are not genuinely displaying virtue because they cannot subscribe to principles (principles about virtues).

It may be objected what appears to be virtue in animals is only instinct. Bernstein has three responses. First, the behaviour is too complex to be instinctual. Second animals are selective about their display of the virtues, for example, dogs are not loyal to everyone (2002, p. 536). Third, there is an evolutionary reason to think some animals virtuous. Virtues are selected for because they have survival value. But even if we accept these arguments the type of virtue displayed by animals is, at least, different in degree from humans'. This means animals will often get less consideration. Non-relational virtue views can therefore be rejected on the grounds of risk.

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[156] Animals are sometimes punished but this does not have the same retributive aspect as human punishment, we punish animals to correct their behaviour.

[157] There is disagreement about what makes something a virtue. Aristotle argues intellect is required, Rousseau thought it had more to do with having a good heart.

v. Utilitarianism for animals, Kantianism for people

Nozick proposes, but does not endorse, a position (which he considers "too minimal") called utilitarianism for animals, Kantianism for people (hereafter UAKP):

> It says: (1) maximise the total happiness of all living beings; (2) place stringent side constrains on what one may do to humans. Human beings may not be used or sacrificed for the benefit of others; animals may be used or sacrificed for the benefit of other people or animals *only if* those benefits are greater than the loss inflicted. (This inexact statement of the utilitarian position is close enough for our purposes, and it can be handled more easily in discussion.) One may proceed only if the total utilitarian benefit is greater than the utilitarian loss inflicted on the animals. This utilitarian view counts animals as much as normal utilitarianism does persons. Following Orwell, we might summarize this view as: *all animals are equal but some are more equal than others*. (None may be sacrificed except for a greater total benefit; but persons may not be sacrificed at all, or only under far more stringent conditions, and never for the benefit of nonhuman animals. I mean (1) above merely to exclude all sacrifices which do not meet the utilitarian standard, not to mandate a utilitarian goal. We shall call this position negative utilitarianism.) (1974, p. 39)

vi. Objections to utilitarianism for animals, Kantianism for people

a. Marginal humans and speciesism

This position is blatantly speciesist. A relevant difference between marginal humans and animals has not been identified.

b. Risk

UAKP risks giving too little weight to animals (this contradicts both most other theories and our intuitions). Under UAKP "[n]othing may be inflicted upon persons for the sake of animals" (1974, pp. 40-1). Nozick does not think this is good enough. He asks:

> Is this an acceptable consequence? Can't one save 10,000 animals from excruciating suffering by inflicting some slight discomfort on a person who did not cause the animals' suffering? One may feel the side constraint is not absolute when it is *people* who can be saved from excruciating suffering. So perhaps the side constraint relaxes, though not as much, when animals' suffering is at stake. (1974, p. 41)

It is risky in that it assumes that Kantianism for people is true. Many dispute this.

UAKP is inconsistent; it does not treat like cases (animals and marginal humans) alike. It is simple and easy to apply. But it is by no means impartial; it is speciesist, designed to protect human interests. By treating animals differently it encourages our continued use of them and so dangerous medicines, poor health and the destruction of the environment (see 2.5). UAKP can be rejected on the grounds it is too risky.

c. Epistemic responsibility

This position, like plain Kantianism is epistemically irresponsible insofar as it relies on proving negatives about animals (see 3.3).

vii. Engel's mere considerability premise

Engel argues all of us are:

> already committed to the *mere considerability premise* – the premise that animals deserve some moral consideration, although not as much consideration as that owed humans... [this] entails that vegetarianism is morally obligatory in most contexts and that animal experimentation is almost always wrong. (2001, p. 89).

He argues most people share the intuition that most (if not all) humans should get greater consideration than animals, and that "animals deserve *some minimal yet non-negligible* amount of direct moral consideration (hereafter, MYN)" (2001, p. 97). At a minimum MYN consideration requires:

> animals *not* be blinded, crushed, or skinned alive for no good reason... The nearly universal moral revulsion these examples engender shows just how widely the mere considerability premise is accepted... your own beliefs show that you are already committed to the mere considerability premise (2001, pp. 97-98).[158]

He contrasts the mere considerability premise with two others: the no considerability premise and the equal considerability premise. He argues that the implications of the equal considerability premise are abominable (this will be discussed in Chapters Four and Five), as are those of the no considerability premise, which entails nothing we do to animals, like torturing them for fun, is wrong.

At first sight MYN seems a restatement of the anti-cruelty principle. But in addition to a prohibition on cruelty if "sentient animals deserve MYN moral consideration then they cannot be killed for no good reason" (2001, p. 99). Because if "animals deserve MYN moral consideration, then their most significant interests cannot be outweighed by the trivial interests of humans" (2001, pp. 99-100). In order to give animals MYN consideration we must, therefore, become vegetarian and stop buying "personal [care] and household products that have been tested on animals" (2001, p. 103). (Engel makes no mention of medical experimentation).

viii. Objections to Engel's Mere considerability

a. Marginal humans and speciesism

The mere considerability premise is speciesist. Engel states that our intuitions tell us we are committed to it. He provides no further reason for saying humans deserve more consideration than animals and makes no mention of how we are to treat marginal humans with similar capacities to animals.

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[158] Philosophers who endorse it: Becker; Carruthers; Steinbock 1978, p. 256.

b. Risk

The mere considerability premise has some commonalities with other positions and our intuitions. In fact, the mere considerability premise is based entirely on intuitions. This is risky; intuitions are not necessarily the best source of moral knowledge, they conflict.

It is not possible to judge its consistency as it does not form part of any overriding theory (though arguably Engel should be advocating veganism not vegetarianism as eggs and dairy produce involve the suffering and deaths of animals). The mere considerability premise is hard to apply because it is vague. Given it prohibits cruelty it needs to overcome the problems identified with the anti-cruelty principle above. It is hard to apply insofar as Engel needs to flesh out what MYN consideration is. He needs to give an account of what animals' "most significant interests" are and which human interests are "trivial". This is by no means easy. For example, Singer argues taste is trivial (Singer 1980, p. 333). Narveson and Regan argue it is not (Narveson 1977, p. 172; Regan 1982, p. 45). But we are always likely to overestimate our own needs. He also needs to explain what a "good reason" is.

The mere considerability premise is simple but it is not clear it would necessarily be consistent within a theory. The mere considerability premise is partial insofar as it prioritises humans significant interests over animals'. It has the benefits of better health and an improved environment. But it does not benefit from encouraging safer medicine because animals' interests are still allowed to be sacrificed for humans' interests.

c. Epistemic responsibility

Engel provides no empirical evidence for his claim that our intuitions support the mere considerability premise. Our practices contradict it insofar as most people do eat meat and use products tested on animals. As Rollin points out human necessity overrides animals' interests in anti-cruelty legislation (1983, p. 113). Engel may object this merely displays our weakness of will. But he needs to provide evidence for this.

ix. Warren's "weak animal rights position"

Warren denies what she calls Regan's "strong animal rights position" (1986, p. 163). Rather, she:

> would extend the scope of the rights claims to include all sentient animals, that is, all those capable of having experiences, including experiences of pleasure or satisfaction and pain, suffering, or frustration... I do not think that the moral rights of most non-human animals are identical in strength to those of persons. There are, for instance, compelling realities which sometimes require that we kill animals for reasons which could not justify the killing of persons. I will call this view "the weak animal rights" position. (1986, p. 164)

Warren argues that the weak animal rights position provides a more plausible way of dealing with a range of cases because the rights of different kinds of animals vary in strength:

> A creature's probable degree of mental sophistication may be relevant to the strength of its moral rights, because mentally sophisticated creatures are apt to be capable of greater suffering and probably lose more which is of potential value to them when they lose their lives. (1986, p. 166)[159]

One difference with "clear moral relevance" is that persons are rational (1986, p. 169). Rationality is morally relevant because it "provides greater possibilities for cooperation and for the non-violent resolution of problems" (1986, p. 169).

Warren argues animals' rights differ both in content and strength. First, human desires and interests are more extensive than animals'. Second, the human capacity for moral autonomy though not a necessary condition for rights is sufficient.

Warren argues that animal rights are "somewhat weaker than that of human beings... weak enough to enable us to justify killing animals when we have no other ways of

[159] Wetlesen argues something similar (1999, p. 287).

achieving such vital goals as feeding or clothing ourselves, or obtaining knowledge which is necessary to save human lives" (1997a, p. 469).

x. Objections to Warren's "weak animal rights position"

a. Marginal humans and speciesism

Warren's position is speciesist. She argues that animals have weak rights but that marginal humans who are similar to them do not (1986, p. 170).

b. Risk

Resting moral status on rationality is risky insofar as many other theories allow sentience and other criteria a greater role. If Warren's theory is rendered consistent (i.e. marginal humans have only weak moral rights) it is counter intuitive. Warren's theory is hard to apply because it will take a lot of empirical evidence, which she does not supply, about how similar animals are to humans. Warren's theory is complicated insofar as it is not clear what status different rights have, or what it means to say a right is weak. Warren's theory is partial and in practice it is likely to be even more so. We constantly overestimate our interests in our dealings with other humans e.g. by giving little or nothing to famine aid – how much more likely then that we do so in the case of animals where we cannot ever really know what their interests are. Warren's theory encourages us to put animals' interests second and as such it encourages using them for our purposes. But as was argued in 2.5 we stand to gain more by discontinuing our use of them (safer drugs, better health, better environment). Warren's view encourages our continued use of animals.

c. Epistemic responsibility

Warren claims her position is in line with our intuitions but she provides no evidence.

Warren's view should be rejected because it is speciesist, risky and epistemically irresponsible.

3.5 Summary and Conclusion

In 3.1 I considered the most moderate view of all; all we need to do is refrain from cruelty to animals. In 3.2 I discussed views that hold that all moral status is relational, including animals'. In 3.3 I discussed views that hold that humans' moral status is non-relational (direct) but that animals' is relational (indirect). In 3.4 I discussed views that say animals' moral status is non-relational.

I argued that these moderate accounts (and all they represent) fail to satisfy either the concerns about risk, epistemic responsibility, or marginal humans and speciesism or all three. Together this gives us reason to look for accounts that accord animals higher moral status. It is one such account that the next chapter will examine.

Chapter Four: The subjects-of-a-life account of morally considerability

Introduction

In chapters one and two I argued that there are reasons for favouring accounts that accord animals moral status. In Chapter Three I argued accounts that accord animals weak moral status are not satisfactory. In this chapter I will examine an account that accords animals a very strong moral status: Regan's subjects-of-a-life account. It will be rejected because it is too risky (it accords too little moral status to some animals and some marginal humans). This means another account will have to be sought (the sentience account – Chapter Five).

In 4.1 I will outline Regan's account. In 4.2 I will examine some general criticisms of it. In 4.3 I will discuss Regan's account of AMC. In 4.4 I will discuss risk. In 4.5 I will assess the epistemic responsibility of Regan's account.

4.1 Regan's subjects-of-a-life account

I shall give a brief sketch of Regan's approach to animals' (and humans') moral status.[160] The case Regan presents is cumulative and evolves by overcoming what he considers the major disadvantages of other theories (2001, p. 286).

Regan's argument has four stages. First, he rejects alternative accounts of the moral status of animals. Second, he examines and rejects some of the major moral theories. Third, he makes a positive case for human rights. Finally, he applies his arguments to animals (animal rights stem from human rights; the two are inextricably linked).

[160] I have chosen to discuss Regan because his work is the most well known, most thoroughly worked out and most discussed. Many others discuss animal rights: Auxter 1979; Cavalieri and Singer 1993, pp. 4-7; Clark 1997; Elliot 1987; Everitt 1992, p. 49; Fox, M. W. 1983, p. 310; Jamieson and Regan 1978; Jamieson 1981; Linzey 1976, 1989, 1991, 1996 (gives a theological account of animal rights); Nelson 1956, p. 116; Nobis 2004; Rachels 1989; Raz 1984, p. 213; Rollin 1983, p. 112, 1992; Rowlands 1997;

i. Rejecting alternative accounts of animals' moral status

The following views have been discussed Chapters One and Three, so I shall only recap them briefly here.

a. *Indirect duty views*

Regan argues that these views are inadequate because they do not account for the direct duties we have to animals (for instance the duty not to be cruel to them) (1983, Ch. 5, 1989, p. 105, 2003, Ch. 4). Thus, only direct duty views are satisfactory.

b. Speciesism

Regan rejects speciesism because it is an unjustified prejudice (1979, p. 189, 1981a, p. 74, 1983, p. 155, 2003, pp. 47-9).

c. Virtue ethics (cruelty-kindness view)

He argues that the main reason virtue ethics type approaches to animals' moral status (what he calls the cruelty-kindness view) are unsatisfactory is that they assess the character of the person performing the act rather than the act itself (1980, p. 535, 1983, p. 198, 1983a, p. 27, 2003, pp. 52-4).

ii. Rejecting alternative moral theories

a. Utilitarianism

He rejects utilitarianism because, among other things, it commits one to counting evil preferences (utilitarianism will be discussed in Chapter Five) (1983, Ch. 6, 2003, p. 60).

Ryder 1975; Salt (see Hendrick and Hendrick 1989); Sapontzis 1985, 1987; Spira 1983; Sprigge 1979; Warren 1986, 1997, pp. 227-9; Wise 2000.

b. Kantianism

He rejects views that say human moral worth depends on their rationality because such views exclude marginal humans.

iii. Positive Account of Human Rights

a. The inherent value of moral agents

Regan develops his own account of human moral status. He starts by examining the value of moral agents:

> The interpretation of formal justice favoured here, which will be referred to as *equality of individuals*, involves viewing certain individuals as having value in themselves. I shall refer to this kind of value as *inherent value* and begin the discussion of it by first concentrating on... the moral agent. (1983, p. 235)

He argues that inherent value is equal, independent of others and cannot be lost because of anything the individual does (1983, p. 237, 1989, pp. 110-11).[161] He says we must believe inherent value is equal "to ensure that we do not pave the way for such injustices as slavery or sexual discrimination" (1989, p. 110). He calls this the *postulate of inherent value* (1983, p. 237).

b. Marginal humans and inherent value

Regan argues that restricting the postulate of inherent value to moral agents is arbitrary (1983, p. 239). He thinks it is reasonable to postulate that marginal humans have inherent value because we have direct duties to them (1983, p. 239).

Regan argues that human moral patients cannot be said to have only a degree of inherent value because to do so would be to confuse inherent value with either a) the value of their experiences, b) the possession of virtues, c) their utility to others, or d) the

[161] Regan uses the term inherent value instead of intrinsic value to distinguish his position from utilitarianism which, he thinks, places intrinsic value on experiences rather than individuals.

interests others take in them (1983, p. 240). Because the value moral agents have does not change (or lessen in degree) when these things change it would be arbitrary to say human moral patients' value is less when they exhibit these things to a lesser degree. Thus, all who are inherently valuable are equally inherently valuable. Inherent value is a "*categorical* concept... It does not come in degrees" (1983, pp. 240-41).

If both moral agents and human moral patients have equal inherent value despite their differences it is reasonable to require some relevant similarity between them "that makes attributing inherent value to them intelligible and nonarbitrary" (1983, p. 241).[162] Regan offers *the subjects-of-a-life criterion* (1983, p. 243).

c. The Subjects-of-a-life criterion

Subjects-of-a-life are those beings who:

> have beliefs and desires; perceptions, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference- and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential lives fare well or ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else's interests. (1983, p. 243)

This is a rather long list of attributes. A better flavour of the meaning and an idea of why Regan chooses it rather than any other term is given in the following passage:

> We bring to our life the mystery of consciousness... we are not only in the world; we are aware of it... [and] of what transpires "on the inside,"... in the realm of our feelings, beliefs, and desires... we are something more than animate matter, something different from plants that, like us, live and die; we

[162] Regan rejects Schweitzer's "reverence for life" ethic on account of concerns about scope and precision.

> are the experiencing subjects-of-a-life, beings with a biography, not merely a biology... we are *somebodies* not *somethings*. (2001, p. 201)[163]

The idea of a subject-of-a-life succeeds where other criteria fail because it succeeds "in explaining our moral sameness, our moral equality" (2004, p. 51).

d. Rights

Regan argues that all subjects-of-a-life have certain basic moral rights. These rights are independent of their relations to others or their voluntary actions, they are universal and all who possess them possess them equally (1981a, p. 71). Rights are valid claims to the treatment one is due (1981a, p. 70).[164] Claims are valid iff they are against a particular individual and the treatment is owed by these individuals.

The main basic moral right all subjects-of-a-life have is the right to respectful treatment, which is due them because of their inherent value (1983, p. 266). This means they cannot be treated as mere "receptacles of intrinsic value"; they cannot be treated as mere means. They have a right not to be harmed (a right against all moral agents).

Rights are invisible barriers protecting the individual that trump the interests of others: no matter what (2003, p. 73). The rights of the individual "trump the otherwise noble goal of advancing the good of society" (2001, p. 272).

Rights are not absolute; under special circumstances (see below) they can justifiably be overridden.

e. Respect Principle and Harm Principle

Regan acknowledges that the postulate of inherent value does not show how we should treat individuals (1983, p. 248). In order to do this we must develop some principle. Regan develops the respect principle: "[w]e are to treat those individuals who have

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[163] See also: Regan 2004, p. 50. Rachels thinks animals have a life in the sense of having a biography (1983, p. 283). Facts about someone's biographical life are "facts about his history, character, actions, interests, and relationships" (1990, p. 199).

[164] Also see Mill 1962, p. 309.

inherent value in ways that respect their inherent value" (1983, p. 248). Given this principle it is a requirement of justice that we give equal respect to those individuals who have equal inherent value. We are unjust when we do not respect them properly, for example by treating them as mere means. The harm principle, according to which we have a direct duty not to harm individuals, can be derived from the respect principle:

> Because all those who possess inherent value possess the equal right to be treated with respect, it follows that all those human beings *and* all those animal beings who possess inherent value share the equal right to respectful treatment. (2001, pp. 210-212)

f. The miniride and worse-off principles

Regan acknowledges there are cases where individuals' rights conflict and it may be necessary to override an individual's rights. Working from the respect principle he formulates the miniride and worse-off principles. The miniride principle states:

> Special considerations aside, when we must choose between overriding the rights of many who are innocent or the rights of few who are innocent, and when each affected individual will be harmed in a prima facie comparable way, then we ought to choose to override the rights of the few in preference to overriding the rights of the many. (1983, p. 305)

Thus "when the foreseeable harm involved for each individual is prima facie comparable, then numbers count" (1983, p. 305). He argues that:

> To favour overriding the rights of the few in no way contravenes the requirement that each is to count for one, no one for more than one; on the contrary, special considerations apart, to choose to override the rights of the many rather than those of the few would be to count A's right for more than one – that is, as being equal to overriding the rights of the... [many] relevantly similar individuals. (1983, p. 305)

However, harms are not always comparable where rights conflict, so we need another principle for such cases. Regan suggests the worse-off principle:

> Special considerations aside, when we must decide to override the rights of the many or the rights of the few who are innocent, and when the harm faced by the few would make them worse-off than any of the many would be if any other option were chosen... we ought to override the rights of the many. (1983, p. 308)

He gives an example where one person will be harmed –125 units and 1,000 will be harmed –1 unit. We can either stop the one being harmed –125 units or we can stop the 1,000 being harmed –1 unit each or we can do nothing. Regan argues that this is the kind of case where "numbers don't count" (1983, p. 308). If the few are to be treated with strict justice we cannot simply add up their losses and compare the aggregate with the total losses of the many without ignoring the few's inherent value:

> It is the magnitude of the harm done to A and each individual member of the thousand not the sum of A's harm compared with the sum of the thousands', that determines whose right overrides whose. (1983, pp. 309-10)

g. Necessary but not sufficient

Regan does not limit rights or moral status to subjects-of-a-life; being a subject-of-a-life is sufficient for moral rights, not necessary (1983, p. 245-6, 2001, p. 203). Those who are not subjects-of-a-life may still be inherently valuable.

Having established the rights of human subjects-of-a-life Regan moves on to animals.

iv. Animal rights

Regan argues some animals (all mammals over a year and birds) are subjects-of-a-life (1983, p. 78, 1998, p. 42-3, 2001a, p. 17). If human subjects-of-a-life are inherently valuable and have rights then animals who are subjects-of-a-life cannot nonarbitrarily be denied equal rights (1983, pp. 239-40, 244, 2001, pp. 210-212, 2004, p. 53).

Implications

Regan's view has drastic implications for our treatment of animals:

- the total abolition of commercial animal agriculture
- the total abolition of the fur industry
- the total abolition of the uses of animals in science (2003, p. 1)[165]

4.2 Criticisms of Regan's account[166]

I will now examine some criticisms of Regan's account. In 4.4 they will be shown to contribute to the overall risk of his account, which gives us reason to look for a less risky account (see Chapter Five – the sentience account).

i. Subjects-of-a-life criterion

The subjects-of-a-life criterion is complicated, requiring individuals to exhibit a lot of different attributes. The subjects-of-a-life criterion could be replaced by a simpler criterion (e.g. sentience).[167] But as I will argue that below, even if the subjects-of-a-life criterion were replaced with something simpler there are other problems.[168]

a. Beliefs and Desires

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[165] Also see 1983, p. 394-8 and 2004, p. 10.

[166] There are many criticisms of the rights view (including objections to rights as valid claims and objections to rights *per se*), I will not consider these due to lack of space. Other objections I will not consider include: animals cannot have rights because they are amoral: Cohen 2001, p. 31; Animals cannot have rights: Carruthers 1992; Cohen 1986, 1997, 2001, pp. 27, 29, 30; Feinberg 1974,1976, 1978; Fox 1978, 1978a, 1986; Frey 1977, 1977a, 1980, 1989; 2003; Leahy 1996; Machan 1991; McCloskey 1965, 1979; Narveson 1977, 1983, 1987; Scruton 2000; Watson 1979; White 1989, p. 119. The Christian tradition says animals cannot have rights: A Catholic Dictionary 1989, p. 133; Linzey 1989, p.134; Rights are either metaphysical entities or they depend on humans: Fox 1986, pp. 51-7; only those who are autonomous/moral agents have rights: Cohen 1986, 1997, pp. 97-8, 2001; Fox 1978; Mackie 1978, p. 355; McCloskey 1979; Rights are necessarily human: McCloskey 1965, p. 126; the idea of animal rights is absurd; animals cannot understand rights; absurd consequences follow from animal rights: Cohen 2001, p. 27. I will not consider these objections because they all presuppose animals do not have moral status. I have argued it is reasonable to think animals have moral status in previous chapters.

[167] In an early paper Regan suggests this: the fact animals "can suffer is a fundamental reason... for thinking... many animals have a right against us not to be made to suffer" (1977, p. 186). Warren makes a similar suggestion (1986, p. 164).

[168] Those aspects of the subjects-of-a-life criterion not considered in this chapter will be considered in the next chapter.

Beliefs and desire are states that interact to produce behaviour (Carruthers 1992, p. 132; Frey 1980, pp. 86-7). Beliefs are states of mind that are either true or false (Scruton 2000, p. 175). Desires are a motivation towards something that the being does not have with a view to obtaining it (Scruton 2000, p. 178).[169]

It is common sense that animals have beliefs and concepts (Carruthers 1992, p. 126; Regan 1983, p. 73; Rollin 1989, p. 46; Scruton 2000, p. 175). Though some have denied that animals have beliefs (Aristotle 1986, 428a; Davidson 1975; Descartes 1927, p. 360; Fellows 2000, p. 587; Frey 1980, pp. 111-3; Leahy 1991, p. 79).

No desires without language

Frey argues that animals cannot even have simple desires because they are not language users (1980, p. 101). He defines simple desires as those that do not involve the intervention of belief (1980). Regan thinks that there are some marginal humans who obviously can have desires without having beliefs of the kind in question (1976a, p. 488). For example, they could desire to have their toothache relieved without having a belief about how. Frey argues those who think animals have simple desires are faced with a dilemma. If Fido desires a bone the question is: "Is (Fido) aware that it has this simple desire? It either is not aware or it is" (1980, p. 104). Frey argues the dog cannot be unaware of its desires, i.e. they cannot be unconscious, because it only makes sense to say some human desires are unconscious because some human desires are conscious, "where the creature in question is alleged to have only unconscious desires, what cash value can the use of the term 'desire' have?" (1980, p. 104). Thus, if the word desire is to mean anything the animal must be aware of at least some of its simple desires (1980, p.105).[170] The other alternative is that the dog is aware of desiring the bone, but Frey argues that this requires self-consciousness and animals are not self-conscious (Frey's arguments about self-consciousness will be discussed below). But it is not obvious being aware of a desire makes a being self-conscious. To be self-conscious it would have to be aware that there is an "I" that is aware, but to be aware of the desire it only

[169] Some who think animals have desires: Aristotle 1986, 414b; Clark 1977, p. 20; Russell 1921. Some who deny animals have desires: Frey 1980, p. 83; Kenny 1963, Ch. 3; Pears 1975; Tinbergen 1966.
[170] Frey's analysis is controversial. Carruthers thinks animals have non-conscious desires (1992, p. 191).

needs to be merely aware it desires.[171] We do not usually reflect on our desires. We are simply aware of them. Animals can be aware without being aware they are aware.

No beliefs without language

Frey argues that animals "cannot have desires unless they have beliefs" (1980, p. 73). First, behaviour cannot show that a dog believes *that p* unless the same "behaviour is not compatible with the belief *that q* or *that r* or *that* s" (1980, p. 114). If it is compatible with other behaviour it is not clear how it proves *that* belief (1980, p. 115). However, we take the behaviour of pre-linguistic children as evidence they have beliefs so it is reasonable to do the same for animals (see Rollin 1989, p. 49).

Second, Frey argues that only those who can have beliefs can have desires, and only those who can use language can have beliefs (1980, pp. 86-100; 1989).[172] He acknowledges saying animals lack desires is controversial (2003, p. 51). Thus, he must admit the burden of proof falls on him. He uses an example to illustrate that the dependence of desires on beliefs:

> I am a collector of rare books and desire to own a Gutenberg Bible: my desire to own this volume is to be traced to my belief that I do not now own such a work and my collection is deficient in this regard... without this belief, I would not have this desire... if I believed that my collection *did* contain a Gutenberg... then I would not desire such a Bible. (1980, pp. 86-7)

He is saying that in order to desire something one must believe one lacks it, if one had it one would not desire it. And in order to have a belief one must believe a specific sentence is true, such as "My collection lacks a Gutenberg Bible" (1980, p. 87; 1989, p. 40).[173] What is being believed is that this sentence is true. In order to believe a sentence is true one must have the ability to believe it is false (1980, pp. 89-90; 1989, p. 41).

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[171] Regan makes a similar point (1982d, p. 278).
[172] Others argue beliefs depend on language so animals cannot have beliefs: Aristotle 1986, 428a; Davidson 1973, 1975; Descartes 1927, p. 360; Fellows 2000, p. 587; Leahy 1991, p. 79.
[173] See also Feinberg 1974, p. 52.

Again this requires language.[174] Thus, no creature that lacks language is capable of having a belief, without beliefs they cannot have desires (1980, p. 88).

Beliefs may be necessary for some sorts of desires. But I do not think they are necessary for all desires. For instance, the desire not to be in pain does not require any beliefs; all it requires is the experience of being in pain. I do not need to believe I am in pain in order to desire it to stop. To be in pain just is, *ceteris paribus*, to want it to stop.[175] Pain is an experience. One does not need beliefs about it to have desires about it.

But even if beliefs are required for desires it does not follow that language is required for beliefs.[176] States of affairs are true or false, sentences merely describe them.[177] What is believed is not the content of a particular sentence. Turkish speakers cannot believe the English sentence. And within a language people might believe different sentences, for example, Frey lacks a Gutenberg Bible or he is missing a Gutenberg Bible.

Language is required to express complicated beliefs about whether one's book collection is deficient. But there are simpler beliefs that do not require language. Or where the best explanation is that the subject is having beliefs. Imagine one is holding a bottle of milk in front of a pre-linguistic child. The child reaches towards it and looks at it longingly. The best explanation is that the child wants the bottle. If having desires requires beliefs the best explanation is that the child believes the bottle they see contains milk and wants it. This explanation of the child's behaviour is one practically everybody would subscribe to. Given this those who think beliefs require language will have to give a convincing explanation of the child's behaviour (one which excludes both beliefs and desires) if they are to show ascribing beliefs to the child is wrong.

It is hard to see how we could learn a language if we did not already have beliefs in place. In order to use the word "spoon" one must first acquire the belief the word spoon means this thing here.

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[174] See also: Aristotle 1986, 427b; Davidson 1975, p. 22; Fellows 2000, p. 592.
[175] There are circumstances where we would not want pain to stop, where pain would prevent future pain for example. Even in these circumstances one still wants the pain to stop on one level.
[176] Many argue animals can have beliefs in spite of lacking language: Carruthers 1992, p. 131; Clark 1977, p. 96; Regan 1983, p. 73.
[177] See also: Bernstein 1998, p. 126.

Thus, desires do not necessarily require beliefs and even if they do it is by no means clear only language users have them.

b. The Ability To Initiate Action In Pursuit Of Their Desires And Goals

Subjects-of-a-life must be autonomous, though not in the sense agents are; subjects-of-a-life must have preference autonomy. To have preference autonomy it is "enough that one have the ability to initiate action because one has those desires or goals one has and believes, rightly or wrongly, that one's desires or purposes will be satisfied or achieved by acting in a certain way" (1983, pp. 84-5). Frey calls Regan's sense of autonomy "impoverished" because it drains autonomy of its significance in accounting for the value of life (1987, pp. 60-1). Elliot argues that this is a display of autonomy and to say there is more to autonomy is to "overly intellectualise" it (1987, p. 96).

But regardless of whether Regan's sense of autonomy is impoverished or not the point is why it should matter at all. It is not obvious that being an agent (even in Regan's sense); that, is "being able to do things", is relevant. If one is an agent one can have one's actions frustrated. But then it would seem to be the frustration that matters.

This point can be highlighted if we consider the implications of excluding those without preference autonomy from moral consideration. There are some marginal humans and animals that arguably do not have preference autonomy e.g. brain-damaged humans. The fact that they are not autonomous does not seem sufficient to suggest that they have no moral status. (Though it may suggest they have a lower moral status.) My point is that preference autonomy is only indirectly relevant to moral status.

ii. The line-drawing problem

How are we to know which animals are subjects-of-a-life (Cohen 2001; Rollin 1992, p. 95; Warren 1986, p. 165)? Where do we draw the line?

Regan's response is simple: we do not know, but "neither do we need to know" (2001, p. 215). This is because there are clear cases of subjects-of-a-life and we do not need to know all cases to know that the animals routinely used in agriculture and science are

subjects-of-a-life; namely, birds (Regan does not say at what age birds become subjects-of-a-life) and all mammals one year and over (2004, p. 60).

It being hard to draw a line is not a problem *per se* (or if it is it is equally a problem for any criteria). However, I do think there is a problem with where Regan is forced to draw the line. It is too early in the case of most humans and late in the case of many animals (many animals develop to full or near full maturity before a year). Regan might reply that the line could be drawn to include all mature animals. But this would still leave out immature humans and animals. He could draw the line at birth. But this means it is not the subjects-of-a-life criterion he is using; humans and most animals are not subjects-of-a-life at birth. Regan's line also excludes fish, amphibians and reptiles (all of which are eaten). Regan thinks fish probably are subjects-of-a-life, the problem is that they are not clear cases (2004, p. 60). Most animals used in agriculture (pigs, calves, chicks, lambs) are killed before they are a year old. Likewise many animals used for scientific experiments are killed well before a year. For Regan to draw the line where he does means most animals currently used are not (clearly) subjects-of-a-life and do not get the protection afforded by the subjects-of-a-life view.

However, Regan is not saying that those mammals under a year or other animals are not subjects-of-a-life. He is saying mammals over a year and birds are clear cases and he wants to limit his argument to the least controversial cases (2004, pp. 60-1). But what are we to do about those animals that are not clear cases (like male chicks that are killed when only hours old). Regan's position is without the resources to tell us why mincing an hour old chick alive (a practice routinely carried out to dispose of unwanted male chicks – 40 million day old chicks are killed every year in the UK alone) is wrong, because such a chick is not clearly a subject-of-a-life.[178] It is not only that a day old chick is not *clearly* a subject-of-a-life but there is a strong case to be made that it clearly is not – and the same applies for other animals (and humans) under a year (see 4.5 and 5.5).

Regan argues that the subjects-of-a-life criterion is categorical. But it is not obvious it should be. Some animals have some of the capacities necessary to be a subject-of-a-life but not others (e.g. memory but no sense of the future) (Cavalieri 2001, p. 97). Why

does not the possession of some of the necessary capacities entitle them to *some* moral status? Similarly, it is arguable that subjects-of-a-life capacities come in degrees. Most of the capacities are ones that develop as the individual matures (Warren 1997, p. 118).

The point is that, for Regan, there must be a sharp line somewhere between subjects-of-a-life and non-subjects-of-a-life because inherent value does not come in degrees. But it is implausible to think there is a hard and fast line with subjects-of-a-life on one side and non-subjects-of-a-life on the other, it is much more likely it comes in degrees. The things he mentioned above (being valued by others, possessing virtue etc.) might not change one's value when removed or altered, but it does not follow that removing other features might not diminish value. That there is such a sharp line between those who are morally considerable and those who are not is implausible.

iii. Inherent value

Regan is accused of equivocating two different senses of inherent value (Cohen 1997, 2001, pp. 53-4; Fox 1986, p. 28.). The first is the Kantian idea of inherent moral worth. The second is the sense in which every thing is unique and not replaceable. Cohen says humans':

> inherent value gives them moral dignity, a unique role in the moral world, as agents having the capacity to act morally and make moral judgements. This is... Sense 1.
>
> each animal is unique, not replaceable in itself by another animal or by any rocks or clay. Animals... are not just things; they live, as unique living creatures they have inherent value. This is... Sense 2. (1997, p. 100)

Cohen and Fox argue that Regan confuses the two senses (Cohen 1997, 2001, pp. 53-4; Fox 1986, p. 28.). But at no point does Regan claim that animals' inherent value, and thus rights, depend upon inherent value in the second sense, he makes no mention of it.

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[178] The Ministry of Agriculture, Fisheries and Food, UK, *Slaughter Statistics,* London, 1994.

Many think that the idea of inherent value is unclear, obscure or mystifying (McCloskey 1987, p. 75; Narveson 1987, p. 37; Sapontzis 1987; Warren 1986, p. 165). It has been argued it is no more mystifying or obscure than the Kantian notion of unconditional worth (Cavalieri 2001, p. 94; Regan 2001a, p. 18). I do not think that the idea of inherent value is particularly mystifying.

More worrying is the connection between inherent value and rights; it is difficult to understand.[179] It is not clear why being inherently valuable means a being has a right to respect and at no point does Regan give a satisfactory account of the connection. If a being has been shown to be inherently valuable it does not follow that they have rights. It may be argued rights arise because the existence of value makes some acts appropriate and some inappropriate towards the bearers of value. But additional arguments are needed.

iv. Equality

Regan argues that all subjects-of-a-life have equal inherent value because to allow degrees of inherent value is "to pave the way for a perfectionist theory of justice" (1983, p. 237).[180] Because those with less inherent value could, with justice, be used to serve those with more inherent value. Any view of inherent value that could ground such a theory is, therefore, unacceptable. Making inherent value categorical is the only way it could not ground a perfectionist theory. Thus inherent value cannot come in degrees.

He objects to perfectionist theories. First, they justify "the most objectionable forms of social, political, and legal discrimination – chattel slavery, rigid caste systems" (1983, p. 234). Second, whether an individual possesses the morally relevant capacities is beyond their control "is the result of 'the natural lottery'... No theory of justice can be adequate that builds justice on so fortuitous a foundation" (1983, p. 234).

It could be argued that a threshold for the relevant criteria could be set. This would avoid unjust treatment (Paske 1988, p. 500-1).

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[179] Warren makes a similar point (1986, p. 165).

[180] According to perfectionist theories of justice "what individuals are due, as a matter of justice, depends on the degree to which they possess a certain cluster of virtues or excellences, including intellectual and artistic talents" (Regan 1983, pp. 233-4).

Regan's natural lottery argument is problematic because it applies equally to every natural object. It is not a tree's fault it is not a subject-of-a-life so, on Regan's argument we would have to accord it equal value too (see Paske 1988, p. 501).

Regan claims that inherent value is categorical in nature and does not admit of degrees. Therefore, Regan thinks, any criterion for inherent value must be categorical. The subjects-of-a-life criterion is categorical (1983, pp. 244-245). Although Regan stipulates that being a subject-of-a-life cannot come in degrees, as I argued above, there is no good reason to think it cannot. Whether something is a subject-of-a-life is an empirical matter. If it does come in degrees it is likely inherent value does too. Some subjects-of-a-life have lives that are richer or fuller than others. It is not obvious this does not make a difference to the value of their lives.

That everyone is equal needs a little more justification than it gets. Regan says "[t]he genius and the seriously mentally disadvantaged child; the prince and the pauper; the brain surgeon and the fruit vendor; Mother Teresa and the most unscrupulous used-car salesman... all are equally inherently valuable" (2003, p. 72). But if we change the last example to Mother Teresa and Hitler do we really want to say they are the same? Or even a dog and Hitler? In a life or death situation most people would be inclined to save Mother Teresa over Hitler and many might choose the dog over Hitler (I would). It might be replied there are different sorts of worth (earned and unearned – see Arneson 1999, p. 108).[181] But Regan makes no mention of it. Presumably only moral agents can have earned worth so how do we compare them to a moral patient who is incapable of earning worth? Is the moral patient worth more or less?

v. Respect as fundamental

For Regan "our most fundamental right, the right that unifies all our other rights, is our right to be treated with respect. When our other rights are violated, we are treated with a lack of respect" (2003, p. 29).

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[181] Darwall distinguishes between recognition respect and appraisal respect (1977, pp. 38-9). It may be that Hitler deserves some recognition respect, as a human, but very different appraisal respect on account of his different deeds. Yet there is a sense in which many would want to say his deeds rob him even of his recognition respect. Regan needs to account for this.

But the idea someone is being treated with a lack of respect shows more about the person who is doing the act than the act itself or the recipient of the action. Like Regan's own critique of the cruelty-kindness view (see 3.1) this is a failure in the theory at least insofar as it assesses the agent rather than the action.

Regan says "what the rapists did was wrong because they treated their victim with a lack of respect, treating her as a mere thing, valuable only because she satisfied their desires... fundamentally, this is why what they did was the grievous wrong it was" (2003, pp. 70-1). But while the lack of respect may be part of what the victim objects to it is unlikely to be fundamental. Many marginal humans and animals do not even know what respect is. But what all victims have in common is that they are hurt and/or harmed physically and/or emotionally. Regan argues that:

> The suffering of those who are treated immorally matters, sometimes... profoundly... causing others to suffer is not the fundamental moral wrong. The fundamental moral wrong is that someone is treated with a lack of respect. The suffering they are caused compounds the wrong done, making a bad thing worse... But that they are made to suffer is itself a *consequence* of their disrespectful treatment, not equivalent to such treatment. (2001, p. 198)

What Regan says undermines the significance of pain. He says pain compounds the wrong, that the fundamental wrong is being treated disrespectfully.[182] But, I think those who are in pain would beg to differ, the pain is bad in itself not because it is a result of disrespectful treatment. What is bad about pain is that it hurts. When we see someone in pain we want to alleviate it because pain is bad, not because we see the result of a disrespectful act. Pain is bad even when no disrespect occurs.

vi. Conflicts - Miniride and worse-off

Rights conflict (Frey 1983a, p. 292; Mackie 1978, pp. 358-9; McCloskey 1979, p. 52). Regan has two principles to resolve conflicts: the worse-off and miniride principles. He applies the worse-off principle to a standard lifeboat example. We can choose between

throwing a dog or a human overboard. Regan says we should throw the dog overboard because "the harm that death is, is a function of the opportunities for satisfaction it forecloses... the death of any of the four humans would be a greater prima facie loss, and thus a greater prima facie harm" (1983, p. 324). He continues "[l]et the number of dogs be as large as one likes; suppose they number a million; and suppose the lifeboat will support only four survivors. Then the rights view still implies that, special considerations apart, the million dogs should be thrown overboard and the four humans saved" (1983, p. 325). But would Regan, or anyone else, be quite so keen to throw the million overboard if they were marginal humans rather than dogs? Regan is relying on our intuitions about the value of life. But they do not obviously favour his interpretation given that for him a million marginal humans with capacities similar to dogs are the same as the million dogs in terms of the harm death is for them. When the example is framed in terms of marginal humans few would willingly throw a million marginal humans overboard to save one normal human. This is a problem Regan does not address. He may say that in the process of reflective equilibrium we must reject our intuitions about marginal humans. However, it is an intuition many would find hard to give up.

The worse-off principle is totally insensitive to numbers, if the harms are unequal by however little no change in numbers could justify inflicting or allowing the greater harm.[183] In Regan's example we should harm the thousand –1 rather than the one –125 (1983, p. 308). But what if the thousand are harmed –100 units each? It becomes less clear that the thousand should still be harmed.

Suppose there is one dog for whom the harm of death is greater than a million marginal humans, Regan would have to insist we save the dog. Or imagine a human with a life expectancy of ten years versus a million humans with a life expectancy of nine years and eleven months. Should we really save the one? Regan is obliged to say yes.

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[182] Respect is widely discussed: Darwall 1977; Downie and Telfer 1969; Kant 1959; Gauthier 1963, pp. 119-20; Rawls 1999; Williams 1970. There are different kinds of respect, for instance Darwall distinguishes between recognition respect and appraisal respect (1977, pp. 38-9).

[183] The Mini-ride principle does allow numbers to count but only where the rights are comparable.

vii. Natural Predators

It has been objected that if animals have rights we have an obligation to protect prey species from predators, "to police nature" (McCloskey 1983, p. 122). Environmentalists consider this a *reductio* of the Animal Rights View. If there were no predators populations of prey species would grow so large they would damage their environment and soon die of starvation due to over grazing.

Regan and Clark argue that animals are not moral agents and so do not violate the rights of others (Clark 1979, 1985; Regan 1983, p. 357). Thus, humans should let be. But, this argument would not be acceptable in the case of a human attacked by a lion. It is our moral agency, not the lion's, that is at issue.[184] If animals have the same fundamental rights as humans then either we must save a gazelle from a lion or we are under no obligation to save a human from a lion. He could argue that saving humans from lions is supererogatory. But most consider it our duty to save humans from lions.

Regan argues that most prey can avoid most predators most of the time and so there is no need to interfere (2001a, p. 19). First, it is not obvious this is true. A lot of prey species get killed a lot of the time. If they did not predators would have died out. According to mini-ride we would have to kill the predators (there are more prey than predators) to protect the rights of the prey. This creates heavy burdens. Where would we start? What would happen to the prey species?

The above criticisms taken together give us reason to reject the rights account. How they contribute to its risk will be discussed in 4.4.

4.3 Marginal cases and speciesism

As was stated in Chapter One Regan distinguishes two versions of AMC; weaker and stronger (1979, p. 189)

In outlining his view Regan has moved from the weaker version, which claims *if* marginal humans are morally considerable animals are too, to the stronger version:

marginal humans *are* morally considerable so animals are too. The second version requires additional arguments to show that marginal humans are morally considerable and Regan believes he has provided these. However, my criticisms of Regan's position (4.2, 4.4, 4.5) shed doubt on the subjects-of-a-life criterion and so on the success of Regan's stronger AMC. In Chapter Five I will argue that there are reasons to prefer a different criterion (the sentience criterion), which delivers a stronger version of AMC.

4.4 Risk

Regan's position carries risks. In the next chapter I will argue that there is a position which is less risky. In this section I will argue that there is an additional reason for rejecting Regan's argument; it is risky. The main risks are that it gives too little moral consideration to some animals and some humans (why it gives less consideration to them was discussed in 4.2, below I will discuss how this is risky). I will use the criteria outlined in 2.6 to assess the risk.

i. Disagreement with other positions

First, it is the only position that says animals are equal to humans. All other positions that accord animals moral status do so on an unequal basis. By diverging from other positions to so great an extent, Regan is taking a significant risk. As was argued in 2.6 part of our reason for uncertainty is that others disagree. Agreement is not the only grounds for, or a guarantee of moral certainty but it adds to the strength of a plausible argument and gives us additional reason in favour of it. So lack of agreement gives us reason to view it with caution. Regan's position could be modified so that subjects-of-a-life are not equal and inherent value comes in degrees. But this would create problems such as endorsing perfectionist theories (see 4.2). Second, the criterion he suggests moral status rests on is entirely new. Again this gives us reason to view it with caution.

ii. Counterintuitive

Parts of Regan's position strongly contradict our intuitions. The most counterintuitive result of Regan's position is the idea that all subjects-of-a-life have equal inherent

[184] Warren makes a similar point (1997, p. 113).

value. This is a problem for Regan insofar as he thinks intuitions are important. It is one he recognises, and, he goes to great lengths to show his position does not entail animals are equal (for instance in the lifeboat example he says we should sacrifice the dog rather than the human).

Regan's account excludes some animals and humans it is counterintuitive to exclude.[185] For example, infants under a year, foetuses, some marginal humans (those who are sentient but do not have a sense of the future for example – see 4.2), he excludes those animals like young dogs who we would want to include. This is risky. What about reptiles and invertebrates e.g. toads? Regan's drawing the line at one year old is risky. Burgess and Tawia say "[w]e conclude (tentatively) that a fetus becomes conscious at about 30 to 35 weeks after conception; an answer based on a careful analysis of EEG readings at various stages of cortical development" (1996, p. 1). Regan's response is that we should give infants and foetuses the benefit of the doubt and treat them as if they are subjects-of-a-life (1983, pp. 319-20). But whenever they become conscious they are unlikely to have things like a memory or a sense of the future until they are much older (maybe years older). It may be objected that Regan could modify his theory to include these marginal humans and animals. But as was argued above (4.2) most of these marginal humans and animals simply are not subjects-of-a-life, if he draws the line elsewhere he will be including non-subjects-of-a-life.

If it is life that is inherently valuable, not the contents (which is Regan's objection to utilitarianism) then Regan should oppose euthanasia. If a life is inherently valuable it remains so no matter how miserable it is for the person living it. Many find this counterintuitive. Given that Regan gives weight to intuitions this is a problem for him.

One of the implications of Regan's view seems to be that we have an absolute duty not to commit suicide because if we do so we are doing so on the basis of the intrinsic value of the experiences (pain, boredom etc.) but if life is inherently valuable it remains so regardless of one's experiences (Narveson 1987, p. 37). Regan does not discuss this implication.

[185] Cohen makes a similar point about irreversibly comatose humans being excluded (1982, 1984, 2001).

Regan would argue that intuitions have a role to play but that they are not everything and the fact his account goes against some of our intuitions to some extent is just a part of the reflective equilibrium process. On his view babies do not have moral status. This is an intuition most people (parents especially) would not be able to give up. This is a problem for Regan because he thinks some intuitions should be given up during the process of reflective equilibrium.

The two principles Regan uses to resolve conflicts (the worse-off principle and the miniride principle) are counterintuitive. The worse-off principle in particular implies that what are usually considered supererogatory acts are strict duties – this is counterintuitive (see 4.2). In responding to this criticism Regan asks us to consider an example: a racing car driver is in an accident and will die without the attention or all the available medical staff, however, there are four other patients who could all be effectively treated by the medical team, the other four will all be significantly harmed (e.g. they will lose an arm, suffer partial paralysis) if they are not treated. The rights view implies that the four have a duty to let the driver be saved (1983, p. 321).

Regan's reply is that in this case there are special considerations; the driver has voluntarily engaged in a high-risk activity and so does not have a valid claim, and thus right, against the other four patients. Thus, the four have no duty to give up their medical treatment to save him.

Regan's response is unsatisfactory. First, he does not seem to take account of individual preferences when assessing harms. For example, a concert pianist who would be paralysed and thus not be able to play the piano any more might consider death a lesser harm than a life without piano playing. Regan needs to give an account of how to weight different harms. Another objection is that everything we do, including our choices, might be a matter of luck. Given that Regan does not think justice should allow luck a role, this possibility should mean the racing driver's need be met.

Imagine we change the example. The four remain the same as does the availability of medical personnel. But instead of an individual engaged in high-risk activity, the one is an ordinary driver or a pedestrian who will die without the medical assistance of all the available personnel (leaving no one for the other four patients). According to the worse-

off principle it is still the one who should get the treatment; has a right to the treatment. It is not obvious this is right. What about the four people who will be significantly harmed, is it really right to sacrifice them for the one? It is likely that numbers and the degree of harm should count in cases where the miniride principle does not apply because the harms are not commensurate. But, perhaps more importantly, it is less than clear that the four have a *duty* to give up their treatment in order to preserve the one. The one does not have a right to demand that the four be left without any treatment so they can be saved. If the four were to give up their right to treatment most would consider such an action supererogatory.

iii. Consistency

Regan is inconsistent insofar as he allows numbers to count in some places but not others – he allows the amount of harm being done to individuals to count when assessing whether harms are comparable. He could modify his principles. But he would have to specify when and how numbers are to count.

Regan's theory is inconsistent in that he argues relationships with friends and families count as a 'special consideration' and as such have a bearing on how we should treat the individuals in question. He argues that "the moral bonds between family members and friends [are]... a *special consideration* that justifiably can override the otherwise binding application of the miniride and worse-off principles" (1983, p. 316). He says:

> It would... be morally otiose to require that we suspend the moral bonds that characterize these relationships whenever someone who stands *outside* these relationships will be made slightly worse-off if we decide to prevent harm to someone who occupies a position *within* such a relationship – for example, a friend. (1983, p. 316)

If on the other hand a great harm may befall a stranger (e.g. death) we can set aside our loyalty to our friend (who will get a minor injury) and honour the worse-off principle (1983, pp. 316-7). However, "the central point remains: the relationships between friends and loved ones *are* special, and so should be counted among those "special

considerations" that can validly suspend the normal application of the miniride and worse-off principles" (1983, p. 317).

There are two problems here. First, there is a line-drawing problem. When should familial relationships count as a special consideration and when should they not? This is a tricky problem that needs to be ironed out. Regan could respond that although there are grey areas there are clear cases. But he needs to give an account of what makes the clear cases clear. Even if these problems can be ironed out there is a more significant problem of consistency. Regan strenuously denies that considerations about species should have any bearing on moral status but if this is so why should familial relationships be allowed to count.[186] One might equally argue that:

> It would... be morally otiose to require that we suspend the moral bonds that characterize *species* relationships whenever some animal who stands *outside* these relationships will be made slightly worse-off if we decide to prevent harm to someone who occupies a position *within* such a relationship – another human.

If it is acceptable to allow familial relationships a role it is equally acceptable to allow species relationships a role. If Regan thinks speciesism is wrong he must allow our relationships with family and friends do not count as a "special relationship". But this leaves him with a further problem: he has to deal with the objection that his theory is counterintuitive in not allowing such relationships a role.

There are further tensions between the theory itself and its application. In theory rights are supposed to be trump cards; no trespassing signs. This feature is important for Regan because it protects individuals against "utilitarian" considerations. But in practice, Regan tells us, rights can be overridden (can be trumped or trespassed upon) when they conflict with the rights of others. He argues the right not to be harmed can be overridden: first, for self-defence; second, to punish those who harm others; third, if the right holder in question is an innocent shield who must be harmed to prevent harm being done to others (1983, pp. 287-96).

When Regan's subjects-of-a-life account is applied to animals it offers even less protection. In a lifeboat where there is only room for four and there are four humans and a dog the dog should be thrown overboard because the dog has less to lose by dying. But trying to make his theory consistent with our intuitions comes close to undermining his own theory. As Singer says "can a theory that tells us that all subjects-of-a-life (including dogs) have equal inherent value be reconciled with the intuition that it is the dog that must be sacrificed" (1985, p. 49). The answer must be no. The problem is that Regan is trying to be consistent with our intuitions.

Suppose people with heart disease have a right to a cure. The lifeboat case might be used as a way of justifying animal experimentation if one could discover the cure for e.g. heart disease. Yet Regan advocates an end to all animal experimentation.

He says we should not test on animals or eat them but most of the animals used in experiments or farmed for food are under one year old and so not subjects-of-a-life. This means there is an inconsistency between the theory and the practice. In theory only subjects-of-a-life have rights, but in practice he wants to claim that all animals have the right not to be tested on or eaten. This is not consistent.

iv. Application

There are problems regarding the application of Regan's theory. The respect principle is the most fundamental principle: "[w]e are to treat those individuals who have inherent value in ways that respect their inherent value" (1983, p. 248). The first problem is what is to count as respectful treatment. What does it mean to say we are respecting someone's inherent value? It is vague. Would it be disrespectful to lie to someone to save their feelings? If, for instance, someone asks you if you like their new haircut and you think it looks awful would it be disrespectful to lie and say it does not or would it be disrespectful to tell the truth and be rude?

A similar problem arises with the harm principle: "*we have a direct prima facie duty not to harm individuals*" (1983, p. 187). What is to count as a harm? Do I harm

[186] It may be objected that these differences do not confer moral standing, Regan is not saying one's family is more inherently valuable than a stranger. However, he is saying that such relationships should be allowed

someone by talking about them behind their back? Does stealing something from a shop harm the shopkeeper, whom do I harm if I steal from a multinational (the loss is spread across so many shareholders and is so infinitesimal it cannot be said to harm them)?

Even assuming we can decide what counts as respect and/or harm there are further problems. The miniride principle states:

> Special considerations aside, when we must choose between overriding the rights of many who are innocent or the rights of few who are innocent, and when each affected individual will be harmed in a prima facie comparable way, then we ought to choose to override the rights of the few in preference to overriding the rights of the many. (1983, p. 305)

But what are to count as comparable harms? Does losing a toe count as comparable harm for a dog and a human or an office worker and an athlete? How does losing a leg compare with losing an arm? How does partial paralysis compare with losing a limb? How does being mugged compare with being kidnapped or raped? These are all questions that need answering if we are to put the miniride principle into use.

The worse-off principle says:

> Special considerations aside, when we must decide to override the rights of the many or the rights of the few who are innocent, and when the harm faced by the few would make them worse-off than any of the many would be if any other option were chosen, then we ought to override the rights of the many. (1983, p. 308)

As was argued above (4.2) there are problems with saying who is worse-off in any one case. For example, the person who will lose their arm will undoubtedly claim they will be made worse-off than the person who will be paralysed and vice versa. Whom are we to believe? We could just decide without reference to the individuals which kind of injury is the worse. But this would not take account of their individuality. If we do ask the individuals then it is possible they will have a clouded view of what would be

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a role in resolving conflicts. This is what is inconsistent.

worse, given they are the one involved. Even if we can determine who would be worse-off in any one case there are still 'special considerations' that come into play.

Regan identifies three special considerations. First, acquired duties and rights (this includes relationships like those to friends and family) (1983, p. 322). Second, certain kinds of activities including high-risk ones. Third, "historical background leading up to situations where we are called upon to decide whose right not to be harmed should be overridden" (1983, p. 322).

But as was discussed above (4.2) with regard to family relationships when these special considerations should be allowed to come into play is not an easy matter. Whether they come in at all may depend on who is worse-off, what the harm done is etc.

Taken individually applying Regan's principles present problems. But when they are taken together the problems multiply. How are we to know which principles apply when? How do we know when the special considerations come into play? Even if these problems can be solved there is another problem. What do we do in cases where we are short of time. In such cases we may not have time to decide what counts as respectful treatment, compare harms, decide who would be made worse-off and if and to what degree any special considerations should be allowed any weight. All the different principles together make it rather unwieldy and impractical. As was argued in 2.6 this is risky.

v. Simplicity

Regan's theory is rather complicated when it comes to application. But there are other areas where it lacks simplicity. In postulating inherent value and rights, Regan is being metaphysically extravagant. He can only be accused of metaphysical extravagance if he has postulated inherent value and/or rights where it is not necessary to do so.

Bentham famously described natural rights as "nonsense upon stilts" (1962, II, p. 500). I am not sure whether rights are nonsense or not, however, I do think a case can be made

for saying that they are superfluous.[187] Rights are derived from interests; if they are derived from interests they are not fundamental (see Raz 1984, p. 213).

There are other problems with moral rights. First, it is not obvious how rights are related to right and wrong and there is no consensus on this relationship (see Frey 1983a, p. 286). Rights are unparsimonious – we do not need them to explain right or wrong – they come afterwards.

Second, arguments for moral rights are usually reducible to arguments for the principles that are supposed to ground the rights in question (see Frey 1983a, p. 288). So their legitimacy turns on the legitimacy of the underlying moral principles. If the principles are questionable so are the rights, if they are sound there is no need for rights.

In the next chapter I will argue that the idea of rights can be done without. If this account is plausible this will lend strength to the idea that Regan is metaphysically extravagant.

vi. Impartiality

Regan allows relationships to friends and families to influence our decisions about whose rights should be overridden in some cases. On this score at least, his account lacks impartiality. If he is to be consistent he ought to allow partiality to one's race, gender, religious group or species; they spring from the same feelings. Regan does not want to allow these prejudices. But if he is to retain his partiality for familial relationships it is hard to see how he can consistently condemn them.

vii. Potential benefits and losses

Regan's theory carries many benefits. If his account is correct we will have refrained from doing much wrong to some animals. It will foster an attitude of respect for humans and animals. However, it carries some heavy costs. We will need to spend a significant amount of effort determining what counts as harms and who is worse-off.

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[187] Similarly, Frey thinks we would do better to "jettison" moral rights (1983a). Singer says "I am not myself convinced that the notion of a moral right is a helpful or meaningful one except when it is used as a

There are other costs. Because human foetuses and human infants are not subjects-of-a-life they have no inherent value and no rights so we have no principled reason to refrain form harming them (it gives us no reason to think infanticide wrong).[188] Regan's reply is that the subjects-of-a-life criterion is sufficient, not necessary for moral status. Whether foetuses and human infants have rights "remains an open question, given the rights view, just as whether natural objects (trees or sagebrush, for example) possess rights remains an open question, given this view... And this is a virtue, not a vice of the view" (1983, p. 319). But it is not obvious that the openness of this question is a virtue. While the moral status of foetuses is controversial, the moral status of infants is not. Virtually everyone agrees human infants are morally considerable. Many think children matter more than adults! So any theory that cannot explain why children matter, and merely leaves whether they do an open question is running a very great risk. It could be argued that Regan could draw the line at one year instead of birth. But as was argued above this will not overcome the criticism because newborns are not subjects-of-a-life.

Another line of response Regan makes is even if infants and foetuses are not subjects-of-a-life and so do not have rights it does not follow we can do what we want to them:

> The rights view advocates taking steps that foster... a moral climate where the rights of the individual are taken seriously... Better, then, to adopt a policy that errs on the side of caution when the recognition of moral rights is at issue. Precisely because it is unclear where we should draw the line between those humans who are, and those who are not, subjects-of-a-life, and in view of our profound ignorance about the comparative mental sophistication of newly born and soon-to-be-born human beings, the rights view would advocate giving infants and viable human foetuses the benefit of the doubt, view them *as if* they are subjects-of-a-life, *as if* they have basic moral rights. (1983, pp. 319-20)

But, this does not give young children enough protection. Most people think they do have moral status. If the best a theory can do is recommend we treat them *as if* they have moral status this is risky. Second, what Regan says in this passage does not answer

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shorthand way of referring to more fundamental moral considerations" (1986a, p. 298).

[188] Unless we allow potential a role. But I gave arguments against this in 1.4.

the point about what it would mean if we could know for sure that children are not subjects-of-a-life. If we knew this we would have no reason to treat them as if they are subjects-of-a-life. Regan may reply that rights are not the extent of morality, there are other grounds for inherent value – but this would not satisfy most people. He needs to say why children under one matter morally. He has not succeeded in doing so.

Regan says we should err on the side of caution when we are not sure whether an animal is a subject-of-a-life (we should assume they are) (1983, p. 396). But he faces the same problem as he does with humans, he can supply no principled reason to give them moral status and if it turns out that, as seems likely, many animals are not subjects-of-a-life we will have no reason to accord them moral status.

Regan's theory has other risks; the vast bulk of animals currently used for food and experiments are not by his own definition subjects-of-a-life (they are either not mammals or birds or they are under a year). As such his position gives us no principled reason to become a vegan or stop testing on them. Thus, his theory does not benefit from the improvements in medicine, health, feeding the hungry and a better environment that go with discontinuing our use of animals (see 2.5). There is nothing to stop people refraining from using animals if they accept Regan's account. But the point is that Regan gives us no reason to stop using most of the animals we currently use in the same way we currently use them. If we have a moral motivation to stop animals, this does, for some provide a stronger reason than self-interest alone (I, for instance, find it easier to refrain from eating milk and dairy products because I think I ought to than I do to refrain from overindulging in food/alcohol because it is bad for my health).

4.5 Epistemic responsibility

A lot depends on whether a being is an experiencing subject-of-a-life. I will look at each capacity required to be a subject-of-a-life (in 4.5 and 5.5).

i. Beliefs and Desires

Stich argues we cannot say what animals' beliefs are and if beliefs are necessary for desires we cannot know what desires animals have (1979, pp. 17-18). Infallible

knowledge of the mental states of others is not possible. However, we do manage relative certainty with humans including those who do not use language. We ascribe beliefs and desires to small children. Also we know when the dog believes it is dinnertime or that there is food in the bowl. Until a relevant difference can be shown with animals the burden of proof lies with Stich.

Related to beliefs are concepts. It has been thought animals lack concepts because they lack language (Aristotle 1986, 428a; Fellows 2000, p. 593; Leahy 1991, p. 79).[189] But animals' behaviour makes it reasonable to think they have concepts: "animals do anticipate and remember... that... is how they learn" (Rollin 1989, p. 50). There is other evidence animals possess simple concepts. Pigeons "can learn to categorise slides depending on whether those slides contain a triangle or not, or depending on whether they contain a human" (Carruthers 1992, p. 131). Vervet monkeys use different alarm calls for different predatory species (Ristau 1992, p. 130). Alex the parrot must have some comprehension of "same" and "different" as he can compare shapes and colours and answer with the category name. He is performing with new objects and colours so he cannot simply be remembering the answers (Ristau 1992, p. 130). Chimpanzees appear to understand "middle object" something "many three- and four-year-old children, though accomplished language users, cannot" (Singer 1986a, p. 302).

ii. Welfare interests and An Individual Welfare

To be subjects-of-a-life animals must have a welfare in the sense that their experiential lives fare well or ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else's interests.

That animals have a welfare is uncontroversial.[190] Entire books have been written about animal welfare (Palmer and Paterson 1989; Spedding 2000). In order to have a welfare animals must be able to be benefited and/or harmed (Bernstein 1998, p. 13; Regan 1982b, p. 108). In order to have experiential welfare of the kind Regan implies animals must be conscious. For their experience to fare well or ill *for them* they must be

[189] Some argue animals possess concepts even though they lack language: Regan 1983, p. 74; Rollin 1992, p. 48.

[190] Dawkins 1980, p. 10; DeGrazia 1996, p. 211; Frey 1980, p. 79; Leahy 1991, p. 43; Regan 1983, p. 88, p. 95; Singer 1995; VanDeVeer 1979, p. 57.

experiencing their lives; they must be conscious of them. In the next section I will argue that animals are conscious (in the next chapter I will discuss benefits and harms). Animals do have a welfare and so welfare interests.

iii. Perceptions and consciousness

Perceptions are the basis of our comprehension of the world around us. That most animals have some perceptions of the world around them will strike most as obvious.[191]

The only time Regan mentions perception is when he is explaining what a subject-of-a-life is (1983, p. 243). What he means by perceptions is not altogether clear. I take him to mean conscious awareness of the world around (see for example 2004, p. 54).[192]

a. Definitions of consciousness

One of the few things those working on consciousness (both philosophers and scientists) seem to agree on is that it is all but impossible to explain it.[193] Despite this there have been many attempts.[194]

It is usually defined as being aware in some way.[195] The normal definition is Nagel's: a "conscious experience... means, basically, that there is something it is like to *be* that organism... something it is like for the organism" (1974, p. 436). He says "the essence of the belief that bats have experience is that there is something that it is like to be a bat" (1974, p. 438). This is a common sense understanding and one Regan could agree to (see DeGrazia 1996, p. 115).

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[191] Many agree some animals can perceive: Aristotle 1986, 415a11; 428a10; 1986, 434b; Locke 1975; Pegis 1948, p. 33; Scruton 2000, p. 9-10. Though some think animals cannot perceive (Frey 1980, pp. 118-120; Leahy 1991, p. 148).

[192] Consciousness not self-consciousness is required to be a subject-of-a-life (1983, p. 243, 2001, p. 201, 2004, p. 46).

[193] Dawkins 1998, p. 4; DeGrazia 1996, p. 101; Gorman 1997, p. C5; Greenfield 1995, p. 196; Griffiths 1999, p. 117, 118; Leahy 1991, p. 109; Page 2001, pp. 43-4; Pinker 1997, p. 146; St Augustine 1961, p. 264; Sutherland 1989.

[194] Dawkins 1980, p. 24, 1998, p. 5; Flanagan 1992, p. 31; Griffin 1976, p. 5; Hubbard 1975; Humphrey 1978; Nagel 1974, p. 438; Natsoulas 1978, p. 910; Scruton 2000, p. 177; Shallice 1978, p. 117; Walker 1983, p. 383.

[195] Dawkins 1998, p. 5; Flanagan 1992, p. 31; Natsoulas 1978, p. 910; Scruton 2000, p. 177; Walker 1983, p. 383.

b. Are animals conscious?

Some doubt whether we can know if animals are conscious in any sense (Dennett 1996, p. 18).[196] Many argue animals are conscious.[197] Most agree mammals are conscious (Baars 1997, pp. 27-33; Carruthers 1992, p. 184; Edelman 1992; Frey 1980, p. 108; Nagel 1974; Regan 1983; Scruton 2000, p. 21; Wise 2000, p. 141). Some think birds are (Edelman 1992; Sprigge 1979, pp. 119-120). Some think reptiles are (Edelman 1992; Fox 1986, p. 4, 72). Others think all vertebrates are (Flanagan 1992, pp. 142-5). Some limit consciousness to anthropoid apes (and maybe dolphins) (Bermond 2003, p. 79).

c. Regan's argument that animals are consciously aware

Whether animals are consciously aware has received much attention.[198] Descartes infamously said animals are automata and not aware of anything – sights, sounds, smells, heat, cold, fear or pain (Descartes 1989). Regan has several arguments for animal consciousness (1983, 2003, 2004).

Analogy – humans are conscious

The only consciousness of which any of us can be absolutely sure is our own. If we think other humans are conscious because they are like us (see below) the same can be said about animals (Dawkins 1998, p. 12; Griffin 1976, p. 85, 2003, p. 111; Singer 1986a, p. 285; Sprigge 1979, p. 119; Walker 1983, p. 339; Wise 2000, p.).[199] The analogy in the case of animals is not as strong as in the case of humans – animals differ

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[196] While doubting animal consciousness Dennett defends a theory of consciousness that "implies... a conscious robot is possible in principle" (1996, p. 21).
Dawkins notes that "[m]any scientists believe... the subjective worlds of animals are not open to investigation... 'consciousness' and 'suffering'... [are] unscientific concepts" (1980, p. 10).

[197] E.g.: Barrs 1997 p. 33 (says the scientific community agree animals are conscious); Carruthers 1992, p. 184; Darwin 2004; Deacon 1997, p. 442; Edelman 1992; Flanagan 1992, pp. 142-5; Fox 1986, p. 4, 72 (thinks even animals like fish and reptiles possess some limited consciousness); Frey 1980, p. 108; Griffin 1976, p. 104, 1991, p. 15, 2003, p. 106; Lehman 1998, p. 315; Midgley 1983, p. 11; Miller 2000 (thinks "[a]lmost every member of the American Philosophical Association would agree... all mammals are conscious, and... all conscious experiences is of some moral significance" (2000, p. 443); Nagel 1974, p. 436; Narveson 1987, p. 32; Rodd 1990, p. 28; Ryder 1975, p. 9; Scruton 2000, p. 21; Searle 1998, pp. 49-50; Singer 1995; Sprigge 1979, pp. 119-120; Wise 2000.

[198] E.g.: Dol et al. 1997; Frey 1980; Lehman 1998; Carruthers 1989; 1992; Pluhar 1995; Robinson 1992; Rollin 1989; Singer 1995.

[199] The argument from analogy is especially strong in the case of the great apes who have very similar DNA and brains (Walker 1983, p. 339; Wise 2000, p. 132).

more – but that animals are sufficiently similar to us to in some ways makes it likely they are conscious.[200]

Common sense

It is a common sense belief that animals are aware (Regan 1983, p. 25, 2004, p. 54; Rollin 1992, p. 56). Compelling reasons must be given against a common sense belief before it is reasonable to abandon it. The point of appealing to common sense is to put the burden of proof on those who deny it.

The way we talk about animals

The way we talk about animals suggests they are conscious, insofar as we talk about them having wants (Regan 1983, p. 25, 2004, p. 55). Indeed, according to the "psychologist Hebb... we simply could not deal with animals if our license to talk in these terms [of consciousness] were revoked" (Rollin 1992, p. 56). When Hebb and his associates used language that did not attribute mental states like fear, hate etc. they found it impossible to describe what animals were doing (1946).[201]

Behaviour

Some animals' behaviour is relevantly similar to ours (Regan 2004, p. 55). Griffin argues that when animals' behaviour is complex we often conclude it is accompanied by conscious thinking (1989, p. 51). When animals' behaviour is adaptable this suggests they are consciously thinking (1989, p. 52). That animals' behaviour often involves complex patterns suggests that they are thinking rather than responding mechanically, especially when the steps taken vary (1989, p. 53). Animals' ability to adapt to novel and challenging situations is good evidence for conscious thought, therefore a "criterion of conscious awareness in animals is *versatile adaptability of behaviour to changing circumstances and challenges*" (1989, p. 54).[202] Similarly, that "intention movements so

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[200] Dawkins argues it is parsimonious to describe animal behaviour as conscious because if we think animals are not conscious we have to allow other humans may not be either. Special arguments are needed to show similar behaviour requires differential explanations (1998, p. 176).

[201] Leahy argues there are other examples where experimenters need not resort to "anthropomorphic" language and the fact we can refer to "clever rabies virus" undermines Regan's point (1991, p. 58).

[202] E.g.: A raven "picked up small rocks in its bill and dropped them at the human intruders" (1989, p. 54).

often evolve into communicative signals may reflect a close linkage between thinking and the intentional communication of thoughts from one conscious animal to another" (1989, p. 55).[203]

Bodies and brains

Some animals' bodies are relevantly similar to ours i.e. similar anatomy and physiology (DeGrazia 1996, p. 104; Regan 1983, p. 18, 2004, p. 56). Animals have similar brains and nervous systems:

> Conscious awareness... is thought to require coordination between the medial temporal lobes of the brain, which includes the hippocampus and its supporting structure, and the cortex. The brains of all mammals have both. (Wise 2000, p. 141)

Ryder argues consciousness "is a function of the central nervous system" thus it is reasonable to assume that those animals with similar central nervous systems to us are conscious (1975, p. 9).

Lord Brain, an eminent neurologist said "the diencephalon is well developed in (vertebrates) animals and birds, I... cannot doubt that the interest and activities of animals are correlated with awareness and feeling in the same way as my own" (quoted in Ryder 1975, p. 10).

There is "[p]hysiological evidence of brain functions that are correlated with conscious thinking" (Griffin 2003, p. 111). There is no good evidence that there is a part of the human brain (that only humans have) that is responsible for consciousness (DeGrazia 1996, p. 114; Dennett 1991, Ch. 5). Instead, available evidence suggests that consciousness is associated with complex central nervous systems (CNSs) if this is right vertebrates and possibly cephalopods (octopi, squid and cuttlefish) are conscious (Flanagan 1992, pp. 142-5). Similarly, there are no fundamental differences between the

[203] E.g.; Griffin 1989, pp. 56-7 (Vervet monkeys react differently to different alarm calls of their conspecifics which indicate different predators), 1976, p. 85.

brains and nervous systems of humans and other vertebrates (Griffin 1976, p. 104; Rodd 1990, p. 28). It, is therefore reasonable to think, at least, all vertebrates are conscious.

Evolutionary theory and consciousness

We share the same evolutionary origins as many animals (Regan 1983, p. 18, 2004, p. 57). Darwin says "the difference in mind between man and the higher animals, great as it is, certainly is one of degree and not of kind" (2004, p. 151). Regan argues:

> *Natura non facit saltum* (nature does not make jumps) is central to his [Darwin's] understanding of how existing species of life, including the human, have come into being. Evolutionary theory teaches that what is more mentally complex evolves from what is less mentally complex, not that what is more mentally complex, the human mind in particular, springs full-blown from what lacks mind altogether. (2003, p. 35)

Many agree that the differences between humans and animals are in degree (DeGrazia 1996, p. 104; Gallup 1977, p. 311; Hebb 1946, p. 104; Regan 1982c, p. 159; Rollin 1992, p. 56).[204] If we assume humans are conscious given evolutionary theory it would be remarkable that humans *alone* are conscious (Regan 1983, p. 18).[205] As Page puts it "[t]hose who hold doubts about consciousness and emotions for animals must explain how it is that these attributes arrive in the natural history of *Homo sapiens* like a bolt of lightning with no precursors in the animal world" (2001, p. 214). (Though it may be that humans have a degree of self-consciousness which, though not unique, is much less developed in other species.)

Consciousness has survival value (DeGrazia 1996, p. 104, pp. 113-4; Griffin 1976, p. 85; Page 2001, p. 217; Regan 1983, p. 19; Rodd 1990, p. 54; Singer 1986a, p. 286; Weiskrantz 1988, pp. 183-99; Wise 2000, p. 132). Consciousness helps its bearers survive by increasing their ability to deal with complicated and novel circumstances (DeGrazia 1996, p. 104; Griffin 1989, p. 57). Consciousness is economical (Griffin

[204] Matthews makes a similar point: "By 'the unity of psychology'... the psychology of human beings is part of the psychology of animals generally" (1978, p. 437). Plato and Aristotle both accepted this principle (Plato 1975, 81d-82b; 2000, 90e-91c, Aristotle 1986, B3).
[205] Some disagree: Fox 1986, pp. 32-3, p. 44.

1989, p. 58). One reason consciousness may help animals survive is that it enables them to learn about their environment (Scruton 2000, p. 183). As Popper put it consciousness "allows our hypotheses to die in our stead" (quoted in Page 2001, p. 217).

These reasons make a strong cumulative case for animal consciousness (Regan 1983, p. 28). Regan argues that mammals are clear cases of conscious animals (1983, p. 29). However, all the evidence that suggests mammals are conscious suggests vertebrates (and possibly cephalopods) are. By ignoring this evidence Regan is being epistemically irresponsible.

d. Objections to animal consciousness

Many think animals lack conscious awareness.[206] Most people agree at least mammals and probably higher vertebrates are conscious. Nowadays to hold no animals are conscious "requires some awkward intellectual gymnastics" (Midgley 1983, p. 11). I will examine some of these gymnastics now.

Conscious versus Non-conscious

Carruthers is one of the few modern philosophers who thinks animals lack consciousness so I will concentrate on his arguments. He argues:

> Animals are... often conscious, in the sense... they are aware of the world around them and of the states of their own bodies. Animals can be awake, asleep, dreaming, comatose, or partly conscious... They can be conscious or fail to be conscious, of an acrid smell, a loud noise... just as we can. (1992, p. 184)

This implies animals are conscious. So what does Carruthers mean when he objects to animal consciousness?[207] Carruthers draws a distinction between two kinds of mental state: conscious and non-conscious (1992, p. 170). He thinks all animals' mental states

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[206] Bermond 2003, p. 79 (thinks pain and suffering are conscious experiences which require a developed prefrontal cortex and a right neocortical hemisphere and only humans, anthropoid apes and maybe dolphins therefore experience suffering (i.e. consciousness)); Carruthers 1989, 1992; Descartes 1989; Harrison 1989, p. 90; Leahy 1991; Malcolm 1977; Vendler 1972; Walker 1983, p. 387 (thinks only language users are conscious).

are non-conscious. An example of a non-conscious experience is driving while not being aware what one is doing – if one negotiates a parked car yet has no recollection of so doing (1992, pp. 170-1). Non-conscious experiences do not feel like anything.

Carruthers thinks animals' non-conscious experiences work something like blindsight in humans.[208] Humans suffer from blindsight where they have lost "conscious experience of an area of their visual field... they nevertheless have non-conscious experiences that are somehow made available to help in the control of their actions" (1992, p. 172). When a human has blindsight:

> the visual information is, in a sense, available to be thought about (since if asked to guess what is there, subjects will generally guess correctly), it is not apt to give rise to spontaneous thoughts in the way... conscious experiences are. In the normal course of events the blindsight person will have no thoughts whatever about objects positioned in the blind portion of their visual field. (1992, p. 183)

Thus, for Carruthers, "not all experiences are conscious" (1992, p. 173). But what would other experiences (non-conscious ones) be like? Are they really experiences in any recognisable sense? Similarly, Bermond thinks"[i]t would be nonsensical to talk of experiences if those experiences failed to reach the domain of consciousness" (2003, p. 79). Dennett says an unconscious act is "[l]ike nothing; it is not part of your experience" (1996, p. 17). A non-conscious experience is not an experience.

Carruthers argues that a conscious mental state is "one that is available to conscious thought – where a conscious act of thinking is itself an event that is available to be thought about similarly in turn" (1992, p. 180). To be conscious a being must have thoughts it is able to think about.[209] He says:

> Granted that animals can be conscious *of* events, our question is whether those states of awareness are, themselves, conscious ones. Our question is not,

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[207] Carruthers thinks the "identification of experience with subjective feel is false. There are... many experiences that do not feel like anything" (1989, p. 258). Harrison argues something similar (1989, p. 90).
[208] For further discussion of blindsight see: DeGrazia 1996, p. 105, p. 113; Flanagan 1992, p. 141; Nikolinakos 1994, p. 100. Harrison suggests animal experiences are all non-conscious (1991).
[209] Carruthers might mean by conscious thought what is normally meant by self-consciousness (DeGrazia makes a similar point 1996, p. 115). Self-consciousness will be discussed in chapter 5.

> whether animals have mental states but whether animals are subject to *conscious* mental states. (1992, p. 184)

He acknowledges that animals are conscious in the normal understanding of consciousness. Animals have conscious states but they are not subject to conscious mental states. There is no real distinction here.

Carruthers thinks once he has established there is a distinction between conscious and non-conscious mental states it follows that animals' experiences are of the non-conscious variety (because they cannot think about their thoughts) (1992, p. 184). This is an extremely bizarre way of describing consciousness. This is not what we would ordinarily understand by it. When I stub my toe I think "owe my toe hurts" not "I am thinking owe my toe hurts". The first description is what it is to be conscious of pain; you are aware it hurts. You do not need to think about being in pain to feel it.

Carruthers' account fails to explain how babies can have feelings – does he really want to deny they are conscious? I doubt it.

Carruthers admits his arguments are "controversial and speculative, and may well turn out to be mistaken" (1992, p. 192).[210] He even thinks his thesis is "too highly speculative to serve as a secure basis for moral practice" (1992, p. 194). Carruthers' account is risky and so it should not be used as a basis for judging animal consciousness.

Language

Many think language is necessary for conscious thought (Carruthers 1992, p. 183; Dennett 1996; Taylor 2003, p. 37).[211] Regan argues that in order for human infants to learn how to talk they must be preverbally and nonverbally aware or they could never learn a language (2004, pp. 67-8). If consciousness depends on language children cannot be aware of anything. This "makes utterly mysterious, at best, how children

[210] Many object to Carruthers views: Bekoff and Jamieson 1991; DeGrazia 1996, p. 112-4; Lehman 1998, p. 316; Robinson 1992.

[211] It may be that language provides a more sophisticated or intense sort of consciousness. the point is that language is not necessary for consciousness per se.

could learn to use a language" (1983, p. 15). If children can be conscious without language we cannot reasonably say animals cannot (1983, p. 16).[212] Some may object that only those with potential for language are conscious. But it is not at all clear how the potential has any bearing.

Many argue language is not necessary for conscious thought (Dawkins 2003, p. 94; Grandin 2005, p. 262; Matthews 1978, p. 447; Walker 1983, p. 383). In addition there is proof that language is not required for conscious thought. Temple Grandin, who is autistic, thinks in pictures, not in words but few would deny that she is conscious (2005, p. 262). Grandin says "Obviously I *am* conscious, even though I don't think in words, so there is nothing to say an animal can't be conscious just because an animal doesn't think in words" (2005, p. 262). Grandin designs whole structures without a single word entering her head, she says, "words come in... *after* I've finished thinking it through" (2005, p. 17). When she talks to others she "translates" her pictures into words (2005, p. 18). Grandin is not alone. Einstein and Samuel Taylor Coleridge both thought (though not entirely) in pictures (Wise 2000, p. 159). There are deaf-mutes who say they were conscious before they acquired language and who thought in pictures and signs (Wise 2000, p. 160). Such people can relate to their pre-linguistic experience (Walker 1983; Wise 2000, p. 160-1). It is hard to see how this would be possible if they were not conscious at the time of having the experiences. Ildefonso a deaf mute who was language-less herded goats and sheep, harvested and planted sugarcane, begged and worked on airplane parts before he learned sign language (Wise 2000, p. 160). Ildefonso only learned to use (sign) language late in his adult life yet he "was conscious, and he had no language at all" (Grandin 2005, p. 262).

There is evidence that animals think in pictures (Louie and Wilson 2001, p. 145-56). Researchers implanted electrodes into the brains of mice and taught them to run round a maze. They found the brain wave patterns were so precise they could see just what a mouse was doing at any given point. When the mice were in the REM phase of sleep they found the same pattern of brain waves as when the mice were running through the maze. Given that humans dream in pictures during REM sleep this is good evidence

[212] Dennett thinks animals and pre-linguistic children lack consciousness (1995, p. 695, 703). He needs to explain how children acquire language without consciousness.

animals do too. If they dream in pictures it is reasonable to think they think in pictures when awake.

Instinct

Some are sceptical of animal consciousness because they put all animal behaviour down to instinct. But there is nothing to say we cannot be aware of an instinct. Take sneezing for example (Page 2001, p. 213).

e. Degrees of consciousness

It is possible that there are degrees of consciousness and animals have a lower degree of consciousness than humans (Griffin 1998, p. 5; Lehman 1998, p. 321; Page 2001, p. 124; Wise 2000, p. 127). This is a problem for Regan because inherent value does not admit of degrees and nor does the criterion (being a subject-of-a-life) it is based on. It is very likely consciousness admits of degrees for as animals (and humans) develop it is unlikely that consciousness suddenly sparks into existence, rather it must come on gradually. There are likely to be differences in degrees of consciousness in fully developed individuals. A dog is conscious, but I am self-conscious. This is a difference in degree. This undermines the categorical nature of inherent value. If the criterion it is based on (consciousness is an aspect of being a subject-of-a-life) comes in degrees it is hard to justify the categorical nature of inherent value.

f. Differences in consciousness

As well as different degrees of consciousness it is highly likely there are differences in content. Grandin believes animals perceive the world in a different way to most humans (Grandin is autistic and thinks autistic people perceive the world in a similar way to animals). All the details normal humans filter out make it into the consciousness of animals (and autistic people). Animals are conscious of details. Normal humans are not. Humans are "abstract in their seeing and hearing. *Normal human beings are abstractified in their sensory perceptions as well as their thoughts*" (2005, p. 30). Most humans process the information their senses take in into an abstract picture in their mind; normal humans see "their ideas of things" (2005, p. 30). Animals, and autistic

people, just see the raw data, they do not process it in the same way. Animals "see the actual things themselves" (2005, p. 30).[213] That people only see what they expect to is supported by work on inattentional blindness. For example, many people did not see a woman dressed as a gorilla when watching a basket ball game (Mack and Rock 1998). Thus, Grandin thinks, animals perceive the world in a totally different way to most humans.

Two factors are involved in the different perceptions of humans and animals. First they sometimes have different sense organs that function more or less well; second they process the information in different ways (Grandin 2005, p. 59).

Many animals see things differently to normal humans, for example, most prey animals have panoramic vision (Grandin 2005, p. 40). Some animals see different colours and contrasts (Grandin 2005, p. 42). Different animals have different sense organs and sensory abilities we do not have and vice versa (Grandin 2005, p. 59). Our colour vision is much better than lots of animals. Dogs and cats have better hearing, bats and dolphins use sonar. Human and Old World primates have a poor ability to smell pheromones (Grandin 2005, p. 61).

Regan does not seem to be aware of the differences in perception; in the content of consciousness. Do these differences make a difference? Is all that matters that they are conscious? These are questions Regan needs to answer.

iv. Memory

Regan argues that it is reasonable to think animals have memories because it is reasonable to think that they have preference-beliefs:

> dogs are [not] born *knowing* how bones taste. To find this out, Fido... had to get his mouth on one... suppose the dog lacks memory... Fido could not form the preference-belief or behave as he does because of what he believes about the connection between the taste of the bones and satisfaction of his desires. (1983, p. 73)

[213] Autistic people are more focused on details than whole objects (Minshew and Goldstein 1998).

There are some who deny that animals can have memories. But most, myself included, agree that higher animals, at least, have memories.[214]

It is reasonable to think animals have memories because memory is adaptive in that it allows the animal to acquire new information (beyond instinct) about what is pleasant (helps survival) and unpleasant (dangerous). Memory has survival value for those that live long enough to benefit from it.

Some might argue that memory is dependent on language. But babies have memories, for example, they remember the faces of their parents, so memory cannot be dependent on language. Humans must be able to remember without language or they could not learn a language (Rollin 1992, p. 50).

There is much physiological evidence that animals have memories; they have "oxytocin [which] is the hormone that lets animals remember each other" (Grandin 2005, p. 106). Similarly, the areas of the brain that are responsible for some parts of memory, such as the hippocampus are present in the brains of humans as well as animals including rats and pigeons (Dawkins and Manning 1998, p. 256; Walker 1983, pp. 320-5).

There is evidence that animals have both short-term and long-term memories (Dawkins and Manning 1998, p. 303). Three types of memories have been identified in chicks and rats – short-term, intermediate-term and long-term (Dawkins and Manning 1998, p. 304). Not many people doubt that animals have memories but for those who do doubt it I shall list a small number of examples.

Birds have amazing memories for where they have hidden food. The Clark's nutcracker (a type of crow) buries up to 30,000 pine seeds in the autumn in an area of 200 square miles and finds over 90% of them during winter (Grandin 2005, p. 263). Marsh tits and chickadees may hide hundreds of seeds in one day and find them all days later (DeGrazia 1996, p. 159). The most parsimonious explanation for this is that they remember where they stored the food (DeGrazia 1996, p. 160).

Birds fly long distances when they migrate. The arctic tern has the longest route – an 18,000 mile round trip from the North Pole to the South Pole and back again (Grandin 2005, p. 285). Birds "have to *learn* these routes... they learn the routes with almost no effort at all [they only have to fly them once]" (Grandin 2005, p. 285).

Chimps can recognise individual people after many years absence (Fouts and Fouts 1993, p. 37-8). There are carefully controlled studies showing the memory capacities of dolphins (Herman 1975, pp. 43-8; Herman and Thompson 1977, pp. 501-3). Gray squirrels bury hundreds of nuts in different places and remember each one (Grandin 2005, p. 287). Pigeons can "memorize hundreds of pictures and remember them months later" (Page 2001, p. 79). A "sheep can remember more than fifty members of its flock" (Page 2001, p. 177). Fish and reptiles will return to the place they spawned to mate. Octopi are good at remembering their way round mazes.

Most of these animals have to fend for themselves (i.e. migrate, store food etc.) well before age one. If memory is to count all who have a memory should count (at least to some extent). This includes not only mammals and birds below one but fish, reptiles and other vertebrates and some cephalopods (such as octopi) who have good memories.

v. A Sense Of The Future, Including Their Own Future[215]

Some deny that animals have a sense of the future (Bennett 1988, p. 199; Wittgenstein 1958, p. 650).[216] Evolution gives us good reason to think conscious animals have a sense of time (DeGrazia 1996, p. 169). Anticipation is useful for predicting events and deciding what to do (Midgley 1983, p. 58). Grandin argues that the "single most important thing emotions do for an animal is allow him to predict the future" (2005, p. 201). Apes use signs to refer to future events (Singer 1993, p. 112).

The capacity to experience fear suggests a sense of future because fear is fear of what may happen in the future (DeGrazia 1996, p. 170; Grandin 2005, p. 203). Likewise

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[214] Aquinas thinks animals have memories (Pegis 1948); Darwin 2004, p. 95; Dawkins and Manning 1998, p. 256; DeGrazia 1996, p. 159; Fouts and Fouts 1993, p. 37-8; Grandin 2005, p. 263; Herman 1975, pp. 43-8; Herman and Thompson 1977, pp. 501-3; Page 2001, p. 177; Walker 1983, p. 78.

[215] Some think animals do have a sense of the future: DeGrazia 1996, p. 170.

desire is future-oriented. There are studies that demonstrate mammals and birds represent temporal intervals.[217] Animals can predict the future behaviour of conspecifics so it is likely they can anticipate their own behaviour (Griffin 1976, p. 44).

Many experiments have demonstrated animals do appear to anticipate painful events:

> Rats will learn to jump on sight of a warning light which indicates that an electric shock will follow shortly. Monkeys will stay awake (and develop stomach ulcers) in order to press levers on command to avoid painful shocks. (Rodd 1990, p. 131)

It is, therefore, reasonable to think that some animals have a sense of the future (though Regan himself presents no empirical evidence for this).

vi. An Emotional Life

It used to be thought that talking of animals in terms of emotions was just anthropomorphism.[218] Animals' behaviour used to be described solely in terms of instincts and drives (Grandin 2005, p. 136). Instincts are fixed action patterns and drives are built-in urges that make animals seek necessities like sex and food. The idea of instincts and drives seemed to explain animal behaviour from an external viewpoint. But the idea of a drive was problematic when it came to mapping the brain because single unified brain circuits that underlie particular drives could not be found (Panksepp 1998, p. 168). It was found that drives like hunger had two different circuits, one for physical aspects and the other for emotional aspects (Grandin 2005, p. 136). Physical aspects like bodily needs are not enough on their own. Animals (like people) need the emotion of seeking to motivate them to hunt or gather food. It is now commonly accepted that almost everything animals (and humans) do is driven by some kind of emotion/feeling.

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[216] Narveson implies having a sense of future requires being self-aware (1977, p. 166).

[217] Allan & Gibbon 1984; Church & Gibbon 1992, pp. 23-540; Gallistel 1990; Gibbon 1977, pp. 279-335; Gill 1988; Killeen 1975, pp. 89-115.

[218] Even now some believe animals cannot have emotions because they cannot have beliefs (Frey 1980, p. 122).

It is widely accepted by those who work with animals that "[m]ammals and birds have the same core feelings people do" (Grandin 2005, p. 88). In Grandin's book she devotes three chapters to animal emotions. Animals are believed to have at least eight emotions: rage; prey chase drive; fear; curiosity; sexual attraction; separation distress; social attachment; play (2005, pp. 93-4). [219] More may yet be identified. Researchers are now discovering that lizards and snakes probably share most of these emotions (Grandin 2005, p. 88).[220] There are several reasons for this.

a. Evolution

Emotion has adaptive economy (Dawkins 2003, p. 97; DeGrazia 1996, p. 118; Grandin 2005, p. 95; Radcliffe Richards 2000, p. 64; Rolls 1999). Emotional responses are good at keeping animals safe. If a rat is shocked if it turns in a certain direction and then the experiment changes so it is shocked if it goes in the other direction the rat learns to do this. This cannot be accounted for by hard-wiring (Dawkins 2003, pp. 97-88), because "[s]pecific rules (such as always turn right...) would be very much less effective than more general rules (repeat what leads to feeling better...)" (Dawkins 2003, p. 98). General emotional states are more effective at helping an animal adapt. Emotions are necessary because they reinforce learning (Dawkins 2003, p. 98).

Curiosity helps animals (and humans) find beneficial things like food and shelter and avoid dangerous things like predators (Grandin 2005, p. 95). This is supported by the fact that our brains are relevantly similar to other animals (especially vertebrates), for instance, the "part of the brain... associated with seeking is the hypothalamus – a part which we share with other mammals" (Grandin 2005, p. 95).

The hormones (oxytocin, and vasopressin) that control sex, motherhood fatherhood and love in humans (and other animals) are similar (only one amino acid different) to those that perform the same functions in frogs and other amphibians (Grandin 2005, p. 106).

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[219] See also: Bateson 1972, pp. 38-9; Clark 1977, p. 101f; Darwin 1989, pp. 28-9, chaps. III and IV; Hare 1963, pp. 222-4; Harlow 1965, p. 90; Hebb 1946; Leahy 1991, p. 128; Midgley 1983, p. 57; Rachels 1989, p. 215; Rodd 1990, p. 5; Scruton 2000, p. 15; Wittgenstein 1967, p. 486.

[220] For instance "snake mothers take care of their babies" (Grandin 2005, p. 88).

Love is not exclusive to humans "[a]nimals love other animals" (Grandin 2005, p. 109). There are good evolutionary reasons to think animals experience social attachment; it is a survival mechanism, which evolved partly to keep warm (Grandin 2005, p. 112). Nearly all mammals and probably most birds make friends (Grandin 2005, p. 130; Rodd 1990, p. 62). Indeed, "virtually *everything* people and animals do is driven by some kind of feeling" (Grandin 2005, p. 136).

b. Arguments against animal emotions

It has been argued that the more complex emotions require language (Frey 1980, pp. 123-4; Leahy 1991, p. 134; Scruton 2000, p. 14). Frey argues that beliefs are part of emotions and this is demonstrated by the fact we can argue people out of their emotional responses (1980, p. 124). Because animals cannot use language, Frey argues, they cannot form beliefs and therefore cannot have emotions. It is not obvious that beliefs require language. We can affect animals beliefs too, for example, we can train them not to be scared by showing them it is safe by rewarding them. Frey argues thoughts are insufficient for emotions because emotions require judgments (1980, p. 125).[221] But there is a wealth of evidence that it does – as argued above many humans think without language.

Frey acknowledges some people have irrational fears which they cannot be argued out of, but, he says, "an understanding of them is possible, I think, only because we can stand back and contrast them with normal cases, where belief is present" (1980, p. 124). Unfortunately, Frey does not offer any explanation of how the presence of beliefs in one case throws any light on the apparent lack of beliefs in the other. It is arguable that the existence of such cases undermines Frey's case especially as he does not explain how the idea beliefs are essential for emotions can accommodate cases where, as with irrational fears, there seems to be no belief upon which the emotion is based.

Frey argues that to feel emotions like shame requires judgments that require concepts that require language. Animals cannot use language and so cannot feel shame (1980, pp. 125-6). But even if shame does involve judgment it is not clear other emotions do.

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[221] Fortenbaugh argues something similar (1975, p. 26ff).

If animals did not feel emotions in much the same way humans do it would make a mockery of experiments psychologists perform on animals. Such experiments assume animals, have a psychology that's similar to ours (for examples see Sharpe 1988, Ch. 6; Singer 1995, Ch. 2; *Journal of Comparative and Physiological Psychology; Journal of Comparative Psychology*).

Thus, it is likely that most animals experience emotions. But it is not just mammals and birds, the same reasons (evolutionary fitness and behavioural evidence) suggest all vertebrates experience emotions. If emotions matter morally Regan is epistemically irresponsible for overlooking the evidence that vertebrates experience them.

vii. The Ability To Initiate Action In Pursuit Of Desires And Goals

If we are to show that an individual acts intentionally we must show it is reasonable to view them as acting with the intention of achieving a given purpose (e.g. satisfying a desire) (Regan 1983, p. 74). Regan argues that animals are autonomous:

> if they have preferences and have the ability to initiate action with a view to satisfying them... (let us call this *preference autonomy)*... the ability to initiate action because one has those desires or goals one has and believes, rightly or wrongly, that one's desires or purpose will be satisfied or achieved by acting in a certain way. (1983, pp. 84-5)[222]

The fact animals use tools suggest intentional action. Some mammals (including the great apes, baboons, elephants) and birds do use rudimentary tools.[223] This is not to say those animals who do not use tools are not acting purposefully.

There are many examples of apparently intentional action. For example, some dogs have worked out how to cross roads safely (Marshall Thomas 1996). Some bulls are able to knock down fences without cutting themselves (Grandin 2005, p. 248). Plovers

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[222] Some think animals are agents in this sense: DeGrazia 1996, p. 172; Elliot 1987, p. 84. Some deny it: Frey 1987, p. 50; Kenny 1975, p. 19; Leahy 1991, p. 40.

[223] See: Darwin 2004, pp. 102-3; Wise 2000, pp. 190-4. A crow called Betty spontaneously bent a wire into a hook to get food out of a tube (Weir 2002, p. 981).

feign having an injured wing in order to draw predators away from their nests (Ristau 1992, p. 127).[224] All these examples suggest animals do have preference autonomy.

The evidence that all vertebrates have beliefs and preferences is strong. Regan is epistemically irresponsible because he does not take this into account.

viii. A Psychophysical Identity Over Time

Regan says, "we must assume... individuals, including both individual animals like Fido and individual human beings, retain their identity over time. The assumption... this is true in the case of human beings is common to all moral theories and begs no substantive moral question... Similarly, therefore, in assuming that the same is true in the case of animals like Fido, no substantive moral question is begged" (1983, p. 83). I agree this is a reasonable assumption because it is common to all theories and thus epistemically responsible.[225]

ix. Epistemic responsibility in general

What we claim to know about animals' abilities should be based on the best available information. But even with this information we can never be certain. Thus, the more epistemic claims one makes the more risk there is that one is wrong. Those theories which make fewer epistemic claims are, therefore, more likely to be more epistemically responsible. Regan makes a lot of epistemic claims, some of which are quite controversial, making his account fairly risky from an epistemic point of view.[226]

4.6 Conclusion

In 4.1 I outlined Regan's position: all subjects-of-a-life have equal inherent value and therefore an equal right to respectful treatment. In 4.2 I outlined some criticisms of Regan's account. In 4.3 I argued that Regan has not provided a strong version of AMC.

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[224] Examples of animals acting intentionally: Goodall 1971, p. 107 (a chimp waits for an older to chimp to move so he can safely get a banana without being interfered with); Page 2001, p. 231; Rollin 1992.
[225] Harrison denies that animals have a 'continuity of consciousness' (1989, p. 82).
[226] Fox accuses Regan of epistemic irresponsibility (1978, p. 111).

In 4.4 I argued Regan's approach is risky insofar as it disagrees with other positions; is counterintuitive; is inconsistent in places; is hard to apply; lacks simplicity; is not impartial; has high potential costs. But most risky of all it excludes some humans and animals it is counterintuitive to exclude.

In 4.5 I assessed the epistemic responsibility of his account. All the evidence that suggests mammals are conscious have memories etc. suggests all vertebrates (and possibly some cephalopods) are. By ignoring this evidence Regan is being epistemically irresponsible. We can never be certain of our epistemic claims thus the more such claims we make the more risk we run of being wrong. Regan's subjects-of-a-life criterion relies on a lot of empirical evidence (some of which is questionable). His account is thus risky from an epistemic point of view.

I have argued that Regan's account is risky because it excludes human infants, mammals under a year and all non-mammalian vertebrates (except birds). In the next chapter I will give an alternative account of moral status that overcomes the problems associated with Regan's account and those discussed in previous chapters. I shall argue that the sentience account is the least risky and this is *a* reason it should be preferred to those discussed.

Chapter Five: The Sentience account

Introduction

In this chapter I will argue that we should favour the sentience criterion for moral status. On this account all sentient beings are morally considerable because they have interests. In 5.1 I will outline the sentience account. In 5.2 I will answer some criticisms. In 5.3 I will reconsider AMC. In 5.4 I will discuss risk. In 5.5 I will look at epistemic responsibility.

5.1 The Sentience criterion

i. Why sentience matters

I have two arguments for the sentience criterion. First is that it is what we would arrive at by adopting the impartial moral perspective. To take the moral point of view is to be consistent. My own interests matter to me. The same is true of any other being with interests. Sentience is necessary and sufficient for having interests so sentience is sufficient for moral status. I will outline this argument in more detail below.

The second argument relies, in part, on what has been said in previous chapters. Everyone agrees that moral agents are morally considerable. Most agree that marginal humans are too. In Chapter One I argued that those who think this must also acknowledge that animals with the same abilities are morally considerable. In Chapter Two I argued excluding animals from moral considerability was too risky. In Chapter Three I rejected weak accounts of animals' moral status. These arguments taken together showed the need to come up with an account of moral status that can accommodate moral agents and moral patients (marginal humans and animals). In Chapter Four I rejected the subjects-of-a-life account. Instead I propose the sentience criterion because it will accommodate both moral agents and moral patients, it does not suffer from the risks associated with the other accounts and is more epistemically responsible than them.[227] I will start by defining sentience

[227] Many have argued sentience is morally relevant: Bernstein 1998, p. 27; Cavalieri 2001, pp. 61-2; Dombrowski 2006, p. 229; Regan 1975; VanDeVeer 1979, p. 67; Wilson 2001, p. 142.

ii. Sentience defined

Frey outlines several meanings of sentience (1980, p. 33-48). First reaction to stimuli, e.g. plants. Second the reaction to sensory stimuli, e.g. insects. Third the capacity to feel pain and pleasure – most animals, certainly all mammals. This is the most common definition.[228] Fourth, the possession of a nervous system remarkably similar to our own – most mammals but not fish and birds. Fifth, the ability to experience more than just pleasure and pain – this includes all normal humans and most animals. This definition is relatively common. Singer defines sentience as "the capacity to suffer and/or experience enjoyment" (1995, pp. 8-9). DeGrazia thinks "sentient animals are animals endowed with any sorts of feelings" (2003b, p. 255). Scruton thinks sentience is being able to sense (2000, p. 188). Feinberg defines sentience as the various elements which make up a conative life, such as wishes and desires (1974, pp. 49-51).

Neither of the first two definitions capture what is usually meant by sentience. Sentient beings are conscious, aware and capable of feeling sensations. Reacting to stimuli is not sufficient for sentience.

The fourth definition is not neutral or helpful because it presupposes that to be sentient is to be like humans in certain ways. Humans are sentient, but it does not follow that what makes us so is just our nervous system. There may be other ways of being sentient. This definition is anthropocentric because it assumes humans are sentient and thus only those like humans can be sentient. It is question begging because it assumes in advance what is sentient, namely humans. It must remain an open question whether those unlike us are sentient or they have simply been defined out of sentience.

The third and fifth definitions can be examined together. The ability to experience can be subdivided into two further categories: pain and non-pain feelings. Those in the first category might conveniently be labelled painient (Ryder 2000, p. 237). But many experiences are neither painful nor pleasurable. For example, the fall of a raindrop on one's hand is (usually) neither painful nor pleasurable yet it is still an experience. Experiences need not be physical; they may be mental events. For example, thinking

[228] E.g.: Bernstein 1998, p. 24; Linzey 1976, Ch. 3; Regan 2001a, p. 14; Spedding 2000, p. 17; Watson 1979, p. 114.

about abstract concepts is an experience. Thus, sentient beings are those conscious and capable of feeling (experiencing) sensations (both physical and mental). I favour this definition because it captures the usual meaning of sentience. The word sentience is derived, in part, from the word sensation. Thus, something is sentient if it can experience sensations. It seems likely that any subject that can experience can experience pleasure and pain. It is likely that all the creatures we are aware of that feel feel pleasure and pain. However, it is possible there are beings who can experience but cannot experience pain and pleasure. Sentient beings can, therefore, be subdivided into two categories: those that can experience painful or pleasurable experiences and those that can experience but cannot experience that which is painful or pleasurable.[229] But sentience usually captures something else; that the experiences matters to the individual having them because they are painful or pleasurable. My definition of sentience is therefore as follows:

A being is sentient if it can experience physical and/or mental suffering and/or enjoyment.[230]

iii. Sentience is a necessary and sufficient condition for interests

We should give moral consideration to the interests of all who are sentient because sentience is a necessary and sufficient condition for having interests.[231] A precursor of this argument was made by Bentham:

> The question is not, Can they *reason*? nor Can they *talk*? but, Can they Suffer? (1948, p. 412fn)

Singer argues that sentience:

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[229] It is questionable whether pain and pleasure should themselves form two separate categories of experience. However, whether they form one or two categories will not affect my argument so for the sake of brevity I shall treat them as forming part of the same category.

[230] Humans with the "congenital universal indifference (or insensitivity) to pain" cannot feel any pain (Baxter and Olszewski 1960; Fox 1978, p. 110). They are still sentient because they can suffer psychologically.

[231] Many philosophers argue that only those who have interests have moral standing: DeGrazia 2003, p. 57; Feinberg 1974; McCloskey 1965; Nelson 1956; Rollin 1992; Singer 1986, 1993, 1995.

> is not just another characteristic like the capacity for language, or for higher mathematics... [it] is a *prerequisite for having interests at all*... It would be nonsense to say that it was not in the interests of a stone to be kicked along the road by a schoolboy. A stone does not have interests because it cannot suffer. Nothing that we can do to it could possibly make any difference to its welfare... [Sentience] is, however... sufficient for us to say that a being has... an interest in not suffering... If a being is not [sentient] there is nothing to be taken into account. (1995, pp. 7-8)

Thus sentience is "the only defensible boundary of concern for the interests of others" (1995, p. 8). Any other characteristic would be arbitrary.

I, like Singer, believe that sentience is a prerequisite for interests. In order to have interests something must first be sentient; sentience is a sufficient condition for moral status. I will call this the sentience criterion.[232]

iv. Interests

Singer defines interests as "anything people desire as in their interests (unless it is incompatible with another desire or desires)" (1993, p. 13). This definition could be clearer, it implies that for something to be in one's interests one has to desire it. But one does not always desire what is in one's interest. For example smoking is bad for one's health yet people still desire it. This confusion can be cleared up using Regan's distinction between preference-interests and welfare-interests (1976, p. 254; 1976a, p. 487; 1983, p. 87; 2001, p. 158).[233] Preference interests are things "an individual is *interested in*... likes, desires, wants or... prefers having, or contrariwise... wants to avoid or... prefers not having" (1983, p. 87). Having a preference-interest means that "A is interested in X" (1983, p. 87).[234] Something is a welfare-interest if "having or doing X would (or we think it would) benefit A... would make a contribution to A's well-being" (1983, p. 88).[235] X is a welfare interest if "X is in A's interest" (1983, p.

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[232] Bernstein defends a version of the sentience criterion, which he calls experientialism (1998, p. 3).
[233] Also see: DeGrazia 1996, p. 39; Feinberg 1974, p. 52; Frey 1979, 1980, pp. 78-9; McCloskey 1965, p. 126.
[234] Frey calls this taking an interest (1980, pp. 78-9).
[235] Frey calls this having an interest (1980, pp. 78-9).

87).[236] Preference interests rely on the subject's desires whereas welfare-interests depend on needs. They do not necessarily coincide. For instance, I could have a preference interest in eating chocolate contrary to my welfare-interest in good health.

The class of things with welfare-interests is much wider than the class of things with preference-interests. Most would agree (non-rational) sentient beings, namely animals and marginal humans, are capable of having a good; a well being in the sense they can be harmed or benefited.[237] Sentient beings have welfare interests. But as Frey points out man-made/manufactured objects have welfare-interests too (1980, p. 79).[238] Thus, it must be preference not welfare interests that are a prerequisite for sentience.

v. Principle of equality

How much moral consideration should different preference interests get? (From here on I will use the terms preference interest, preference, and interest interchangeably.) The satisfaction of my preferences matters to me, the preferences of others matter to them. There is nothing special or different about me. If my preferences matter so do those of others.[239] Thus, all preferences should be given equal consideration.[240]

I have argued in previous chapters that species is not a relevant factor so we must consider *all* interests regardless of whose they are (i.e. regardless of species). Thus far, my arguments yield the following principle: *All preference interests should be given equal consideration.*

vi. Evil preferences

Before proceeding I want to forestall a criticism; that evil interests must be counted. Regan offers an extremely compelling version of this objection, he says it is a serious flaw to require:

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[236] A further distinction can be made: episodic and dispositional interests (Regan 1976, p. 254).
[237] See: Dawkins 1980, p. 10; DeGrazia 1996, p. 211; Frey 1980, p. 79; Leahy 1991, p. 43; Regan 1983, p. 88, p. 95; Singer 1995; VanDeVeer 1979, p. 57.
[238] Some deny objects can have interests (e.g. McCloskey 1965, p. 126).
[239] Singer makes a similar point about the universal point of view (1993, pp. 11-12).

> that we count the satisfaction of the worst sorts of preferences (... "evil preferences")... I begin with an example of evil preferences.
>
> In 1989 the national media followed a tragic story involving a group of teenage boys who lured a mentally disadvantaged girl into a basement. Using a broom handle and a baseball bat, four of the boys took turns raping her. What the boys wanted was not sex in the abstract; what they wanted was violent sex forced upon a trusting, uncomprehending girl. (With an IQ of 49, the victim had the mental competence of a second grader). (2003, p. 60)

Regan thinks that in response it will be argued that this act was wrong because the pleasures of the boys are outweighed by the fear, anxiety and pain of the victim, her parents, neighbouring children and their parents. All these bad consequences mean the boys' act frustrated more preferences than it satisfied and so was wrong. But what Regan finds objectionable is:

> that *everyone's* satisfactions and frustrations be taken into account and counted fairly. The poor victim's suffering? Yes. The anxiety of the neighbourhood's parents? Yes. Their daughter's fears? Yes. The satisfaction of the rapists' preferences? Yes, indeed. Not to take *their* satisfactions into account would be to treat them unfairly. (2003, p. 60)

Regan is, rightly, abhorred by the idea that the rapist's desire to rape should count positively:

> How otherwise sensible, sensitive people, whose philosophical abilities I admire and whose character I respect, can subscribe to a view with this implication always has been, is now, and always will remain a mystery to me. (2003, p. 60)

He continues:

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[240] Others who argue for equal consideration of interests: DeGrazia 1996, p. 53; Ryder 2000, p. 239; Singer 1993, p. 21.

> Are we to count the satisfactions of child abusers before condemning child abuse? Those of slaveholders before denouncing slavery? The very idea of guaranteeing a place for these satisfactions in the "moral calculus" is morally offensive. The preference satisfactions of those who act in these ways should play no role whatsoever in the determination of the wrong they do. We are not to evaluate the violation of human dignity by first asking how much the violators enjoy violating it. That is a part of what it means to judge the preferences evil. (2003, p. 61)

I have quoted Regan at length here because I think the objection he raises is an extremely serious one.

Regan thinks that if we are to count preferences we *must* count all preferences, including evil ones (2003, p. 88). This is where Regan and I part company. I do not think consistency requires one to count evil preferences the same as others. The clue to understanding why lies in how we identify evil preferences. Regan is not very helpful, he says "I assume... people of good will who are not already committed to utilitarianism will recognize what I mean" by evil preferences (2003, p. 60). I want to flesh out the idea of evil preferences. In Regan's example the evil preferences are the boys' preferences to have "violent sex forced upon a trusting, uncomprehending girl" (2003, p. 60). What the boys wanted was to do the opposite to what she would prefer (i.e. not to be raped). It is because their preference was to undermine her preferences that their preferences are "evil". Regan agrees, he says that the "violators enjoy violating" is part of what makes their preferences evil (2003, p. 61). Evil preferences can be defined as those inconsistent with the like preferences of others.

I have argued that preferences matter and ought to be given moral consideration. Counting preferences that specifically undermine the preferences of others (evil preferences) undermines this goal. I (and other utilitarians) am, therefore under no obligation to count evil preferences as I do others. Regan objects that evil preferences should play "no role whatsoever" in moral deliberations (2003, p. 61). But I think I can do better than this. Evil preferences can and should be counted, but they should be counted negatively like anything else that frustrates preferences.

Consider an analogy. If freedom is a worthwhile goal it does not follow that people should be free to do whatever they want. I am not free to lock someone else in a cage or paralyse them. Individuals' freedom should be limited insofar as they can do what they want as long as it does not interfere with the like freedom of others. Freedom is valuable, yet we do not value *all* freedoms. Just so with preferences. Putting the rapists' preferences on the negative side would be no more unfair than restraining a kidnapper's freedom to kidnap. I value preferences, but only those preferences that are consistent with the maximisation of the like preferences of others.[241] I should, therefore, count evil preferences negatively. The principle that was reached at the end of the previous section can then be modified as follows: *All preference interests compatible with the like preference interests of others should be given equal consideration.*

vii. Persons and non-persons

I will now discuss killing and the value of life. A distinction many think illuminates this discussion is that between "persons" and non-persons. The concept of personhood has been widely discussed.[242] In the past "person" has been applied exclusively to humans. Some think all humans are "persons" (e.g. Lomasky 1992, p. 950; Sun 2000, p. 29). However, there is now a tendency to divorce the two, to think non-humans can be "persons" (see for example, Harris 1989, p. 18; Sapontzis 1993, p. 270; Singer 1986a, p. 295; Tooley 1972, p. 40; Warren 1997, p. 93).

Defining personhood

Many definitions of personhood have been given. For Singer a person is, roughly, a self-conscious or rational being (1979, p. 94; 1986a, p. 295; 1993, pp. 86-7). Mitchell says persons are "self-conscious beings with some control over their own activities, who reflect (via language) about these activities and have a moral sense" (1993, p. 237). Warren's criteria of personhood include consciousness; the capacity to feel pain;

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[241] Singer seems to acknowledge this point when defining what is in an individual's interests: "anything people desire as in their interests (unless it is incompatible with another desire or desires)" (1993, p. 13). However, he does not apply it to weighing preferences, nor does he say we should count evil preferences negatively.

[242] E.g.: Arneson 1999, p. 109; Au 2000; Chadwick 2000; Chan 2000; Dennett 1976; Fan 2000; Graf 2000; Hansen 2000; Harris 1989, p. 18; Hui 2000; Leahy 1991, p. 24; Lomasky 1992, p. 950; McCann 2000; Mitchell 1993, p. 237; Ohara 2000; Quante 2000; Qui 2000; Sapontzis 1993, p. 270; Scruton 2000, p. 28; Singer 1986a, p. 295; Sun 2000; Telfer 2000; Tooley 1972; Warren 1993, p. 306f, 1997, p. 92.

reasoning; self-motivated activity; the ability to communicate; a concept of self and self-awareness (1993, p. 306f). Harris says a person is "any being capable of valuing its own existence" (1989, p. 18). Tooley thinks a person is an entity capable of having an interest in its own continued existence (1972). For Dennett personhood requires three mutually interdependent characteristics – being rational; being intentional and being perceived as rational and intentional. According to Dennett being a person requires the being to reciprocate by perceiving others as rational and intentional, they must also be capable of verbal communication and self-consciousness (1976). Scruton says a person has free will and is rational (2000, p. 27). Autonomy is often linked to personhood but also to agency which in turn involves rationality, action for reason, self-awareness, self-critical control of desires, application of norms to own conduct, deliberative choice (Frey 1987, p. 51).

My definition of personhood

If person is just another word for human it cannot be a useful philosophical category. Therefore, I think we should distinguish personhood from humanity. There seem to be roughly two types of personhood; the merely self-conscious and moral agents. The term moral agent already usefully identifies the latter. Given this and the general tendency to use person in a more inclusive way I favour the former definition. I will therefore use the term person to mean those beings who are self-conscious.

Which beings are persons will therefore depend on which beings are self-conscious. This will be discussed in 5.5.[243]

viii. The value of life

Many think persons' are more valuable than non-persons (Signer 1986a).[244] Some think only persons have a right to life (Narveson 1977, p. 166; Tooley 1972; VanDeVeer 1986, p. 238). Frey argues that the "value of life is a function of its quality... we do judge some human lives of less value than others" (1989, p. 116). He thinks persons are more valuable than non-persons because "[a]utonomy affects the value of a life because

[243] Self-consciousness may come in degrees. A relatively high degree is required for personhood.
[244] Those who discuss the value of life include: Singer 1995, p. 20; Williams 1980, p. 156.

of what it enables us to make of our lives" (1987, p. 56). Singer argues persons are more valuable than non-persons:

> self-awareness, the capacity to think ahead and have hopes and aspirations for the future... are relevant to the question of taking life. It is not arbitrary to hold that the life of a self-aware being, capable of abstract thought, of planning for the future, of complex acts of communication, and so on, is more valuable than the life of a being without these capacities. (1995, p. 20)

I think that the value of life depends on the interests of the being in question. The more interests it has, the more interest it has in staying alive. The fewer interests it has the less interest it has in staying alive. Generally persons have more of an interest in staying alive than non-persons because they are capable of forming plans and dying will thwart more of their preferences. The value of a life is a function of its interests. Thus, the moral status of lives comes in degrees.[245] It may be objected that non-persons do not have any interest in continuing to live because they are not self-conscious and cannot have preferences about the future. Whether this is the case depends on whether death harms non-persons (animals and marginal humans).

The harm of death

To harm someone is to reduce their welfare either by inflicting something on them, like physical pain, or by depriving them of benefits, like freedom or opportunities for fulfilling preferences (Regan 1983, p. 94, 1993, p. 202). Not all harms hurt. Nor need we be aware of what we are missing to be harmed. Suppose, someone is in dire need. They buy a lottery ticket that subsequently wins. They do not know they have the winning numbers and someone has stolen their ticket. They have still been harmed.

The harm of death for persons

In general death is considered a greater harm for persons because they have more to lose (Frey 1987, p. 56; Jamieson 1983, p. 145; Singer 1986a, p. 298, 1995, p. 21).

[245] Others have thought the value of lives comes in degrees: DeGrazia 1991, p. 75, 2003, p. 57; Jamieson 1983, p. 145; Rachels 1990, p. 209.

Jamieson says "the mental complexity of a person counts for something because persons can have the joys and sorrows of simple consciousness and those of reflexive consciousness as well" (1983, p. 145). Similarly, Singer argues that:

> to take the life of a being who has been hoping, planning, and working for some future goal is to deprive the being of the fulfilment of all those efforts; to take the life of a being with a mental capacity below the level needed to grasp that one is a being with a future... cannot involve this particular kind of loss. (1995, p. 21)

Non-persons cannot have preferences about their future existence and so it will not be as bad to take the life of a non-person as it is to take the life of a person. But the preference for life is only one among others that have to be considered.

The harm of death for non-persons

Lacking a preference for continued existence does not mean death does not harm non-persons. Many have argued death harms non-persons because it deprives them of all future enjoyments (DeGrazia 1996, 2003, p. 56; Jamieson 1983, p. 143; Lockwood 1979, p. 159; Rachels 1990, p. 199; Regan 1982d, p. 109, 1983, p. 100, 324, 1993, p. 202; Rodd 1990, p. 126; Singer 1993, p. 102; VanDeVeer 1979, p. 71). Life is instrumentally valuable, for both persons and non-persons because it is a prerequisite for all other goods.

Non-persons may not have a preference for continued existence but they do have other preferences. These preferences will all be thwarted if they die. Death does harm them, though not as much as persons.

Comparing the moral status of lives

In one sense the lives of persons and non-persons have equal moral status because death is an equal harm insofar as death robs both of all future satisfactions. However, in another sense persons' lives have more value because persons have more interests. A useful comparison is two people who go bankrupt. One person started with £500

another with £1,000,000. Both end up in the same position. But the latter had the greater loss. This is comparable to the value a person's life has over a non-persons'; The one who losses £500 losses less than the one who losses £1,000,000. All things being equal it is worse to lose £1,000,000 than £500. Similarly, all things being equal it is worse for a person to lose their life. A person losses all the things a non-person does and a lot more. Thus, though death is an equal harm in that it means the loss of all future goods persons have more goods to lose.

It does not follow from this that the life of a non-person is of no account, that persons can sacrifice them for trivial reasons. The life of a non-person matters to the extent that death will frustrate their preferences. The life of a non-person should be considered as *prima facie* valuable and should not be sacrificed without sufficient justification.

ix. Counting interests

So far my arguments have yielded the following principle: *All preference interests compatible with the like preference interests of others should be given equal consideration.*

At this point I wish to forestall some further criticisms to do with the separateness of persons. So far this principle can allow aggregating harms and benefits so all the harms may fall on one and all the benefits on another. Imagine you can finance the university educations of ten very gifted people who would not otherwise get a university education. The only way you can do this is to deprive four people of their unemployment benefit meaning they will become homeless. The potential scholars all have very strong preferences in getting a university education because doing so will virtually guarantee they will be happy and prosperous. It might seem that my principle advocates sending the ten to university at the cost of the four. This is prima facie unfair. It is unfair because the four get their lives ruined while the ten get their lives massively improved. Such unfairness needs justification. I am not sure that there is one. I think that when we assess preferences we need to take into account their distribution; that this is part of giving them equal consideration. Two of the most fruitful and, the most fair ways, of deciding how to distribute harms and benefits (and by implication the

satisfaction of preferences) have been outlined by Regan and Rawls. Regan has two principles.[246] First the miniride principle states:

> Special considerations aside, when we must choose between overriding the rights of many who are innocent or the rights of few who are innocent, and when each affected individual will be harmed in a prima facie comparable way, then we ought to choose to override the rights of the few in preference to overriding the rights of the many. (1983, p. 305)

Regan is discussing how to decide which rights ought to be overridden. His conclusion is that when all else is equal numbers count. The same applies, I think, to the weighing of preferences. If we were to choose between sending ten people to university or sending one we should send the ten. My principle can thus be modified accordingly: *All preference interests compatible with the like preference interests of others should be given equal consideration. Where preferences are alike the interests of the many should be maximised.*[247]

However, preferences are not always comparable. The same applies to harms and so Regan thinks we need another principle for such cases. Regan suggests the worse-off principle:

> Special considerations aside, when we must decide to override the rights of the many or the rights of the few who are innocent, and when the harm faced by the few would make them worse-off than any of the many would be if any other option were chosen, then we ought to override the rights of the many. (1983, p. 308)

In essence, Regan is saying we should consider the distribution of harms when we are deciding who to inflict them on. Rawls says something similar, his Difference Principle states: "[s]ocial and economic inequalities are to be arranged so that they are... to the greatest expected benefit of the least advantaged" (1999, p. 72). Rawls also thinks the

[246] I criticised Regan's principles in the previous chapter when they formed part of his theory but I think the underlying thoughts behind them can be made use of. I will argue that when they are modified to form part of the sentience account they can better overcome the criticisms made of them than when they form part of Regan's theory.

distribution of harms matters. I think the same applies to preferences. If someone will be made much worse-off than several others this ought to enter into deliberations. I argued in the previous chapter that Regan's worse-off principle was insensitive to numbers (if the harms are different by even a little this is not taken into account). But only if the few are to be made *much* worse-off can we justify overriding the interests of the many. My principle can now read: *All preference interests compatible with the like preference interests of others should be given equal consideration. Where preferences are alike the interests of the many should be maximised. When frustrating the preference interests of the few would make them much worse-off than any of the many would be if their preference interests were satisfied, we ought to maximise the interests of the few.*[248]

5.2 Criticisms of my account

i. The sentience criterion is too crude

Some argue that the sentience criterion is crude. Scruton says, "to focus exclusively on suffering is... a caricature of moral thought" (2000, p. 49). Similarly, Frey argues:

> Sentient beings have an enormous number of different kinds of experiences... so why... single out experiences of pain from all the other kinds which sentient beings have? (1980, pp. 47-8)

This is a caricature of the sentience criterion. It does not just concern itself with pain; all positive and negative experiences are included. Contrary to Frey there is evidence that all experiences are either positive or negative. The role of emotions is survival (Grandin 2005, p. 198). We need our emotions in order to make decisions. Thus, we actually have a positive or negative reaction to everything: *"Nothing is neutral"* (Grandin 2005, p. 198).[249] For instance, we even have a positive or negative reaction to nonsense syllables (Grandin 2005, p. 198). But even if this evidence is not accepted,

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[247] It is fairly uncontroversial that numbers should count though some disagree (e.g. Taurek 1977).

[248] This yields a different kind of utilitarianism that I want to call respect utilitarianism because it respects the separateness of persons. In brief, respect utilitarianism allows the dispersal of benefits and harms to play a role in utility calculations. We should consider all those interests that are consistent with the like interests of others equally. Where interests conflict we should aim to make as many of the worse off as well off as possible.

and there are some neutral experiences this does not undermine the sentience criterion. Neutral experiences do not matter to the one experiencing them (they have no preferences about them) so there is no need for them to be given moral consideration.

ii. Sentience is not necessary or sufficient for having interests

It has been objected that there are some interests for which sentience is not a necessary condition (Frey 1980, p.147; Watson 1979, p. 114). Watson argues "[t]here would seem to be no reason why lack of either physical or mental pain or pleasure would deprive one of all interests" (1979, p. 115). It is true that lacking either one or the other would not deprive one of all interests, but lacking both would. To have a preference interest in something is to care about it; to have a positive or negative response to it. If one cannot have such a response one cannot have a preference interest in it.

Many have questioned the sufficiency of sentience for having interests (Fox 1986, p. 73; Frey 1980, p.147; Watson 1979, p. 114; Williams 1980, pp. 151-3). Williams thinks humans interests are different in kind from animals' because persons have plans and projects and are future orientated, also rationality informs some human interests (presumably intellectual interests) (1980, pp. 153-5). But the relevant feature of having plans etc. is that one has a preference interest in them. To show there is a difference in kind (or even in degree) more is needed.

Frey objects that those in a coma cannot, on the sentience criterion, have an interest in things like privacy because they cannot experience pain or pleasure (1980, p.147). Yet, Frey argues, we do think they have an interest in privacy, (1980, p.156). But their having an interest would depend on their having previous preferences about privacy or on the assumption that, should they regain consciousness they will have preferences about privacy. It is perfectly possible to count either, or both kinds of preferences – thus explaining why such a person could be said to have an interest in privacy.

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[249] There are some exceptions, such as people with brain damage (Grandin 2005, pp. 198-206).

iii. Equal consideration

Many have objected to the idea that animals' interests should be given equal consideration (e.g. Becker 1983, p. 225; Carruthers 1992, p. 8, 67; Devine 1978, p. 489; Engel 2001, p. 90; Fox 1986, p. 73; Steinbock 1978, p. 251, 255-6; Vallentyne 2005, p. 403; Williams 1980, p. 149). Fox argues that "in some sense animals' pain still counts for less than that of beings like humans [because]... it may be reasonably conjectured that animals do not suffer psychologically as greatly as humans, since their psychological and inner mental life gives every appearance of being far poorer in content" (1986, p. 73). This claim is an epistemic one, for which Fox offers no evidence. As I will argue in 5.5 the opposite may even be true for it is possible animals' experience of fear is much worse than ours. But even if animals do suffer less this is no reason not to give those pains on a par with humans' the same weight. Fox's point may be that you cannot really isolate a human's pains from the rest of their psychology and as such it is not coherent to talk about human pains being on a par with animals'. But even if this is true it leaves Fox facing AMC. If animals' pains are different so are marginal humans'. In Chapter One I argued AMC shifts the burden of proof onto those who would give animals' interests less weight; they need to show there is a relevant difference between marginal humans and animals.

iv. Measuring and comparing interests

A major difficulty is how to measure and compare interests (Arneson 1999, p. 105; Carruthers 1992, p. 60; Cavalieri 2001, p. 63; Clark 1977, p. 74; Fishkin 1981, p. 666; Fox 1986, p. 64; Watson 1979, p. 118; Wise 2000, p. 182). It is argued that these difficulties are even greater when trying to compare the pains of different species (Carruthers 1992, p. 60; Devine 1978, p. 502; Puka 1977, p. 558). Singer argues that such comparisons are possible; "there must be some kind of blow... that would cause the horse as much pain as we cause a baby by slapping with our hand" (1995, p. 15). Differences in different species may mean there are differences in their experiences but this just means we need to take care. For instance, a normal human's psychological capacities will lead them to suffer more in some circumstances than normal animals. For instance, humans may anticipate unpleasant future experiences. On the other hand

animals will not usually understand that a visit to the vet will make them feel less pain in the long term and be terrified (likewise with marginal humans visiting the doctor).[250]

Singer argues, and I agree, that precision is inessential (1995, p. 16). Comparing interests is possible (DeGrazia 2003, p. 55; Singer 1995, p. 15). There are different ways of measuring, such as intensity and duration (Singer 1995, p. 17). Bentham noted seven dimensions: intensity, duration, certainty, extent, fecundity, purity, propinquity (1948, p. 152). Dawkins argues it is possible to measure suffering by looking at individual aspects of a battery cage, for instance, and finding which aspects the hen finds attractive or aversive (1980, p. 90). What Dawkins calls choice tests can be used to measure preferences. For example, if a hen spends more time stood on a fine mesh than a coarse wire floor the fine mesh is preferred (1980, pp. 89-90).

Other ways of measuring animal suffering include using ourselves as models, their physical health, behaviour (abnormal behaviour may be indicative of suffering), comparisons with wild conspecifics (Dawkins 1980, pp. 98, 109-11, 114-5). My point is that it is possible to make rough comparisons, though I do not have room here to give a complete account of how.

v. Utility monsters

The existence of "utility monsters" is a problem (Arneson 1999, p. 105). Utility monsters are those who have more preferences than others and thus get more of their preferences satisfied. The objection is that they get treated unfairly. Nozick argues that utility monsters are an embarrassment for utilitarians because they:

> get enormously greater gains in utility from any sacrifice of others than these others lose... the theory seems to require that we all be sacrificed in the monster's maw. (1974, p.41)

In response Singer cites the principle of declining marginal utility:

[250] Singer makes a similar point (1993, pp. 59-60).

> for a given individual, a set amount of something is more useful when people have little of it than when they have a lot. (1993, p. 24)

Thus, utility monsters are not as bad as they seem at first because the more they have the less satisfaction they will get so it is not true we will all be sacrificed to them. But the principle of declining marginal utility only applies when the same preferences are in question – who should get the last piece of cake for instance? But what about those situations where different preferences are in question? My principle states: *When frustrating the preference interests of the few would make them much worse-off than any of the many would be if their preference interests were satisfied, we ought to maximise the interests of the few.* This means no one can be "sacrificed" to utility monsters because no one can be made worse-off. It may be objected that the utility monster will only demand relatively small sacrifices from everyone so everyone else will only be mildly put out by them and so we will be sacrificed to them. But if the "sacrifices" on our part are smaller than the gains the utility monster gets then they are not really sacrifices and it is not obviously wrong that the utility monster should benefit.

It may be objected that even with these qualifications utility monsters still get more than their fair share: their greed is rewarded. I think this is untrue. Consider a parallel case. Suppose I have to share food with a fussy eater. There is a choice between burnt or un-burnt food. I should, I think, let the fussy eater have the un-burnt food. It may sound as if I am getting a raw deal; as if the fussy eater is a food monster. But if one puts oneself in the fussy eater's position one can see it would be unfair not to give them the better food. To be satisfied with my food I need quality 5. The fussy eater needs quality 9. For the fussy eater to get the same enjoyment out of food they must get the better quality food. If they get the 5 food it is equivalent to my getting 1. The fussy eater did not choose to be fussy. Who would? It is not that fussy eaters want better food, for them the food must be better for them to enjoy it an equal amount. Just so with utility monsters. Utility monsters getting their preferences met is not unfair, nor is it greedy.

The point is it is impartiality that is important. The objection to racism is to partiality for one's own race. Impartiality is what matters. Utilitarianism is impartial insofar as it assesses all interests without reference to whose they are. It may seem that utility monsters get more than their due but they do not.

vi. Death does not harm animals

Cigman argues that "death is not, and cannot be, a misfortune for any creature other than a human" (1981, pp. 47-48). The death of an animal is not a misfortune because animals have no *categorical* desires; those which do not "merely presuppose being alive (like the desire to eat when one is hungry), but rather answer the question whether one wants to remain alive" (1981, pp. 57-8). For death to be a misfortune to animals "animals would have to possess essentially the same conceptions of life and death as persons do" (1981, p. 58). This account is problematic. First, in denying death harms animals Cigman must also admit it does not harm marginal humans (see Chapter One). Second, Cigman's account presupposes that in order to be harmed one must be aware one is being harmed. But there are many things we would usually consider harms even if we do not know about them. For instance, if someone steals the £20 I forgot I had without my knowledge I have still been harmed by the loss of it. Missing out on all they would have enjoyed had they continued living harms animals.

vii. Only moral agents can have preference-interests

McCloskey argues that interests have a prescriptive overtone and therefore only those who ought to do things (i.e. moral agents) have interests. On McCloskey's view interests have an evaluative and prescriptive meaning:

> interests suggest much more than that which is indicated by the person's welfare. They suggest that which is or ought to be or which would be of *concern* to the person/being. It is partly for this reason – because the concept of interests has this evaluative-prescriptive overtone – that we decline to speak of interests of animals, and speak rather of their welfare. (1965, p. 126)

McCloskey does not elaborate on the meaning of "evaluative-prescriptive overtone" nor does he say what implications this has. Regan interprets McCloskey thus:

> The operative words here seem to be 'ought' and 'concern'... what McCloskey seems to be saying is that when we speak of what is in a being's interests, what we mean is (a) that X will (or we think it will) contribute to A's good – the

> "evaluative overtone" – and (b) that X ought to be of concern to A, and that A ought to care about it – hence the "prescriptive overtone" (1976, p. 255).

Thus, according to Regan, McCloskey argues talk of interests has an action guiding prescriptive function. McCloskey's view that animals (and by implication other non-persons) cannot have preference-interests must rest on this idea. What McCloskey seems to be arguing is that animals cannot have preference interests because they are not beings that "ought" to do anything, animals are not moral agents.

Regan counters this argument by saying the ought is addressed to some competent person (1976, pp. 256-7).[251] However, I think Regan is conceding too much when he allows that when we say something is in A's interest A *ought* to care about it.[252] For example, I have a preference for kiwis rather than oranges; I like kiwis, I hate oranges. By definition I already care about eating kiwis rather than oranges, to say I *ought* to care is unnecessary; I do care because I prefer kiwis to oranges. Saying that something ought to care about its interests is to put the case too strongly. We think that if, for example, A has an interest in not drinking alcohol A should be motivated to some extent by that interest. So if interests are prescriptive they are prescriptive in this much weaker sense. We do not think that if A stops caring about this particular interest they have done something wrong in the strong sense implied if they *ought* to care about it.

Even if these arguments are not accepted McCloskey has to overcome the AMC; in saying that only moral agents have interests McCloskey must accept that marginal humans do not either for they are not beings that *ought* to do anything. This is a serious problem that McCloskey has not solved.[253]

viii. Comparing the value of lives

Above I argued the potential value of life is a function of its interests; those who have more interests typically have more value. Thus, normal adult humans typically have

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[251] Frey has argued Regan's argument would yield the unwelcome result that both marginal humans and animals only have interests when there is a competent person around to care about them (1977). But this objection depends on a misunderstanding of Regan's position. Regan does not argue that competent persons are *necessary* for animals or marginal humans to have preference interests, rather they are necessary for the prescriptive element (1977a, p. 335-7).

[252] I have made this argument elsewhere (2007).

more value than marginal humans and animals. It may be objected that this is inconsistent with my earlier anti-speciesist stance. It is not speciesist because the criterion for the value of life is a function of its subjects' interests; there is no reference to species.

ix. The line-drawing problem

It may be objected that my account has several line-drawing problems: which beings are sentient; which animals have preferences; who are persons/non-persons? These questions are largely empirical. Answers will be given in 5.5. However, in the meantime it is worth noting that there is no need to draw an exact line. We can say roughly what is or is not sentient, have preferences and are self-conscious (and so persons). A rough idea is all that is required. Precision is not necessary. As Rollin puts it "[o]ne cannot draw a clear line between what feels warm and what feels cool" (1992, p. 96). Yet we can still say that some things are warm and others cool.

x. Higher pleasure

Some utilitarians argue that higher pleasures have more value than lower ones. Mill argues:

> Few human creatures would consent to be changed into any of the lower animals, for a promise of the fullest allowance of a beast's pleasures; no intelligent human being would consent to be a fool, no instructed person would be an ignoramus... It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, are of a different opinion, it is because they only know their own side of the question. The other party to the comparison knows both sides. (1962, pp. 259-60)

Carruthers argues that "the distinction between higher and lower pleasures... is of doubtful coherence" (1992, p. 71). I am inclined to agree. I do not think we need such a

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[253] McCloskey's response to the AMC was discussed in chapter one.

distinction. Interests are interests and like interests should be counted alike. Trying to decide which are higher or lower is unnecessarily arbitrary.

xi. Sleeping

Sleep is often thought to be a problem for utilitarians. Some have argued that for a utilitarian there is nothing wrong with painlessly killing an animal if it is asleep because animals cannot form long-term preferences (Carruthers 1992, p. 84; Lockwood 1979, p. 159). Thus if we kill a cat while it is asleep we will not have frustrated any of its preferences (Lockwood 1979, p. 159). This is not so with a normal sleeping human.[254] The important point is that even though a sleeping animal (or human) has no preferences if you kill them you will still deny them the satisfaction of their future preferences regardless of whether they know it or not.

And perhaps more importantly if sleep is a problem for utilitarianism it is equally a problem for any other theory of moral status. For almost any criteria you pick as the basis for moral status is temporarily dormant while one is sleeping, this includes rationality, moral agency and most of the common criteria for moral status (one exception might be having a soul). If being asleep robs sentient beings of their moral status it also does so for moral agents etc.

xii. Receptacles

A standard criticism of utilitarianism is that it must view both people and animals as receptacles. Regan gives an analogy:

> imagine that some cups contain different liquids, some sweet, some bitter, some a mix of the two. What has value are the liquids: the sweeter, the better; the bitterer, the worse. The cups have no value. It is what goes into them, not what they go into, that has value. For the utilitarian, human beings are like the cups in our example... What has morally significant value is what "goes into us," so to speak, the mental states for which we serve as "receptacles." Our feelings of

[254] Not everyone agrees with this, Spaemann argues that humans who are sleeping or temporarily anaesthetized are not persons (Spaemann quoted in Sun 2000, p. 29). But this is controversial.

> satisfaction have positive value; our feelings of frustration, negative value. (2003, p. 59)

According to Regan:

> we fail to treat individuals who have inherent value with the respect they are due... whenever we treat them *as if* they lacked inherent value, and we treat them in this way whenever we treat them *as if they were mere receptacles* of valuable experiences (e.g. pleasure or preference satisfaction) or *as if their value depended upon their utility* relative to the interests of others... we fail to display proper respect for those who have inherent value whenever we harm them so that we may bring about the best aggregate consequences for everyone affected by the outcome of such treatment. (1983, pp. 248-9)

Singer argues that utilitarians need not view any being as a receptacle:

> the utilitarian can also accept... inherent value. The meaning a utilitarian would give to this claim is as follows... They have preferences, and they have a welfare. Their welfare matters, and no defensible moral judgments can ignore or discount their interests. (1987, p. 6)

Thus utilitarianism does recognize inherent value. Singer says the idea utilitarians treat individuals as mere receptacles of valuable experiences is problematic because we cannot separate the individual from their experience in the same way we can separate a bottle from its contents (1987, pp. 7-8). The objection that it is the cup not its contents that are valuable does not make much sense – an empty cup has no more obvious value than its contents. It is the combination of the two that matter.

Another thing the receptacle charge is getting at is that utilitarians allow individuals to be harmed to bring about the best overall consequences and in so doing treat the individual as a receptacle. Regan argues:

> It can hardly be just or respectful to harm individuals who have inherent value merely in order to secure the best aggregate consequences for everyone affected

> by the outcome... because it is to view the individual who is harmed *merely* as a receptacles of what has value (e.g. pleasure), so that the losses of such value credited to the harmed individual can be made up for, or more than compensated, by the sum of the gains in such values by others, *without any wrong having been done to the loser*. Individuals who have inherent value, however, have a kind of value that is distinct from, is not reducible to, and is incommensurate with such values as pleasure or preference satisfaction, either their own or those of others. To harm such individuals *merely* in order to produce the best consequences for all involved *is* to do what is wrong – *is* to treat them unjustly – because it fails to respect their inherent value... individuals who have inherent value must never be treated *merely as means* to securing the best aggregate consequences. (1983, p. 249)

But harming or even killing an individual for the benefit of others does not treat them as mere receptacles (also see Singer 1987, p. 11). After all Regan himself is prepared to harm or kill individuals for the benefit of others (see 4.2 and 4.4). The only difference is utilitarians are prepared to kill or harm individuals to maximise interests, whereas Regan is only prepared to do this where rights conflict. Utilitarians no more treat individuals as if they were receptacles than the Rights view does when it allows rights to be overridden in conflict cases.

xiii. Replaceability

Leslie Stephen argues that eating bacon is kind to pigs (1896). Those who eat meat are responsible for the death of the animals they eat and so any future pleasures they miss out on. However, they are also responsible for creating animals to replace those eaten. The losses one animal suffers are balanced by bringing a replacement into existence. Singer calls this 'the replaceability argument' (1993, p. 121).

Singer argues that non-persons are replaceable while persons are not. He thinks it is useful to see life as a journey:

> Gradually, as goals are set, even if tentatively, and a lot is done in order to increase the probability of the goals being reached, the wrongness of bringing

> the journey to a premature end increases. Towards the end of life, when most thing that might have been achieved have either been done, or are now unlikely to be accomplished, the loss of life may again be less of tragedy than it would have been at an earlier stage of life. (1993, p. 130)

Singer thinks this model can explain why those who are self-conscious are not replaceable because we are depriving them of the fulfilment of their goals, something not true of those who are not self-conscious. Thus, Singer thinks "the killing of non-self-conscious animals may not be wrong" (1993, p. 133).

Singer thinks non-persons are replaceable but only because the alternatives are less appealing (1999, p. 326). Singer is not happy about saying animals are replaceable and tentatively says what may make them replaceable is that they cannot see themselves "as existing over time... aspire to longer life (as well as to have other non-momentary, future-directed interests)" (1993, p. 125).

But it is not obvious that preferences of an immediate sort are any more replaceable than those that are not immediate. My immediate desire to have a cup of tea is no different from yours. This does not make *me* or my preference replaceable.

Hart argues both self-conscious and conscious beings must be replaceable for a utilitarian:

> Utilitarianism... requires that the overall satisfaction of different persons' preferences be maximzed... If preferences, even the desire to live, may be outweighed by the preferences of others, why cannot they be outweighed by new preferences created to take their place? (quoted in Singer 1993, p. 127)

Lockwood also argues that preference-utilitarianism cannot support the non-replaceability of persons (1979, pp. 159-60).[255] Lockwood argues that Singer's non-replaceability thesis can only be supported if it renders preferences themselves non-replaceable such that one preference cannot be replaced by another (Lockwood 1979, p. 160). But Lockwood offers no reason to think preferences are replaceable. I do not think

they are. Although many preferences may be extremely similar they are not identical. Each time I take a sip of tea is different from every other. My preference for taking a sip of tea at time *t* cannot be replaced by my taking it at *t1* or by someone else sipping it at anytime, for my preference is for *me* to sip tea at *t*. Unless *I* drink tea at *t* my preference has not been fulfilled. In this sense all preferences are non-replaceable. This is true regardless of the cognitive capacities of the individual. If a mouse prefers to eat corn at time *t* that preference will only be satisfied if *that* mouse eats corn at *t*, not if another mouse does. The mice's preference may be for the same thing but their preferences are not themselves the same.

If we deprive them of satisfying a preference – it is they whom we have deprived and it is that particular preference we have denied – the preference is not replaceable from the point of view of the one deprived – it does not satisfy me if you give the chocolate I wanted to someone else. No more does it satisfy a chicken that another chicken with similar preferences has its preferences satisfied. The two cases are exactly parallel and to insist otherwise is speciesist.

One way of identifying what is wrong with the replaceability argument is that it looks at the issue from the wrong perspective. From the perspective of "the world" one chicken is exactly the same as another; this is not the case from the chicken's point of view. The preference matters because it is the preference of a sentient being. It is not the other way round.

This line of argument has been objected to. Gaita argues that "every human being is unique and irreplaceable as nothing else we know in nature is" (2002, p. 174). Fox argues animals lack the right kind of uniqueness. Animals are numerically unique, he says, but:

> so are pebbles, cigarette butts, ticks of a clock... In another sense, animals are also unique individuals; each is a subject of its own sensations, experience, or awareness. In a third sense... animals are unique individuals... that... have "personalities" – distinctive dispositional traits, looks, behaviours, dietary preferences, ways of being playful, and so on. But in a further sense (most

[255] Lockwood thinks the replaceability thesis is not acceptable even in the case of animals (1979, p. 168).

> relevant to our discussion), animals do not show any signs whatever of being individuals – the sense in which we could legitimately speak of their lives as more or less "full," "satisfying," and so forth or in which we could meaningfully state that animals "have their own lives to lead" or have a "capacity to enjoy the good life". (1986, p. 28)

But why should these former senses not matter. Fox is not clear. Preferences matter because they are the preference of a sentient being. They belong to that sentient being no matter how lacking in individuality it is. Suppose someone clones me. The clone is identical right down to doing and thinking exactly the same things as me at exactly the same time. Locking me in a room and refusing to satisfy my preferences could not be justified on the basis my clone is having the same exact preference satisfied. The same applies to animals, no matter how lacking in individuality they may be.[256]

xiv. Separateness of persons

Many object that utilitarianism does not recognise the separateness of persons (Cavalieri 2001, p. 91; Clark 1977, p. 70; Fishkin 1981, p. 666; Rawls 1999; Regan 1983, pp. 248-9; Williams 1973, p. 98). Regan argues:

> Utilitarianism... can sanction inequitable distributions of harms (evils) and benefits (goods). Since the goal set by the theory is aggregative... following this principle could require that some few individuals be made to suffer a lot so that the rest might individually gain a little. (1983, p. 211).

The objection that utilitarianism treats individuals as a mass without recognising their individuality is mistaken. A comment from Singer can help explain:

> The principle of equal consideration of interests acts like a pair of scales, weighing interests impartially. True scales favour the side where the interest is stronger or where several interests combine to outweigh a smaller number of similar interest. (1993, p. 22)

Each individual's interests are being weighed equally. They are being treated as individuals. Individuals are treated as individuals because each individual is given their due consideration. My principle goes further than Singer's insofar as it does not just count numbers it takes into account how badly the worse-off will be made, thus taking them into consideration as an individual. It therefore respects individuals as well as Regan or Rawls's views.

xv. Natural predation

What utilitarians should do about predators is a problem (Telfer 2000, p. 231). Predators kill prey animals, if animals' interests matter as much as humans' shouldn't we stop them killing one another? On the face of it the answer appears to be yes. But by stopping a predator eating prey species other hardships would be caused not only to the predator (they cannot eat) but the prey species numbers would soon grow out of control and end up in them all, or nearly all starving (Singer 1975, pp. 251-252). Most deaths animals inflict on others are fairly quick, so it is probably better to leave alone. There are some exceptions. Some deaths are long and painful – those that are the results of parasites. There may be some justification for trying to eliminate these species. But for the most part we would do better to leave alone. It may be objected that we should control the numbers of prey species in kinder ways. But this would be unfeasible in practice.

Even if these arguments are not accepted the fact there is a problem of scope is not a devastating problem or at least if it is it is one virtually all theories face. For instance, we face an analogous problem if we limit the scope of moral concern to humans (for instance how much help should we give to those on other continents who are starving?).

xvi. Future generations and future interests

Frey points out: "much of the present writing and thinking on ecology and the environment is premised on the fact that future beings, beings which do not now exist...

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[256] It is highly probable that most, if not all, sentient animals are individual in the sense of having individual traits, characteristics – their individuality may not be as marked as it is in humans. From an evolutionary perspective we would expect differences; if all individuals were exactly the same species could not evolve.

nevertheless have interests" (1980, p.152). What Frey is getting at is that any moral theory ought to be able to accommodate this. I think my theory can do so comfortably.

It may be useful to draw a distinction between actual, probable, and potential future interests. Actual interests are those that are certain – those that exist now, such as my current interests. Probable interests are the interests of those beings that currently exist. For example, I have a probable interest in having a nice day on my next birthday. Probable interests can be given more or less weight according to their probability. Thus my interest in having a nice day on my next birthday should be given quite a lot of weight as it is highly likely I will reach my next birthday. My interests in having a nice day on my hundred and tenth birthday should be given correspondingly less weight because it is extremely improbable I shall live to see it. Potential interests are the interests of those who are not yet in existence or those who are not sufficiently well formed to have any clear interests (such as foetuses). Potential interests should be given less weight than actual or probable interests because they are more unlikely.

We know with relative certainty that there will be future generations (of animals as well as humans) and that these future generations will have preferences. We do not know what their precise content will be, but we do know they will want things like a clean, safe environment. Preference utilitarians can and should take such preferences into account.

5.3 Marginal cases argument

In outlining the sentience criterion I have given independent proof of the moral status of marginal humans and thus moved from the weaker version, which claims *if* marginal humans are morally considerable animals are too, to the stronger version, which claims marginal humans *are* morally considerable and so animals are too.

Some have argued that the kind of position I have outlined is speciesist (Almeida 2004, p. 31; Carruthers 1992, pp. 96-7; Dunayer 2004; Fox 1978, p. 113; Frey 1980, p. 37-44; Regan 1983, pp. 226-8; Williams 1980, p. 155). Dunayer accuses Singer of being a

new-speciesist (Dunayer 2004).[257] An old-speciesist limits rights to humans. A new-speciesist favours rights for some nonhuman beings, those most human-like. Singer is a speciesist, it is argued, because he thinks many animals do not have a right to life or liberty. Singer denies he is speciesist because his basis for moral status is cognitive capacities, not species. But Dunayer thinks he is a speciesist because the capacities in question are typical of a particular species – they are human biased and so speciesist. But the fact a criterion for moral status is one humans share in no way shows the criterion is speciesist in Dunayer's new sense. But, we all agree that normal humans have moral status thus it is impossible that any sufficient criterion would exclude them.

5.4 Risk and the cautious approach

The sentience account is less risky than the other accounts for the following reasons.

i. Disagreement with other positions

The sentience account has a lot in common with other accounts; the recognition that sentience is morally relevant is virtually universal. As Rachels argues "the rule against causing unnecessary pain is the least eccentric of all moral principles" (1990, p. 212).

There are disagreements about which beings have moral status. But there is also a great deal of agreement. Namely, all humans (including infants under one) have moral status. Regan's account leaves the moral status of infants under one and some marginal humans (those who are not subjects-of-a-life) an open question. This is risky. The sentience criterion gives the moral status of such humans a firm basis.

There is more disagreement about the moral status of foetuses. But, the general consensus is that the more developed it is the higher its moral status. This is something with which the sentience account concurs. On the sentience criterion foetuses have moral status once they are sentient, whenever this may be (probably after 24 weeks). On the subjects-of-a-life account foetuses have no moral status.

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[257] Almeida uses the term developmentalism (2004, p. 31). Williams uses the term "faunaism" - a prejudice in favour of members of the animal kingdom (1980, p. 155).

ii. Counterintuitive

That humans and animals are equal is, for many, counterintuitive (Arneson 1999, p. 105; Carruthers 1992, p. 9; Engel 2001, p. 91; Lockwood 1979, p. 157). But as has been argued in previous chapters this does not undermine the sentience criterion because intuitions are of limited value in assessing moral claims. What is more, even if they have a role the sentience account is less counterintuitive than the subjects-of-a-life account insofar as it does not assert the kind of equality that is objected to in the subjects-of-a-life account.

iii. Consistency

The sentience account is consistent insofar as it does not have conflicting principles (it has only one principle). It may be objected that this principle is inconsistent (e.g. that I ought to count evil preferences) but the arguments above demonstrate the consistency of my position.

iv. Application

The sentience account is relatively easy to apply; it can be applied to most, or all, situations one might expect to meet and therefore provides practical guidance. It is easier to apply than the subjects-of-a-life account because it has one, rather than several, principles.

v. Simplicity

The sentience account is simple. It has one simple principle unlike the subjects-of-a-life account, which has several. It is also simple insofar as it relies on much simpler epistemic claims, rather than needing to go through the list of all the criteria for subjects-of-a-life we only need establish whether a being is sentient to establish whether it has moral status.

vi. Impartiality

The sentience account is impartial insofar as it is not speciesist (as those discussed in Chapter Three were shown to be). The subjects-of-a-life account is not speciesist but it does allow some partiality such as familial relationships to count thus robbing it of its impartiality.

vii. Potential benefits and losses

The benefits of the sentience account outweigh the losses insofar as animals will be given greater consideration but the cost to us (humans) will be relatively minor – giving up some food we like and not using animals for testing. These changes are not all loses either, animal free diets are better for good health and a ban on the use of animals in science will lead to better practice in medical research (see 2.5).

5.5 Epistemic responsibility

i. Feelings of Pleasure And Pain

Pain and suffering are standardly assumed to have three components (Wise 2000, p. 182). First is nociception. This is the ability of specialized nerves to detect and signal noxious events. Nociception appears in all vertebrates and may exist in some invertebrates. Second is pain. Pain is our conscious awareness of the nociceptive stimulus. All vertebrates have the neural connections necessary to transmit pain signals. Third, is suffering which is not synonymous with pain. Pain is just one cause of suffering. Suffering is the emotional response to perceived pain.

Suffering may be distinguished from pain (Dawkins 2003, p. 95; Fox 1986, p. 217n; Grandin 2005, p. 191; Wise 2000, p. 182). Pain is physical. Suffering includes psychological distress and aversive physical sensations (Fox 1986, p. 217n). Dawkins defines suffering as experiencing "strong or persistent negative emotions" (2003, p. 95).

Most agree that (at least some) animals are sentient.[258] Darwin thought it was obvious: "lower animals, like man, manifestly feel pleasure and pain, happiness and misery" (2004, p. 89). However, a few deny that animals feel pain (Carruthers 1992; Bermond 2003, p. 79; Descartes 1989; Harrison 1989, p. 79).[259] Some argue that while animals have pain their pains are non-conscious (Carruthers 1992, p. 189; Harrison 1991, p. 32). There is, however, a large body of empirical evidence for animal pain.

Behaviour

Animal behaviour is evidence they experience pain.[260] For instance animals (including mammals and fish) engage in pain guarding, they "avoid putting weight on the injured limb" (Grandin 2005, p. 183). However, there are limits to what behaviour can tell us about animals' pain. Animals, especially prey species, tend to hide their pain because injured animals are more likely to be picked off by a predator (Grandin 2005, p. 180). For example, bulls being castrated by having a tight band wrapped around their testicles may act as if they are "in agony. They lie down on the ground in strange, contorted positions and... moan – but they do this only when... alone" (Grandin 2005, p. 181). This kind of evidence suggests that we need to be extremely careful before using behaviour alone to show an animal is not in pain; they may be hiding their pain.

Harrison objects to behavioural evidence for animal pain – he says we do not ascribe pain to ants or single-cell organisms that "withdraw from harmful stimuli" (1991, p. 26). But pain behaviour is more than simply avoiding aversive stimuli (Bernstein 1998, p. 139). Insects, for instance do not engage in pain guarding, they still walk on a damaged limb, which suggests they do not feel pain (Grandin 2005, p. 183). Pain behaviour also has other components like rocking, writhing, crying out, licking wounds etc. These are all things that animals do but insects do not.

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[258] Bentham 1948, p. 412fn; Carruthers 1992, p. 61; Carter 2005, p. 17; Cohen 1997, p. 95; Dawkins 2003; Diamond 1978, p. 466; Fellows 2000, p. 588; Fox 1986, p. 161; Frey 1980, p. 109; Garner 1993, p. 12; Grandin 2005, p. 183; Ryder 1975, p. 10; Schopenhauer 1883, vol. I, p. 47; Scruton 2000, p. 49; Watson 1979, p. 112. Among these are many who would deny them moral status. The 1876 Cruelty to animals act has a pain clause (Ryder 1975, p. 98, 100).

[259] Harrison denies animals feel pain. Bermond thinks no animals except anthropoid apes and maybe dolphins can experience suffering.

[260] Carter 2005, p. 17; Darwin 1989, p. 27, 28-9, 2004, p. 89; Grandin 2005, p. 181; Rollin 1989a, p. 62; Ryder 1975, p. 10; Singer 1993, p. 69.

Physiological

The physiological similarities between animals and humans suggest animals are sentient (Littlewood Report 1965, p. 54; Rollin 1989a, p. 63; Ryder 1975, p. 10; Singer 1993, p. 70; Voltaire 1989, p. 21). There "is good evidence that pain is a function of the nervous system and that many animals have nervous systems very much like our own" (Ryder 1975, p. 4). The nervous systems of all vertebrates, especially mammals and birds, are fundamentally similar.[261] And the "parts of the human nervous system that are concerned with feeling pain are relatively old, in evolutionary terms" (Singer 1993, p. 70). These similarities make it highly likely all vertebrates, at least, feel pain. And:

> Anaesthetics and analgesics control what appears to be pain... the biological feedback mechanisms for controlling pain seem to be remarkably similar in all vertebrates, involving serotonin, endorphins and enkephalins and Substance P. (Rollin 1989a, pp. 63-4)

Evidence for animal pain is by no means new and strong evidence for it existed in the 1960s (see *Littlewood Report 1965,* p. 54; Ryder 1975, p. 10).

Harrison objects that "our feelings of pain are not simply a function of neuroanatomy, but also of psychological and cultural factors" (1989, p. 86). But this merely informs the content of the pain. It does not show such factors are necessary to experience pain.

Evolution

The theory of evolution states that things, like pain, which give their bearers an adaptive advantage are unlikely to come into existence all of a sudden, rather they would have emerged slowly (Darwin 2004, p. 89; Dawkins 1980, p. 83; Rollin 1989a, p. 64, 1992, p. 74). Pleasure and pain are tools that help ensure an individual will fulfil its needs and avoid danger. Those animals that cannot feel pain would not only be at a severe disadvantage, they would not survive (Rollin 1989a, p. 64). This provides reason to

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[261] Vertebrates have vertebrae, a backbone or spinal column: they include mammals, birds, reptiles, amphibians and fishes.

think animals are similar to us in their capacity to feel pain and that any differences are differences in degree, not kind. [262]

It may be objected that some of an animal's pain behaviour is maladaptive. But this is also true of humans. For instance, if a human who is hiding from a predator cries out or writhes in pain they may give their position away and thus lose their life. So why do we still feel pain? Carter argues that in general feeling pain is adaptive and that squealing and writing are maladaptive spin offs (2005, p. 18). Pain will not always help its bearer, but it usually will, just so with animals.

Parsimony

Animal pain is more parsimonious than the alternatives; it is a "simple" assumption (Dawkins 1980, p. 85). This is recognized by those who carry out biomedical research, it is implicitly endorsed by statements of principle regarding the humane use of animals, insofar as they often mention that such principles apply to vertebrates (see National Research Council 1996, pp. 117-8; National Aeronautics and Space Administration 1998; Council for International Organizations of Medical Sciences 1985, p. 18).

Which animals feel pain?

On the basis of the evidence presented above it is reasonable to say all vertebrates feel pain. All vertebrates exhibit similar pain behaviour. They are physiologically similar. And the theory of evolution supports animal pain. Strong support has been given for the idea vertebrates, at least, are sentient (Adams and Rose 1989; DeGrazia 2003b, p. 255; DeGrazia and Rowan 1991; Fox 1986, pp. 72-3; Grandin 2005, p. 183; Rodd 1990; Sapontzis 1993, p. 272; Smith and Boyd 1991; Varner 2003). The idea that all vertebrates are sentient is based on a wide survey of those who compared normal adult humans to animals on behavioural and neurophysiological criteria such as whether animals have a highly developed central nervous system, whether endogenous opiates are present, whether responses to painful stimuli are similar to ours and whether these responses are changed by analgesia (see Bateson 1991; DeGrazia and Rowan 1991; Adams and Rose 1989; Smith and Boyd 1991). Some argue that some invertebrates

[262] Hume makes a similar point (1975).

such as cephalopods (e.g. octopus and squid) are sentient (Aldridge et al. 1991; Bateson 1992; Varner 2003; Warren 1986, p. 166). I do not want to rule out that invertebrates feel pain and it seems likely that cephalopods do, but the evidence is not as strong here. What seems fairly certain is that insects do not feel pain, as although they may move away from damaging stimuli they do not engage in other parts of pain behaviour such as pain guarding, rocking, writhing, crying out etc. There are also more marked physiological differences.

Individual pain

As with humans different animals experience pain differently – different individuals have higher or lower pain thresholds and different animals are influenced by their surroundings i.e. the humans and animals around them (Grandin 2005, p. 181; Rollin 1992, p. 69). We should therefore be careful when we generalise about a particular species and remember that individuals within a species can and do vary.

Degrees of sentience

Many think sentience comes in degrees (Clark 1977, p. 42; Devine 1978, p. 486; Hume 1975; Grandin 2005, p. 190; Warren 1997, p. 155). Some who think animals feel less pain than humans. Devine argues animals' pains are less intense and human sufferings have greater conceptual richness (1978, p. 486). Similarly, Fox argues greater mental complexity is required for suffering like "anxiety, stress, anguish, apprehensiveness, despair, sorrow, grief, lamentation, upset, and the like" (1986, p. 217n). This may be true of the kinds of suffering Fox lists. But other types of suffering like fear do not require such mental complexity. Fear for example. Grandin argues that fear "is so bad for animals... it's worse than pain" (2005, p. 189). Thus, even if animals experience less pain it seems likely they experience more suffering than humans (Grandin 2005, p. 190). Animals suffer more from anxiety because they do not have the kind of psychological defence mechanisms humans do (like projection, displacement, repression, denial) (Grandin 2005, pp. 91-2). If this is right then animals may suffer *more* than normal humans when exposed to the same stimulus.

Sentience comes in degrees, but it is not obvious that humans are always at the high end and animals on the low end. We need to be careful when trying to determine how much pain/suffering any individual is feeling. Sentience also comes in degrees insofar as those who develop into sentient creatures will become more sentient as they develop.

ii. Preference interests

I will argue that animals have preference interests.[263] First, Darwin argued one of the mechanisms of natural selection is sexual selection (1968, Ch. 4). Sexual selection is plausibly a result of preferences – those who prefer the fitter mates are more likely to reproduce viable offspring.

Second, behavioural evidence suggests that animals have preferences. If animals display regular behaviour patterns such as always choosing eating rather than going outside we can conclude they prefer eating to going outside (Regan 1983, p. 85). It may be objected that the dog is not aware of the choices – but this is hard to sustain if one puts down a bowl of food and then says walkies and he eats the food – he is aware what both mean. It may be objected he is only satisfying his short-term preference – that he is not aware that it is eat or walk, but he still prefers to eat now. Third, if an animal is presented with a novel situation where they can choose between a carrot or their normal food and they choose the latter they can be thought to prefer their normal food (Regan 1983, p. 86).

iii. Self-consciousness

As was argued above whether a being is self-conscious or not has a bearing on its preferences (and so its moral status) because only those who are self-conscious can have preferences about their continuing existence. Thus which animals are self-conscious is significant.[264] I shall start by defining it.

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[263] Some think animals have preference interests include: Dawkins 1980, p. 83; Fox 1978, p. 106; Nelson 1956, p. 116. Those who think animals do not have preference interests include: Frey 1980, p. 2, 139.

[264] Some think animals lack self-consciousness: Cohen 2001, p. 245; Frey 1980, p.108; Kant 1963, pp. 239-41; Tooley 1972, p. 63. Some think some animals are self-conscious: Singer 1986a, p. 301, 1995, p. 131.

Many have offered definitions of self-consciousness.[265] I will give a few representative definitions. Regan defines self-consciousness as "being aware that we are aware... Not only are we aware *of* the world, we are aware of being *in* it" (2004, p. 45). Natsoulas defines it as "being aware of... one's own perception, thought, or other occurrent mental episode" (1978, p. 911). Griffin says self-consciousness is "awareness... one is thinking or feeling in a certain way" (2003, p. 109). Scruton defines it as awareness of one's "own states of mind" (2000, p. 21). Singer says a being is self-conscious "if it is aware of itself as an entity, distinct from other entities in the world" (1986a, p. 296). Rodd says self-consciousness is "the ability to form mental concepts about the self as an entity and/or to reflect about one's feelings" (1990, p. 64). Thus, self-consciousness can be defined as being aware one is aware. Are animals aware they are aware?

Language

Some argue that language is necessary for self-consciousness (Black 1972, p. 2; Frey 1980, p.105; Leahy 1991, p. 32-4). Singer argues it is possible for a being to think conceptually without language and there are many instances of animal behaviour that would be virtually impossible to explain without ascribing concepts to them (1995, p. 114). This is reinforced by those humans who think in pictures (see 4.5).

Behaviour

Some argue animals' behaviour is insufficient to demonstrate self-consciousness (Frey 1980, p.106). Behaviour is the only way animals can convey their awareness, but they cannot convey self-conscious behaviour: "overt, physical behaviour, *however complex or complicated*, will never suffice to endow animals with simple desires under an awareness condition" (Frey 1980, p.107). First, this assertion is questionable – it seems likely those animals that pass the mirror recognition test are self-conscious (see below). Second, even if such behaviour is not conclusive the fact we have no absolute proof of animal self-consciousness does not prove they are not. We have no absolute proof in the case of humans yet we are willing to grant them the benefit of the doubt.

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[265] Frey 1983, p. 163; McCloskey 1979, p. 34. Carruthers says that in order to be conscious our thoughts must be available to be thought about (1992, p. 180). However, as argued in the previous chapter this is

Which animals and humans are self-conscious

Rollin argues all animals are self-conscious: "animals have a sense of self... if one is willing to admit that animals feel pain, it follows that pain would not be of much use were it not referred to a self" (1989, p. 47). Similarly, Watson argues sentient animals are "(necessarily) self-conscious" (1979, p. 127). Singer argues "[a] chimpanzee, dog, or pig, for instance, will have a higher degree of self-awareness... than a severely retarded infant or someone in a state of advanced senility" (1995, p. 19). However, most who think animals are self-conscious limit it to great apes because of their ability to use American sign language (Singer 1986a, p. 301). Those apes that can use symbols know the symbol for their name and "me" and use both (Wise 2000, p. 198). Great apes like bonobos and chimps pass the mirror test (Wise 2000, pp. 198-9). This test involves anaesthetizing apes and then placing an odourless and tasteless red dot on their face those "chimpanzees who touched the red spots while gazing into a mirror recognized the mirror image of themselves" (Wise 2000, p. 199). The ape Washoe signed "Me Washoe" when shown her reflection in a mirror (Leahy 1991, p. 31). It is reasonable to consider those who pass this test self-conscious. Singer thinks the evidence for ape self-consciousness should make us rethink how we view other animals, possessing a language did not make these animals self-conscious (as bottlenose dolphins have also passed it - Wise 2000, p. 269) rather it merely allows them to display a characteristic they, and other animals, already have (1993, p. 112). Whether other animals are self-conscious is ultimately a matter for empirical investigation, investigation that has yet to be carried out (I have not come across any mirror tests for other animals). But it seems reasonable to suppose the great apes are self-conscious, and the higher mammals at least might be – though perhaps to a lesser degree.

No child under 15 months has passed the mirror test, and infants usually react "socially" to a mirror up to 18 months, the percentage that pass the test increases up to the age of 24 months (Ristau 1992, p. 131;Wise 2000, p. 199). This suggests human children are not self-aware until 24 months. This suggests that self-consciousness comes in degrees – children become more self-conscious the older they get.

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more like self-consciousness than mere consciousness.

iv. Epistemic responsibility in general

As Singer pointed out "many philosophers... [attempt] to do philosophy from the armchair, on a topic that demands investigation in the real world" (1993, p. 114). I have endeavoured to avoid this pitfall.

The sentience account is more epistemically responsible than the subjects-of-a-life account. We can be pretty certain vertebrates are sentient and this is all that is required to get the sentience account off the ground. The subjects-of-a-life account, however, requires that animals have a sense of their own future and memory etc.[266] These things are more questionable then whether animals are sentient. Therefore, an account that relies on them is less epistemically responsible then one that relies on sentience (which is more certain).[267]

5.6 Conclusion

In this chapter I argued we should favour the sentience criterion for moral status. On this account all sentient beings are morally considerable because they have interests. In 5.1 I outlined the sentience account of moral status. In 5.2 I answered some criticisms of my account. In 5.3 I reconsidered AMC. In 5.4 I argued that the sentience account is less risky than the other accounts considered. In 5.5 I argued that the sentience account is more epistemically responsible than the other accounts considered. For these reasons it should be preferred.

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[266] Garner makes a similar point (1993, p. 26).

[267] I have concentrated on the epistemic responsibility regarding animals. It should also be noted that we need to be equally careful when we are looking at humans, especially marginal humans, as Kittay points out many people, philosophers included are somewhat ignorant about what marginal humans are like (2005, p. 126).

Summary and conclusion

I. Summary

In the introduction I gave definitions of the terms involved and put the current debate into context by giving a brief background to the debate over moral status.

In Chapter One I outlined the argument from marginal cases (AMC). I argued that if we think marginal humans are morally considerable we must accept that animals are too. I argued that AMC gives us *a* reason to prefer accounts of moral status that include marginal humans and by extension animals.

In Chapter Two I argued that when coming up with accounts of moral considerability philosophers have often failed to address our moral uncertainty and the risk this entails. I outlined the cautious approach: that we ought to reduce our risk of doing wrong. I argued that any account of moral considerability that excludes animals is taking an unnecessary moral risk: animals might be morally considerable and if they are most of our current treatment of them is wrong. I gave some criteria for assessing moral risk, one of which was the losses and benefits a theory brings with it. In 2.5 I argued that instead of losing out humans stand to benefit a great deal by according animals greater moral status (through better health, medicines, a better environment and an increased ability to feed the world's starving people). Thus, the cautious approach gives us *a* reason to favour accounts of moral considerability that accord animals moral status.

I argued that more attention should be paid to questions of epistemic responsibility and being epistemically responsible augurs in a theory's favour.

In Chapter Three I outlined some accounts that say animals have some, limited, moral status. I argued these moderate accounts (and those they are representative of) fail to satisfy either the concerns about risk, epistemic responsibility, or marginal humans or all three. This gives us reason to look for accounts that accord animals higher moral status.

In Chapter Four I outlined the subjects-of-a-life account. On this account all animals are equally morally considerable to humans. I argued that this account is risky insofar as it accords animals equal inherent value, excludes human infants, mammals under a year and all non-mammalian vertebrates (except birds). It could also be more epistemically responsible.

In Chapter Five I argued we should favour a sentience-based account. On this account all sentient beings are morally considerable. I argued we should use the following principle: *All preference interests compatible with the like preference interests of others should be given equal consideration. Where preferences are alike the interests of the many should be maximised. When frustrating the preference interests of the few would make them much worse-off than any of the many would be if their preference interests were satisfied, we ought to maximise the interests of the few.*

I argued that this is the least morally risky and most epistemically responsible of all the accounts considered.

In brief, I argued that being sentient makes things morally considerable. AMC gives us *a* reason to prefer an account of moral considerability that includes animals. Considerations of moral risk give us *another*. The sentience account is plausible in its own right. The fact the sentience account is less risky and more epistemically responsible than the other accounts considered gives us reason to prefer it. Accepting these arguments has important implications: first, in practice we should assume animals are morally considerable; second; we should review many of the ways we treat them. I shall now outline what those implications are.

II. Implications of my account

i. Vegetarianism and veganism

We do not need to eat meat or dairy products (see 2.5 and Appendix 2). If animals' interests should be given the consideration due to them they cannot be made to suffer solely for our pleasures of taste. But do they suffer?

a. How many animals?

45 billion animals were killed for food across the world in 2000 (9,713 million in the US), according to the Food and Agriculture Organization. This figure excludes some small countries and 'non-slaughter' deaths, which are generally not reported.[268]

b. Animal suffering

Animals suffer as a result of farming.[269] What follows is a list of how *some* farm animals suffer. It is by no means comprehensive.

Pigs: Pigs are often kept indoors in overcrowded sheds. Many have to sleep on bare concrete; this is uncomfortable and distressing (Gellatley 1996, pp. 1-11). Adult female pigs kept for breeding are usually confined in small, solitary stalls with little or no room to move or lie down with comfort. Piglets are usually taken away from their mothers after 4 weeks (left to the mother it would be 4 of 5 months). This early separation causes great distress to mother and infants.

Piglets are often kept in conditions so cramped they bite each other's tails and/or resort to cannibalism. The "cure" for this is to pull out their teeth, cut off their tails and castrate them, usually without anaesthetic and often by people with no veterinary training. Alternatively they are kept in bare individual cages where they can barely move (Robbins 1987, pp. 82-3).[270]

Chickens: The majority of chickens reared for meat in the UK are factory farmed; they are kept in massive overcrowded windowless sheds. They often start their lives by being debeaked without anaesthetic by unskilled labourers. Beaks are as sensitive as tongues, which often get cut off too; the pain is intense (Gentle 1986, 1987, 1990; Grigor 1995). The shock is so severe many die.

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[268] USDA/ NASS: "Poultry Slaughter 2000 Summary," February 200; "Livestock Slaughter 2000 Summary," March 2001; "Hatchery Production 2000 Summary," April 2001;"Turkey Hatchery," July 2001 5. ;"Meat Animals Production, Disposition, & Income 2000," April 2001;"Chicken and Eggs," Monthly Reports, July 2001;"Turkey Hatchery," Monthly Reports, July 2001;"Poultry Slaughter," Monthly Reports, August 2001; "Livestock Slaughter," Monthly Reports, July 2001.

[269] See: Gellatley 1996; Singer 1995; Spiegel 1988.

Chickens are routinely given growth hormones and overfed. As a result by the age of 35 days many are unable to move because they cannot lift their own weight. They are overfed so they will reach the weight at which they are to be slaughtered quicker. This now takes 42 days; half the time taken in the sixties.[271] Broken bones, heart and lung disorders, and other deformities are common.[272] They get ammonia burns on their legs and chests because they are forced to sit in their own faeces and urine. In the UK 12% (72 million chickens) die before they reach 42 days (the age at which they are slaughtered).[273]

Turkeys: Turkeys are reared in conditions similar to chickens (Gellatley 1996, p. 32).

Beef: Cows usually spend only six months outside before being confined to feedlots (they are not allowed to live beyond 36 months – they should live around 25 years). They are often transported long distances to feedlots. When they arrive they are fed grain and anything else that will fatten them up cheaply. Male calves are often castrated and de-horned to stop them from harming one another due to overcrowding.

Fish: Fish that are caught in the wild die by slowly suffocating. Those in fish farms fare little better. As many as 50,000 salmon are cramped up in a single cage – this is roughly one bathtub per fish (salmon are approximately 75cm long). Trout are even more crowded; roughly 27 to a bathtub. This overcrowding encourages the spread of disease (which often spread to wild fish that inhabit the same water). Disease is thought to account for 10-30% of the death rate. Parasites feed on Salmon such that their skull is exposed. Seals, birds and otters are shot by fish-farmers to protect their stocks.

Sheep: Over 4 million (20% of all born) lambs die in Britain from cold or starvation.[274] In Australia it is between 20 and 40%.[275] Sheep are castrated and have their tails

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[270] "How to make $12,000 sitting down" *Farm Journal,* August 1966
[271] *Poultry World,* p. 28, November 1985.
[272] "£10m study into battery chicken deformities", *The Independent,* 13 March 1992; "Bone defects found in most fast-growth oven chickens", *The Guardian,* 13 March 1992.
[273] "Broiler losses reach high levels in winter months", *Poultry World,* May 1994, p. 13. The figures are from an estimate by John Parsons, the National Farmer's Unions.
[274] Lamb survival video from Farming Press.
[275] *Wool Manufacturing: Shear pain, PETA Washington, DC., 1995.*

docked: "There is no doubt that all methods of castration and tailing cause pain and distress".[276]

Milk: Milk frequently causes cows great suffering; many never go outdoors or they spend at least half the year indoors in small cubicles. Their udders are unusually large (weighing up to 50 kilos) making it difficult to walk and often causing lameness. Nearly 100% have painful feet (Webster 1995).[277] Around 40% of UK cows suffer from mastitis, which causes great pain when they are milked.[278] They are forced to produce ten times more milk than their calf would need.[279] This is extremely hard work – it is like making a human jog for six to eight hours a day, every day (Webster 1995). The result of excessive milk production and repeated impregnation is that cows become unprofitable after around five years and are slaughtered (cows naturally live around 25 years) (Brunner 1988).

In order for a cow to produce milk she must have a calf. Both calf and cow experience suffering at the early separation (usually when the calf is days or hours old). Calves are an unwanted by-product. About a quarter of the females replace their mothers, the rest will either be slaughtered when only a few days old or end up as veal (veal calves spend the whole of their short lives tethered alone in tiny stalls in the dark and fed an iron deficient diet resulting in constant and painful diarrhoea). There are around 800,000 veal calves in the US alone (Regan 2003, p. 12).

Eggs: Battery hens suffer (Appleby 1991, p. 2; Baxter 1994). Approximately 90% of hens that lay eggs are confined in battery cages. They are allocated space about the size of an A4 piece of paper; so tiny they cannot even stretch their wings. They spend the whole time standing on the wire mesh, which causes great pain in their feet. Cages are stacked on top of one another so the faeces of the animals above fall onto those below. Their low calcium diet combined with lack of exercise often causes brittle/broken bones (Gregory, and Wilkins 1989). When their egg production falls (usually after as little as a year) chickens end up at the slaughterhouse. Male chickens, the wrong breed

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[276] The Farm Animal Welfare Council. Report on the Welfare of Sheep, MAFF Publication 1994, p. 22.
[277] The Ministry of Agriculture, Fisheries and Food, UK, *Lameness in Dairy Cattle*, MAFF Publications 1992, p. 5.
[278] P. Jackson, Head of Farm Animals Division, Cambridge Veterinary School, on "Fast Life in the Food Chain", *Horizon*, BBC2, 18 May 1992.
[279] Ibid.

to be reared for meat, are an unwanted by-product. They are killed within a day by gassing, dislocating their neck or *mincing them alive* in a homogeniser.

Stereotypic Behaviour: Many farm animals exhibit stereotypic behaviour.[280] This is a repeated motion such as gnawing on bars or, in the unlikely event they have the space, pacing up and down. Such behaviour is a sign of chronic psychiatric disorders in humans. Many believe it indicates much the same in animals. Keeping animals in such appalling conditions has literally made them go mad.

Transportation: To get animals to the slaughterhouse will nearly always involve transportation. Conditions in trucks are extremely cramped, any animal that falls over will get trampled. Many animals get travel sick. Thus, even short journeys are an ordeal. Many animals have to endure long journeys, often many days, in terrible cramped conditions, given little or no food, water or rest and often forced to travel in freezing cold or unbearably hot conditions with inadequate ventilation.[281] Many animals die during transportation; all that awaits the unlucky survivors is a painful, terrifying death.

Slaughter: Unfamiliar surroundings terrify animals (Grandin 2005). Animals know what slaughterhouses are, they know that other animals have been killed and that they are about to die (Gruzalski 1983, p. 258). Anticipating their own death is not the end of their suffering; it is the beginning.

Fish are known to suffer when killed.[282]

Sheep take between 73 seconds and five minutes between being stunned and losing consciousness (Gregory and Wotton 1984, 1984a).

Chickens are hung upside down by their legs. Many have broken legs so suffer unbearable pain. They are taken along a conveyor belt. They are supposed to be stunned. This often does not work. They often reach the next stage, a rotating blade, conscious. It is supposed to decapitate them. Not all chickens are the same height, they

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[280] CRB Research, *Does Close Confinement Cause Distress in Sows?* A Review of the scientific Evidence commissioned by the Athene Trust, July 1986, p. 6.

[281] Eurogroup Report,1992, Dossier to the UK Presidency of the EC: Farm animals sent for slaughter across Europe, 9 July, 1992.cc

struggle and so are often cut either in the chest or in the head, leaving them badly injured but not dead (between 6.8 and 23.4%). They are plunged into scalding water where they eventually die in agony (Stevenson 1993, p. 6).

A minimum of 25% of animals are routinely given electric shocks when being handled at slaughter plants. Grandin, who designs slaughterhouse systems, admits:

> One... criteria... plants had to meet to pass my audit was that employees couldn't use the electric prod on more than 25% of the animals. (2005, p. 32)

Thus, at least 25% of animals are given shocks. She even records one plant where "they were using them [the electric cattle prods] on every single animal" (2005, p. 34).

Animals such as pigs, cows and sheep are often stunned, or supposed to be, before they are killed. But due either to time constraints or lack of skill the stunning often does not work and animals are conscious when killed. The Ministry of Agriculture says that 240 volts should be used to stun a pig effectively but many use less than 75 and most are under 150.[283] Many pigs are incorrect stunned.[284] Many pigs regain consciousness before they slowly bleed to death (Anil 1991). Cows heads are restrained and a bolt is shot into their heads which is supposed to destroy part of the brain. When the bolt has been shot into their head they are stuck so that they bleed to death. Due to pressures of time mistakes are often made, meaning animals are not killed instantly and die slowly and painfully:

> killing line speeds are so fast in modern slaughterhouses that animals frequently do not have time to bleed out before reaching the skinners and leggers. As a result, unstunned and improperly stunned cows routinely have their legs cut off and their skin removed while they are still alive, and unstunned and improperly stunned pigs are routinely lowered face first into the 140F (60C) scalding tank while they are still fully conscious. (Engel 2001, p. 101)

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[282] D. Brown "Salmon suffer painful deaths on fish farms", *The Daily Telegraph*, 13 May 1991.
[283] The Ministry of Agriculture, Fisheries and Food (UK), *Code of Practice on the Welfare of Red Meat Animals at Slaughter*, MAFF Publications 1992.

As Clark points out "any slaughtering technique employed on a large scale involves great suffering" (1977, p. 74). Grandin designs cattle handling systems for meatpacking plants and she says that allowing some animals to die without being stunned is *necessary*:

> People... can't live up to perfection. When you give a plant a good standard – like 95% of all cattle have to be stunned (killed) correctly on the first shot every single day – they always do better than they do under a zero-tolerance regulation. (2005, p. 29)

Thus, according to Grandin it is *impossible* for every animal to be killed humanely and unrealistic to expect it. 5% may not sound like a lot, but when you consider the number of animals killed in a year (45 billion), the numbers of animals that suffer a painful inhumane death, that *must* suffer a painful death, are staggering: 225 million animals. And this 5% is only on the days the plants are being inspected. Most of the time no one is watching them, in reality the numbers could be *a lot* higher.

In the US, in addition to the 8,856 million animals reported in USDA 2000 slaughter reports, another 857 million, or 8.8% of the total suffered lingering deaths from disease, malnutrition, injury, or suffocation, associated with factory farming practices.

Add to this the fact that approximately one third of the food produced in the UK is wasted (and presumably similar amounts are wasted in the rest of the developed west).[285] One third of farm animals suffer and die for no reason.

What about organic and free-range farms?

Free-range conditions are often little better. Birds are kept in massive flocks of up to 16,000 in one shed. Some so called 'free-range' chickens are kept in huge barns, the only difference is that there must be access to a small patch of land outside. But the chickens kept in them often lack the ability or the inclination to go outside. They lack the ability because they may have broken legs or are unable to get through the crowds.

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[284] The Farm Animal Welfare Council, *Report on the Welfare of Livestock (Red Meat Animals) at the Time of Slaughter*, MAFF Publications, 1984.

They lack the inclination because the food is inside and to get back to it would be very difficult. Thus up to 50% of "free-range" chickens *never* go outside. It should be remembered that *"[u]nanaesthetised* branding, dehorning, ear tagging, ear clipping, and castration are standard procedures on nonintensive family farms, as well" (Engel 2001, p. 101)

Animals in organic farms usually have a better time of it. They generally have more space, better food and habitat. However, organically farmed animals still suffer. They suffer if they are forced to produce eggs or milk beyond their natural capacity. They suffer when young animals are prematurely separated from their mothers. They suffer from mastitis. They suffer when they are transported. Male chicks and male calves are still worthless by-products that are killed in the same manner non-organic chicks and calves are killed. But most importantly they are still slaughtered and often under the same inhumane conditions non-organic and battery farmed animals are slaughtered. Even if an animal has had an idyllic life they will still suffer just before they die. And all farm animals (including those used to produce eggs and milk) suffer the ultimate harm: death. As was argued in the previous chapter death harms animals because it robs them of all future pleasures.

What should we do about animal suffering?

c. Veganism

Singer argues that most of us have an obligation to be vegetarian most of the time (1993, pp. 62-3; 1995).[286] I think those who advocate vegetarianism do not go far enough.[287] The same objections that hold for eating meat hold for eating eggs and dairy

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[285] http://news.bbc.co.uk/1/hi/talking_point/4446277.stm

[286] Others who advocate vegetarianism: Engel 2001; Everitt 1992; Rachels 1990, p. 212; Regan 1983; Rollin 1992, p. 85; Sprigge 1979, pp. 125-6; Stephens 2003, p. 207; Wetlesen 1999, p. 314.

[287] Those who discuss vegetarianism: Adams 1990; Amato and Partridge 1989; Auxter 1979, p. 222; Carruthers 1992, p. 74; Cigman 1981, p. 48; Crisp 1988; Devine 1978; Diamond 1978, p. 468; Dombrowski 1984; Egonsson 1997; Engel 2001, p. 89; Fox (M. A.) 1978, p. 117, 1986, p. 20-1; Fox (M.W.) 1983; Francis & Norman 1978, p. 509; Frey 1980, 1987a; George 2003; Gruzalski 1983, pp. 262-3; Hare 1999; Hudson 1993; Narveson 1977; Puka 1977; Rachels 1987,1990; Regan 1975, 1981, 1982, 1983, 2004; Rodd 1990; Rollin 1992, p. 85; Sapontzis 1988, 1991; Scanlon 1983; Singer 1980, 1986a, 1993, pp. 62-3, 1995, 1999; Soble 1985; Sprigge 1979, pp. 125-6; Spedding 2000, p. 145; Sprigge 1979; Stephens 2003, p. 207; Weir 1991; Wenz 1984; Wetlesen 1999; Williams 1980.
Those who argue there is no obligation to be vegetarian: Frey 1983, p. 109; Narveson 1983, p. 59; VanDeVeer 1983, p. 159; Warren 1997, p. 232.

products; namely, the animals' preferences are not given due consideration, that they suffer and die. Therefore, most of us ought to be vegan most of the time (we ought not eat any animal produce).[288] Many object that Singer's principle of equality does not deliver vegetarianism (and so by implication veganism) (Carruthers 1992, p. 74; Frey 1980, p.141; Narveson 1977, p. 173; Puka 1977, p. 558; Regan 1982, p. 41, 1983, p. 220, 1983a, p. 32, 2003, p. 66; Williams 1980, p. 157).[289] However, unlike Singer I can offer a principled reason for this:

All preference interests compatible with the like preference interests of others should be given equal consideration.

The interests of someone who wants to eat meat and dairy products are not compatible with the like interests of those they are using for food. It cannot be justified for someone with alternative sources of food to use animals (it may be all right to eat eggs or milk from animals that are kept much like pets as long as they are treated well and will not be killed when they become redundant).[290] It can never be justified for those with alternative sources of food to eat meat because wanting to kill something for meat or use them for eggs or milk is not compatible with the animals' interests.

d. Objections to veganism

Veganism is counterproductive

Singer is a vegan as far as practical given his busy lifestyle (Vegan Autumn 2006, p. 18). But he does not think we should advocate veganism:

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[288] Most who discuss animals' moral status discuss vegetarianism rather than veganism (a few exceptions (most only mention it) include: Clark 1977, p. 80; Cohen 2001, p. 7; Devine 1978, p. 486; Engel 2001, p. 100; Frey 1983, p. 7; Regan 2003, p. 13, 2004, p. 70; Rodd 1990, p. 139; Singer 1999, p. 324; Spedding 2000, p. 145; Stephens 2003, p. 201;Warren 1997, p. 64n. Some advocate veganism: Clark 1977, p. 80; Regan 2004, p. 106.

[289] Others have argued that a simple prohibition on causing unnecessary pain yields vegetarianism: Engel 2001; Rachels 1990, p. 212.

[290] Veganism is a means to achieving equality of interests. It is not required where no interests are violated, such as when animals kept in good conditions and have some of their milk or eggs taken. It is also all right to eat animals that have died of natural causes or have been accidentally killed. Singer says something similar about vegetarianism being a means (1980, p. 327).

> I have... moved to a near-vegan diet, but I am not strict about it, and do not advocate veganism to others, or at least not to those who are not already in the animal movement, because at the present stage of development of our society's concern for animals, this seems to be asking more than most people are prepared to give. In other words, to advocate veganism may be counterproductive, in much the way that as we saw above, asking people to give more than, say, 10% of their income to famine relief may be counterproductive. (1999, p. 324)

I think he is wrong. Being a "vegan" is not very much more difficult than becoming a "vegetarian". Singer argues:

> becoming a vegetarian has helped me to be effective in persuading people to reconsider their accepted views about the status of animals. I am frequently asked what I eat, both privately and by the media, and people seem to understand and respect the commitment shown by being a vegetarian. They would, I believe have been less convinced if I had had to go into a long explanation about which farms it is all right to buy meat from, and which it is not all right to buy meat from. (1999, p. 324)

But if we replace vegetarian with vegan in the above passage there is no greater difference other than that vegans are in a stronger position not to be faulted for consistency.

Triviality of taste

Most people who eat meat, eggs and dairy products eat them for one reason: they like the taste. Singer argues:

> the pleasures of taste – which are not the same as the pleasures of eating – are relatively trivial by comparison with the interest of, say, a pig in being able to move freely, mingle with other animals, and generally avoid the boredom and confinement of factory farm life. (1980, p. 333)[291]

Narveson thinks eating meat is not a trivial interest (1977, p. 172). Similarly Regan argues:

> Most of the people I know... go to a great deal of trouble to prepare tasty food or to find "the best restaurants". (1982, p. 45)

But I think Singer's point stands. No matter how much a human enjoys food it seems unlikely that enjoyment can have more importance to them than a life free from pain and misery can have to the animal they are eating/using for food.

As Regan himself points out:

> It is the great new food we gain, not the customary old food we lose, that is the real vegan surprise. (2004, p. 106)

Gruzalski agrees that "a change of eating habits is, for many people, an exciting and deeply satisfying adventure" (1983, p. 261)

Narveson argues "that the vegetarian diet is more limited, since every pleasure available to the vegetarian is available to the carnivore" (1977, p. 14). It is in principle true that all the same foods available to vegans are available to meat eaters. However, "38% of adults will only eat 10 foods".[292] And in practice meat eaters eat meat, they do not eat vegan food (there is a limit to how much people can eat). Thus, by becoming vegan they will experience new foods.

It may be objected that meat eaters will not like vegan food. But "[r]esearch has shown that the more you try a food, the more likely you are to learn to like it" (Healthy Living Club Magazine, January 2007, p. 4). Little and often is the key. If you eat something ten times you are 62% more likely to like it.[293] Tastes can change. We are all familiar with acquired tastes. For instance I now like chilli, I did not use to. Tastes can change and meat eaters are likely to end up enjoying vegan food as much as their previous diet.

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[291] Engel also thinks it is trivial (2001, p. 101).
[292] http://www.bbc.co.uk/sn/humanbody/truthaboutfood/kids/neophobia.shtml

Effect of boycotting meat, eggs and dairy products

Some may object that becoming vegan (or vegetarian) has no effect on the actual number of animals that suffer and are killed. But it is hard to deny that those who buy such products are "accomplices after the fact" (Everitt 1992, p. 48). Gruzalski argues boycotting animal products does have an effect because:

> Profit margins in various parts of the meat industry are so small, for example, that the amount of meat "wasted" by even one person becoming vegetarian would in fact be recycled into other markets, even if only fertilizer markets or pet food markets. (1983, pp. 262-3).

By buying meat you are contributing to its demand (Gruzalski 1983, p. 265). Hare says that "[o]n the face of it, the immediate effect of my not, on a particular occasion, buying meat is to reduce, very slightly, the demand for that kind of meat. It will not directly save the life of any animal, because the animal in question has been killed already" (1999, p. 241). But being a vegan is a lifestyle choice. When you add up all the meat one is not eating the effect is much greater.

Even if we reject the idea that one individual can affect the meat and dairy industry "a large number of consumers rejecting animal flesh must make a difference" (Singer 1980, p. 335).

Vegan and vegetarian alternatives are now big business, business that is no longer being given to those who produce meat. For instance: the total meat free foods market in UK in 2004 is estimated at £626 million, which is a 38% rise on the 1999 level;[294] the tofu market is worth £3 million pa;[295] 15% of home meals are vegetarian.[296]

Singer says becoming vegetarian "allows the animal welfare campaigner to defeat *ad hominem* attacks, for instance: 'How can you object to killing seals when you eat pigs and claves?'" (1980, p. 336). One cannot seriously expect others to become vegan if

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[293] *The Truth About Food*, BBC 2, 25th January 2007.
[294] Mintel Meat Free Foods Report December 2004 Vegetarian Society - http://www.vegsoc.org/info/statveg-sales.html
[295] Cauldron Foods March 1993.

one is not oneself. We can influence others; they may follow our example (Gruzalski 1983, p. 263). Becoming a vegan is a way of demonstrating the strength of one's belief.

Demi-vegetarian

Hare argues that we should be 'demi-vegetarian'. A demi-vegetarian "eats little meat, and is careful what kinds of meat he (or she) eats" (1999, p. 237).[297]

Hare argues by "selecting carefully the meat that they... buy, they might help to cause those practices to be abandoned which occasion most suffering to animals" (Hare 1999, p. 242). He thinks the same applies to eggs and dairy products. This argument is fallacious. These practices are much more likely to abandoned if there is *no* call for meat.

Animals are better off if farmed

A common argument is that animals are better off if we farm them provided they are treated well (Cargile 1983; Devine 1978, p. 492; Ferre 1986, p. 399; Hare 1999, p. 239; Narveson 1983, p. 49; VanDeVeer 1983, p. 159; Weir 1991, p. 21). Either because a) they are better off than they are in the wild, or b) they would not exist at all if we did not breed them (Narveson 1977, p. 162). As I argued above most animals are not better off as a result of being farmed. But suppose they are well treated? This argument may sound convincing at first. But imagine instead we apply it to humans. If I decide to have a child (one that is cognitively impaired so that they are as rational as your average farm animal) am I at liberty to use them for food, to kill them if I treat them well?[298] Obviously not. Once the child exists I have certain (self-imposed) obligations to them. The same can be said of animals.[299]

Hare says "I am fairly certain that, if given the choice, I would prefer the life, all told, of such a fish to that of almost any fish in the wild, and to non-existence" (1999, p. 240). But we cannot know this is what the fish would agree to.

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[296] Heinz 1991.
[297] Stephens also advocates a form of demi-vegetarianism (2003, p. 201).
[298] Telfer makes a similar point (2000, p. 220).
[299] Nozick makes a similar point (1974, pp. 38-9).

But, it is not a good deal for the animals - they have more to lose: their lives. Humans make all the gains with no losses. It is not much of a deal for the animals.

Hare argues that "the moral argument based on the wrongness of *killing* animals collapses completely in the face of the objection that by accepting it we should in practice *reduce* the number of animals, and thus the total amount of animal welfare" (1999, p. 245).

Firstly, the idea an animal has had the "gift of life" bestowed on it "applies, if at all, only where the animal has a reasonable life" (Telfer 2000, p. 220). This is a tiny minority, if any. Saying bringing someone into existence benefits them is incoherent because at the time the benefit is conferred they do not exist to be benefited.

Second, it is simply not true that stopping farming animals will result in less animals or less animal welfare. If we stop farming the space will be inhabited by other (wild) animals (Gruzalski 1983, pp. 254-5; Singer 1999, p. 326). As Gruzalski argues "other animals would experience... pleasures [like those of well looked after farm animals]... without suffering from restricted movement and slaughter" (1983, p. 255). In all likelihood there would be more wild animals as they are smaller and require less food.

ii. Experimentation[300]

The types of experiments performed can be divided into two: therapeutic and non-therapeutic. Therapeutic are those with a medical benefit: drugs, surgery, behavioural experiments etc. Only 24% of research in Britain (using 630,000 animals) was to develop and test medicines.[301] Non-therapeutic are those that do not yield a medical benefit, products include: aftershave, shaving cream, cosmetics, deodorants, soaps, food colourings, clothes dyes, cleaning products, hair dye, shampoos, conditioners etc.

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[300] Many object to animal experimentation (Mayo 1983; Regan 1982a, 2001a, p. 35; Ryder 1975, p. 39; Sprigge 1979, p. 127 (thinks it is alright if it does not cause pain or distress)). Others defend it (Brody 2003; Cohen 1986, 2001; Emlen 2003). Some think only some experiments are justified (Singer 1986a, p. 315).

[301] There were only 28 inspectors.

There are some things that do not clearly fall into either category, examples include sleeping pills or diet pills. However, that there are grey areas does not show these categories are of no use. Most experiments do fall clearly in one or the other: tests for cures for cancer are therapeutic, tests for aftershave aren't.

a. Non-therapeutic experiments on animals

If we are to treat the like interests of all equally then using animals for non-therapeutic tests cannot be justified. Our interests in new shampoos cannot override their interests in not suffering and dying.

b. Therapeutic experiments on animals

Humans' interests in developing cures are incompatible with the like interests of animals living lives free from pain and distress. As such we have a principled reason to reject animal experimentation.

iii. Other uses for animals

Hunting, angling and blood sports

Angling and hunting have two main purposes: providing food and a leisure activity. As was argued above eating animals, including fish, when there are equally nutritious alternatives just because one likes the taste is not justified because it does not give equal consideration to the like interests of all. The same applies to killing animals for recreation. It may be permissible to eat animals if there are no other food sources available because although animals have an interest in living their interest is not as strong as that of a person. But it would only be permissible if we were equally prepared to eat marginal humans in the same situation.

Fashion (including silk)

If animals' interests are to be given like consideration they cannot be harmed or killed to satisfy a desire for fashionable clothes (this includes fur, leather and wool).

What about silk? It is not as clear as it is with animals that insects feel pain, so the argument against using silk is not so strong. However, we cannot know for sure that they do not feel pain so the least risky option here is to give the silk worms the benefit of the doubt and not produce silk. Silk worms may feel pain and if they do then by producing silk we have done something wrong (especially when you consider that producing silk involves boiling silk worms alive). If it turns out they do not feel pain then we have just missed out on a nice fabric.

Bees and honey

Honey bees are now factory farmed in much the same way that animals are factory farmed. The case for not eating honey is much the same as that for not wearing silk. Bees may feel pain, they may not. Until we can be sure they do not we should give them the benefit of the doubt.

Zoos

Zoos are unacceptable. Animals should not be penned up in cages for people's amusement. This is not consistent with giving their interests equal consideration. It may be acceptable to keep some wild animals in captivity but iff doing so is in their interest – usually this will mean the aim is to release them into the wild.

Pets/Companion animals

Keeping any animal in a cage is unacceptable because it does not allow them their interest in freedom. The only pets it is acceptable to keep are those that do not need to be kept in a cage; namely, cats and dogs (which can both be fed on vegan pet food). You should only have cats and dogs if you live in an appropriate location, and can provide them with the appropriate diet, exercise, shelter and companionship.

Pests

People should make every effort to secure their homes against pests – i.e. block up holes where rats or mice might enter. If one finds they are in one's home one should make every effort to remove them humanely. If humane traps do not work it may be permissible to kill pests, but *only* if they are a significant risk to your life or health.

Sports and entertainments involving animals

What about sports or entertainments that do not involve killing animals such as horse riding, circus animals, dancing bears, horse racing, polo and dog racing? These sports/entertainments still often involve a great deal of suffering in the form of broken legs or being made to travel long distances. Animals that are no longer considered good enough to take part in the sports are unceremoniously disposed of. Killing animals or making them suffer for sport is as unjustifiable as killing or harming them for food; it is denying their interests equal consideration

III. Conclusion

I have argued that AMC gives us *a* reason to prefer an account of moral considerability that includes animals. Considerations of moral risk give us *a* reason to prefer accounts of moral status that include animals. That the sentience account is less risky and more epistemically responsible than the alternatives gives us *a* reason to prefer it. Accepting these arguments has important implications for the way we treat animals; we must stop using them for food, science and other purposes.

Appendix 1: The dangers of animal experimentation and the benefits of alternatives

The total number of animals used in animal experiments across the world every year is approximately 180 million (2.8 million in the UK, 13 million in Europe, 148 million in the USA).[302] 60% of procedures were conducted without anaesthetic.[303]

a. Differences between humans and animals

Animal tests are poor at predicting toxicity and potential benefits.[304] Animals react differently to drugs due to differences in their absorption, distribution, metabolism, response to and elimination of drugs. Similarly, diseases artificially induced in laboratories can never be compared to those arising spontaneously in humans. Because of variation among species, the toxicity of one chemical may vary by up to three times between different species. Animal-based research cannot be extrapolated to humans. Some examples:

- 90% of animals used in drug testing are rats and mice. Only 46% of chemicals known to cause cancer in humans cause cancer in mice and rats.[305]
- 11,600 chemicals have anti-cancer properties in mice; none of these have anti-cancer properties in humans.[306]
- None of the 32 drugs used to treat cancer in humans have anti-cancer effects in mice.[307]
- TRAIL, a drug thought to be useful for cancer, was fine when tested on monkeys; it damaged human liver cells in cell cultures.[308]
- 49 drugs have been identified by animal experiments as potential new treatments for strokes; none have proved effective in over 114 clinical trials.[309]
- Botulinum is harmless for cats; it kills mice.[310]

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[302] Statistics compiled by the Dr Hadwen Trust. Leaflet: Global Experiment Statistics. UK statistics: Home Office publication: Statistics on Scientific procedures on Living Animals (published in 2006).
[303] For accounts of the suffering see: Coleman 1994; Goodall et al. 2002; Greek and Greek 2003; Hepner 1994; Langley 1989; Page 1997; Ruesh 1982, 2003; Ryder 1975; Sharpe 1988, 1994.
[304] Dr Hadwen leaflet – Animal Testing of Medicines.
[305] *Fundamental and Applied Toxicology*, 1993, 3, pp. 63-7.
[306] http://www.dlrm.org/resources/alternative.htm
[307] *Science* 1997 No. 278. p. 1041.
[308] *Nature Medicine*, 2000, 6, pp. 502-3.
[309] Stroke 2001, 31, pp. 1349-1359.
[310] 'Vivisection or Science?' by Prof. Pietro Croce

- 100mg of scopolamine does not affect cats and dogs. 5mg will kill a human.[311]
- Amylnitrate dangerously raises the internal pressure of the eyes of dogs; it lowers the pressure within the human eye.[312]
- Novalgin is an anaesthetic for humans; it causes excitement in cats.[313]

b. Animal experimentation is medically unsound and dangerous

The safety of animal testing is far from assured. According to the US regulatory body, the Food and Drug Administration (FDA) 92% of drugs that pass animal testing, subsequently fail in human trials.[314] Around two million Americans become ill every year because of reactions to prescribed medicines – 100,000 die due to these reactions.[315] This death rate:

> makes prescription drugs *the fourth leading cause of death* in America, behind only heart disease, cancer, and stroke... [FDA] estimates that physicians report only 1 percent of adverse drug reactions. (Regan 2003, p. 17)

The situation in the UK is similar. Estimates of numbers vary. One estimate is over 19,000 adverse drug effects annually in Britain (probably only a tenth of the real number) (BMJ, 1988, 296: 761-764). Another is that UK adverse drug reactions account for 6.5% of hospital admissions (250,000 patients), costing the NHS around £466 million a year and killing as many as 10,000 a year.[316]

The British Medical Association (BMA) claims that adverse drug reactions are "significantly "under-reported" partly because health professionals are confused about reporting procedures. 2% of patients admitted to hospital with an ADR die.[317] Data on the side effects of newly launched drugs is limited (Mann, Martin and Kapoor 1998). Examples of drugs proved unsafe despite being tested on animals:

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[311] Ibid.
[312] Ibid.
[313] Ibid.
[314] Challenge and Opportunity on the Critical Path to New Medicine Products, March 2004 – FDA.
[315] *Journal of American Medical Association, 1998, 279, p. 1200.*
[316] British Medical Journal 2004, 329,pp. 15-19.
[317] See Mann, Martin and Kapoor 1998.

- OPREN killed 62 people and had serious side effects for 3,500 others, in the UK alone, including damaging eyes, skin, circulation, liver and kidneys.[318]
- CLIOQUINOL Caused 30,000 cases of blindness and/or paralysis in Japan and thousands of deaths worldwide.[319]
- THALIDOMIDE caused tens of thousands of birth defects worldwide. In adults, thalidomide produced permanent nerve damage.[320]
- ERALDIN patients took this for four years before side effects were detected, including blindness, stomach problems, pains in joints and growths.[321]
- ISOPRENALINE killed at least 3,500 children.[322]
- ENCAINIDE and FLENCAINIDE caused 3,000 deaths.[323]
- METHAQUALONE caused sever psychiatric disturbances leading to at least 366 deaths.[324]
- STILBOESTROL caused cancer in young women.[325]
- Drugs for asthma kill 2,000 people each year.[326]
- There are many other examples: Orabilex; Zelmid; Manoplax; Zomaz; Suprol; Osmosin; Flosint; Debendox and Mydoil.[327]

c. We are missing potentially life saving drugs

Animal testing does not just mean dangerous drugs are developed: it means useful ones are not. For example, the foxglove (digitalis) was formerly considered to be dangerous for the heart because when tested on dogs it raised their blood pressure. For this reason its use, which is of undisputed value for the human heart, was delayed for many years.[328] Similarly, corneal transplants were delayed for nearly 90 years because of the results of animal studies, the breakthrough came from clinical work.[329]

The most significant example is penicillin, which has saved millions of lives:

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[318] http://www.dlrm.org/resources/victims.htm
[319] Ibid.
[320] Ibid.
[321] Ibid.
[322] Dr Hadwen leaflet – Necessary Evil.
[323] Ibid.
[324] Ibid.
[325] Ibid.
[326] Ibid.
[327] Ibid.
[328] http://www.dlrm.org/resources/alternative.htm
[329] http://www.dlrm.org/speeches/sp10.htm

> Fleming's... discovery of penicillin owed nothing to animal experimentation and he mentions testing penicillin only on a rabbit, a mouse and (probably one) man. (Ryder 1975, p. 111)

It was lucky Fleming did not test it on animals or we may never have received its benefits:

> penicillin is extremely poisonous to guinea-pigs, and it has been claimed that if it had been routinely screened on laboratory animals as all new drugs are today, then penicillin would never have reached the stage of a clinical trial. (Ryder 1975, p. 111)

How many more drugs/procedures have been lost due to animal experimentation?

d. Alternatives

There are several organisations devoted to non-animal research (Dr Hadwen Trust for Humane Research; FRAME; Humane Research Trust; Lord Dowding Fund For Humane Research). Instead of using animals those committed to non-animal research use a whole range of non-animal techniques.

There are many alternative methods of testing the safety and efficacy of drugs/procedures: biotechnology (e.g. toxicogenomics); epidemiology (the study of disease and its spread); computers for the construction of mathematical models; cell and tissue cultures in vitro; organ culture; analytical technology, molecular research, post mortem studies; ethical clinical research with volunteer patients and healthy subjects; recent advances in the design of functional brain imaging techniques such as Positron Emission Tomography (PET), functional Magnetic Resonance Imagery (fMRI), Electroencephalography (EEG) and Magnetoencephalography (MEG) allow the brains of humans to be studied, with little or no discomfort.[330]

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[330] See: http://www.dlrm.org/ and http://www.drhadwentrust.org.uk/ and www.navs.org.uk

These alternatives have a massive advantage over using animals – there is NO species difference to worry about. They are already being used to great effect:

> Alternative methods are regularly replacing animal experiments... For example, cell cultures have replaced the use of monkeys in polio vaccine production; pregnancy tests are now conducted in test-tubes instead of in rabbits; batches of insulin are analysed chemically and not by tests in mice; and cell culture methods have replaced the use of thousands of live mice in the production of monoclonal antibodies.[331]

The means of transmission and prevention of AIDS is due entirely to epidemology.[332] Epidemology identified links between smoking, high fat and sugar diets and cancer; links between high fat and salt diets and lack of exercise and coronary heart disease.[333]

Many researchers are unaware of alternatives or are unwilling to use them or forced to use animals due to legal requriements. Animals are cheaper than more sophisticated or technically demanding non-animal methods.[334]

e. Prevention

Anyone concerned about human welfare should be concerned to prevent the need for medical cures arising. Preventative medicine works.

The common killers in the west are heart disease, cancer, and obesity. Such diseases are largely caused by people eating an unhealthy diet, taking too little exercise and/or smoking. Poor diet may be responsible for up to a third of all cancer deaths (Department of Health, 2000). As I will argue below adopting a vegan diet can prevent disease.[335] If we prevented people living such unhealthy lifestyles (not necessarily by coercion) we would not only prevent humans suffering from these diseases but it would, to some extent, obviate the need for cures. Prevention is a policy that could be

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[331] http://www.drhadwentrust.org.uk/
[332] www.navs.org.uk
[333] www.navs.org.uk
[334] http://www.drhadwentrust.org.uk/
[335] PCRM advocate prevention through nutrition - http://www.pcrm.org/about/

productively used in developing countries. The biggest killer in Africa is Aids. This is preventable through abstinence, monogamy or effective contraception.

Prevention is better than cure. Not only is it a more efficient use of resources, it stops people from suffering in the first place.

Appendix 2: Health

There is plenty of evidence that vegan diets are healthy and can meet all our nutritional needs (Clark 1977, p. 44fn; Engel 2001, p. 100; Regan 2003, p. 13; Rodd 1990, p. 139; Singer 1980, p. 334). The FDA says veganism and vegetarianism are "positive healthful dietary options" (Regan 2004, p. 107).[336] The American Dietetic Association and Dieticians of Canada agree that vegan diets are appropriate for all stages of life including pregnancy, lactation, infancy, childhood, and adolescence.[337] The BMA say that vegan diets provide all the nutrients required for good health (British Medial Association 1986, p. 49). And "iron deficiency is no more common in vegetarians and vegans than in meat eaters" (British Medial Association 1986, p. 49; also see Sanders et al. 1978, p.14).[338]

Every nutrient humans need can be gained from a vegan diet. The lists given below do not detail all vegan sources, just some of the most common.

Protein: nuts, beans, pulses, seeds, grains, Soya milk, Soya beans, tofu, lentils, chickpeas, peas, wholemeal flour, wholemeal bread, rice, sesame seeds, pumpkin seeds, sunflower seeds, cereals, baked beans, quinoa, wheat, oats, barley, buckwheat, millet, pasta, bread.[339]

Fat: nuts, seeds, sunflower oil, olive oil, flaxseed oil, vegetable oils.

Fibre: grains, nuts, beans, pulses, wheatgerm, bread, pasta, rice, oats, pulses, fruits, vegetables.

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[336] See also: Davis and Melina 2000; Jamieson 2005; Klaper 1987; Langley 1988; Neal and Raymond 1998; Rowley and Hartvig 2003; Walsh 2003.

[337] *Journal of the American Dietetic Association,* June 2003.

[338] There is anthropological evidence that humans have mainly survived off non-animal based foods (Amato and Partridge 1989, p. 2; Stephens 2003, p. 206).

[339] Protein is composed of 22 amino acids; eight of which are essential because they cannot be made by the human body. It used to be thought protein gained from meat, eggs and dairy products was of a higher quality than those from plants. However, one can get both essential and non-essential amino acids from plant sources. So as long as one gets protein from a variety of sources the quality is just as good as that derived from meat, eggs and dairy products (some vegetable proteins such as tofu and quinoa are complete proteins – containing all 8 essential amino acids).

Carbohydrate: grains, rice, wheatgerm, cereals, oats, nuts, pulses, bread, potatoes, starchy vegetables, beans, pasta.

Vitamins

Vitamin A: green leafy vegetables, carrots, margarines, sweet potato, red chillies, parsley, peppers, spinach, butternut squash, watercress, spring greens, tomatoes, mangoes, cantaloupe melon, apricots, broccoli.

Vitamin B1 (Thiamin): yeast extract, wheat germ, fortified breakfast cereals, sunflower seeds, peanuts, wheat bran, sesame seeds, soya flour, peas, pine nuts, pistachio nuts, cashew nuts, wholemeal bread, wholemeal pasta, kidney beans, red split lentils, brown rice, soya beans.

Vitamin B2 (Riboflavin): yeast extract, fortified breakfast cereals, almonds, wheat germ, wheat bran, mushrooms, split peas, spinach.

Vitamin B3 (Niacin): yeast extract, fortified breakfast cereals, wheat germ, wheat bran, peanut butter, peanuts, nuts, sesames seeds, sunflower seeds, almonds, wholemeal bread, wholemeal pasta, brown rice, potatoes.

Vitamin B5 (Pantothenic Acid): dried yeast, broad beans, peanuts, wheat bran, sesames seeds, mushrooms, pecan nuts, peanut butter, soya flour, walnuts, hazelnuts, avocado, cashew nuts, dates, apricots, wholemeal bread.

Vitamin B6 (Pyridoxine): yeast extract, fortified breakfast cereals, wheat germ, wheat bran, dried yeast, muesli, sesame seeds, walnuts, hazelnuts, peanuts, soya flour, avocado, bananas, wholemeal bread.

Vitamin B12 (Cobalamin): marmite, fortified breakfast cereals, fortified soya milks, fortified vegan margarines, vitamin supplements.[340]

Vitamin C (Ascorbic Acid): oranges, parsley, red peppers, green peppers, guava, spring greens, strawberries, watercress, cabbage, Brussels sprouts, kiwi, red cabbage, broccoli, tomatoes, cauliflower, sweet corn, nectarines, mango, grapefruit, peaches, spinach, spring onions, mango juice, sweet potato, courgette, broad beans, garlic, peas.

Vitamin D: sunlight on the skin (this is where most people get most of their vitamin D), fortified margarines, fortified breakfast cereals, fortified soya milk.

Vitamin E: wheat germ oil, sunflower oil, safflower oil, sunflower seed, palm oil, margarines, hazelnuts, almonds, tomatoes, rapeseed oil, wheat germ, soya oil, peanut oil, pine nuts, peanuts, brazil nuts, peanut butter, walnuts, avocados, sesame seeds, spinach, broccoli.

Vitamin K: green leafy vegetables, seaweeds, kelp, spinach, lettuce, soya beans, cauliflower, cabbage, broccoli, wheat bran, wheat germ, green beans, asparagus, oats, potatoes, peas, strawberries.

Minerals

Calcium: dark green leafy vegetables (e.g. spring greens and kale), sesame seeds, tofu (that has been set with calcium), seaweed, carob powder, almonds, figs, soya flour, parsley, spinach, watercress, tortilla chips, muffins, hazelnuts, pineapple, white bread, sunflower seeds, muesli, apricots, red kidney beans, haricot beans, broccoli, oatmeal, baked beans, oranges, cauliflower, split peas, fortified soya milk.

Chloride: salt, stock cubes, soy sauce, yeast extract, bread, peanut butter.

Chromium: brewer's yeast, bread, black pepper, apples, chilli, potatoes, spaghetti, spinach, oranges.

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[340] Some argue B12 can be gained from natural sources such as sprouted seeds or miso or other plant products that are the result of fermentation. However, general advice is to ensure you get 3mcg a day from fortified foods or supplements.

Copper: dried yeast, cocoa powder, sunflower seeds, cashew nuts brazil nuts, pumpkin seeds, sesame seeds, walnuts, nine nuts hazel nuts, pecan nuts, peanuts, almonds, currants, mushrooms, peaches.

Fluoride: apples, asparagus, barley, beetroot, cabbage, corn, citrus fruits, garlic, oats, rice, sea salt, spinach, tea, watercress, tap water (fluoridated).

Iodine: bread, peppers, cereals, fruit, lettuce, peanuts, raisings, iodised salt, seaweed, spinach, green leafy vegetables, kelp (two kelp tablets a week is sufficient to meet iodine needs).

Iron: whole grains, leafy green vegetables, dried fruits, beans, pulses, wheat bran, sesame seeds, wheat germ, tofu, Soya beans, cous cous, Soya milk, wholemeal bread, legumes, peanuts, watercress, spinach, red kidney beans, houmous, peas, broccoli, brown rice, nuts, pulses, grains, seeds, lentils, fortified breakfast cereals, quinoa.

Magnesium: wheat bran, cocoa powder, seaweed, brazil nuts, sunflower seeds, sesame seeds, almonds, pine nuts, dried yeast, peanuts, cashew nuts, wheat germ, walnuts, hazelnuts, houmous, tofu, spinach, brown rice, celery, quinoa.

Manganese: wheat germ, wheat bran, pine nuts seaweed, hazel nuts, pecan nuts, oatmeal, mushrooms, muesli, sunflower seeds, peanuts, wholemeal bred, almonds, cashew nuts, sesame seeds, wholemeal pasta, brown rice, watercress, whit bread, spinach, houmous, red kidney beans.

Molybdenum: apricots, barley, wholemeal bread, cabbage, carrots, cereal, coconut, corn, garlic, legumes, lentils, oats, peas, potatoes, rice, spinach, sunflower seeds.

Phosphorus: dried yeast, what bran, wheat germ, yeast extract, pumpkin seeds, sesame seeds, pine nuts, sunflower seeds, brazil nuts, cashew nuts, almonds, walnuts, oatmeal, peanut butter, quinoa.

Potassium: yeast extract, dried yeast, apricots, peaches, raisins, what germ, pine nuts, almonds, parsley, hazel nuts, sunflower seeds, peanuts, brazil nuts, potatoes, avocadoes walnuts, bananas, carrots, oranges, spinach, peas, whole grains.

Selenium: brazil nuts, sunflower seeds, wholemeal bread, crumpets, houmous.

Sodium: salt, bicarbonate of soda, stock cubes, soy sauce, most processed foods.

Sulphur: peanuts, brazil nuts, mixed nuts, peaches, almonds, walnuts, white bread, Brussels sprouts, red kidney beans, red cabbage.

Zinc: wheat germ, wheat bran, dried yeast, seeds, beans, cereals, pumpkin seeds, pine nuts, cashew nuts, pecan nuts, sesame seeds, brazil nuts, tofu, quinoa.

Other Nutrients

Biotin: wheat germ, wheat bran, dried yeast, walnuts, peanuts, nuts, almonds, soya beans, oatmeal, muesli, cashew nuts, brazil nuts.

Choline: barley, black eye peas, cabbage, cauliflower, chick peas, dried yeast, lentils, lettuce, oatmeal, peanuts, potatoes, brown rice, soya beans, spinach, split peas, wheat germ.

Omega-3 (alpha-linolenic acid): Canola oil, flaxseed oil, hazelnuts, pecans, Soya oil, sunflower oil, green leafy vegetables, walnuts, quinoa, linseed, rapeseed oil, walnut oil.

Omega-6 (linoleic acid): flaxseed oil, hempseed oil, canola oil, corn oil, evening primrose oil, nuts, olive oil, safflower oil, soya oil, Soya beans, sunflower oil, quinoa, walnut oil.

Flavonoids: Apricots, Beetroot, black berries, broad beans, broccoli, cabbage, cherries, garlic, grapes, grapefruit, lemons, melon, onions, oranges, parsley, peppers, plums, potatoes.

Folic Acid (folate): dried yeast, yeast extract, soya flour, wheat germ, fortified breakfast cereals, sweet corn pinto beans, muesli, Brussels sprouts, peanuts, sesame seeds, spinach, hazel nuts, cashew nuts, walnuts, spring greens, wholemeal bread, oatmeal, green beans, lettuce, soya beans, oranges.

Inositol: barley, black eye peas, wholemeal bread, cabbage, chickpeas, dried yeast, grapefruit, lentils, lettuce, melon, oatmeal, onions, oranges, peanuts, peas, raisins, brown rice, soya beans, strawberries.

a. A vegan diet is healthier

A strict vegan diet is healthier than the alternatives (Engel 2001, p. 100; Stephens 2003, p. 203; http://www.pcrm.org/health/veginfo/nutritionfaq.html). In 1999, 1.29 million, or 54%, of all U.S. deaths were attributed to diseases for which consumption of animal products represents a substantial risk factor.[341] Vegan diets are lower in saturated fat, cholesterol, and higher in carbohydrates, fibre, magnesium, potassium, folate, and antioxidants such as Vitamins C and E and phytochemicals. This leads to better overall health. According to the BMA" [v]egans have lower rates of obesity, heart disease, high blood pressure, large bowel disorder and cancers and gallstones. Cholesterol levels tend to be lower" (British Medial Association 1986, p. 49; also see Fisher et al. 1986). One study of 11,000 people showed that vegetarians have around 40% less chance of developing any kind of cancer 30% less chance of coronary heart disease and have a 20% chance of living longer (Thorogood et al. 1994).

The main causes of death in Europe and the US are heart disease and cancer, all or which are:

> positively correlated with the consumption of meat and animal products... vegetarians tend to outlive meat-eaters by seven years and aren't prone to other

[341] Public Health Service. USPHS, National Center for Health Statistics "Deaths: Preliminary Data for 1999," National Vital Statistics Report, June 26, 2001. (The estimate was obtained by adding the number of deaths caused by each of 14 diseases for which physicians specializing in the relationship between diet and health have identified meat consumption as a substantial risk factor. The number of 1999 deaths by each disease came from the National Vital Statistics Report published in June 2001 by the National Center for Health Statistics of the U.S.)

degenerative diseases such as diabetes and stroke which slow people down and make them chronically ill. (Engel 2001, p. 100)

b. Vegan diet as cure

Vegan diets have been used as a treatment for many diseases including diabetes, angina, high blood pressure, arthritis and kidney disease. For instance a study published in *Diabetes Care*, found 43% of people with type-2 diabetes who followed a low fat vegan diet for 22 weeks reduced their need to take medication compared with only 26% who followed the diet recommended by the American Diabetes Association.

Those with hypertension were put on a vegan diet: out of 26 patients 20 gave up their medication completely, the other six reduced it, mostly by half; 50% felt much better, 30% felt completely recovered; their blood cholesterol dropped by 15% on average; the savings on drugs and hospitalisation were around £1,000 a patient (Lindahl et al. 1984).

A vegan diet has been shown to improve the symptoms of rheumatoid arthritis (Hafstrom et al. 2001). Vegan diets effectively treat clogged arteries by reducing blockages (Ornish, D. al. 1990).

c. Meat and dairy produce can lead to poor health and weight gain

Many omnivores eat far too much protein, which is converted into toxins by the body. The more protein you eat the more risk you are at from degenerative diseases such as heart disease, cancer and diabetes (Campbell et al. 1989). The average UK diet contains too much saturated fat (WHO recommends we should cut down), the major contributor to this is dairy products. A diet high in saturated fat greatly increases the risk of heart disease. Vegetable fats tend to have less saturated and more mono-saturated and unsaturated fats.

d. Meat, eggs and dairy products are unhealthy

Factory farmed animals, and those who eat them suffer from many diseases: salmonella (one third of all chickens are infected (Erlichman 1994)), Avian Flu/Bird Flu, BSE,

CJD, campylobacter, E-coli, BIV (an AIDS-type virus), foot and mouth disease; 53% of cow carcasses and 83% of pig carcasses are infected with E-coli. More than 100 people have now died of nvCJD. And estimates state the death-toll may rise to 10,000.

85,000 people in 1995 had food poisoning resulting in around 260 deaths.[342] Nearly "95 percent of all food poisoning cases arise because of infected meat, eggs or dairy products" (Gellatley 1996, p. 117). There are high levels of pesticides (which have been linked with cancer) in meat, eggs and dairy products; some estimates put the figure at 14 times the level in vegetables (Elliot 1990).

e. Calcium and osteoporosis

Too much animal protein has been linked to osteoporosis (Gellatley 1996, p. 125). A high protein diet, especially derived from animal foods, causes calcium loss in the body. The higher sulphur-to-calcium ratio of meat increases calcium excretion, and a diet rich in meat can cause bone demineralisation, but vegetable protein may *prevent* calcium loss (Bresla et al. 1988; Linkswiler et al. 1981).

Eskimos consume more calcium than most others yet have one of highest rates of osteoporosis (Mazess 1974). Osteoporosis is rare in China despite the fact they have the one of the lowest intakes of calcium.[343] In one study giving boron (found only in fruit, leafy vegetables and legumes) helped post-menopausal women reduce calcium loss by 40% (Nielsen et al. 1987). Dr Oski says cow's milk is overrated as a source of calcium, often contaminated with traces of antibiotics, and can cause allergies and digestive problems, and it has been linked to juvenile diabetes.[344]

f. Heart Disease

Lifelong vegans are 57% less likely to get heart disease than meat eaters (Thorogood et al. 1987). Vegetarians are between 24 and 50% less like to die of heart disease than meat eaters (Burr and Butland 1988; Burr and Sweetnam 1982; Chang-Claude 1992; Langley 1988, p. 43; Snowdon et al. 1984).

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[342] Communicable Disease Reports, Communicable Disease Surveillance Centre, Reports for 1995.
[343] "Challenge to US habits – major Chinese study backs plant based diet", *Herald Tribune*, 10 May 1990.

g. Cancer

25% of people in England will die of cancer; more than 33% will develop cancer at some stage in their lives. Cancer is the most common cause of death in the UK (Department of Health, 2000). WHO have determined that dietary factors account for at least 30% of all cancers in Western countries and up to 20% in developing countries.

Cancer rates are between 25% and 50% lower in vegetarians (Chang-Claude et al. 1992, 1993; Ornish, Roberts, Spock et al. 1995; Thorogood 1994). There are significant reductions in cancer risk among those who avoid meat (Barnard et al. 1995).

There is a link between cancer and protein, the more protein you eat the more likely you are to get cancer; meat eaters eat too much protein (Campbell & Campbell 2004).

Little research has been done on vegans but what has been done indicates vegans are at a much lower risk of developing cancer. A vegan diet may lower the risk of developing prostate cancer; studies suggest that the risk of prostate cancer is increased by high levels of the growth factor IGF-I which is 9% lower in vegans than in meat-eaters.[345] Prostate cancer rates are generally low in countries with a low consumption of meat and dairy products. There is evidence that consuming mostly a plant-based diet has a protective role against cancer (Krajcovicova-Kudlackova et al. 2005). A Western diet (characterised by milk and meat) increases the levels of hormones associated with breast cancer (Adlercreutz, 1990). Epidemiologically, the intake of animal source food correlates with the country-by-country incidence of cancer; the less animal source food per capita, the lower the cancer rate.[346]

An adequate amount of fibre can help protect against many diseases including colon cancer: fibre is only available in plant foods. WHO recommends people eat a minimum of 18 grams and a maximum of 54 grams of fibre a day. Vegans tend to consume 40 to

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[344] "Dr Spock sours on cow milk for babies", *Toronto Star* 30.9.92
[345] Vegan diet 'cuts prostate cancer risk' - http://news.bbc.co.uk/1/hi/health/782959.stm
[346] http://www.vegsource.com/harris/cancer_vegdiet.htm

50 grams of fibre a day, vegetarians 30-40 grams and meat eaters only 10-20. Thus "vegetarians and vegans suffer less from cancers of the bowel" (Clark 1977, pp.176-77).

Cancer specialist Dr Rosy Daniel thinks "[t]he best move... is to become completely vegan."[347]

[347] http://www.viva.org.uk/guides/vhfk04.html

Appendix 3: Starving people

According to the UN Food and Agriculture Organisation (FAO), more than 25,000 people die of starvation every day (9,125,000 a year), and more than 800 million people are chronically undernourished.[348] Yet:

> if Americans were to reduce their meat consumption by only 10 percent for one year, it would free at least 12 million tons of grain for human consumption – or enough to feed 60 million starving people. (Stephens 2003, p. 204)

Animals do not produce food: they waste it.[349] In the west we feed most of our grain to animals which convert it into meat, milk etc. This is extremely inefficient. If we all become vegan there would be enough food to end world hunger (Singer 1980, p. 333-4, 1993, p. 220; Weir 1991, p. 25; Hudson 1993, p. 90). Only around 10% of the energy obtained from the food farm animals eat is converted into meat or dairy produce – 90% is wasted (Singer 1993, p. 62). Estimates vary. One study shows beef raised on feedlots may convert as little as 2.5% of their gross feed energy into food for human consumption and only 5% of the protein in feed being converted to edible animal protein (Smil 2000).

40% of cereal that is harvested is fed to livestock:

> There is more than enough to feed the current world population on a vegan diet, nowhere near enough for a standard western meat eater's diet (Tickell 1991).

Around 60% of EC animal feeds and 90% of protein concentrates used for animal feed in Britain are imported from the developing world (Moyes 1985; Yates 1986, p. 16).

Dennis Avery, Director of the Centre for Global Food Issues argues "The world must create five billions vegans in the next several decades, or triple its total farm output without using more land" (1999).

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[348] Others put the numbers much higher - Mark R. Elsis puts it at 35,615 a day – see http://www.starvation.net/

[349] VegFam and HIPPO are charities working towards easing the world famine through a vegan solution.

Appendix 4: The Environment

Farming animals for food damages the environment.

a) Land use

Raising animals for food takes up more than two-thirds of agricultural land (de Haan et al. 1998). There is only a limited amount of land suitable for growing crops. A varied vegan diet with plenty of fruit and vegetables, grains and legumes uses half the amount of land, a vegetarian diet uses one fifth of the land needed for a European omnivorous diet (Gerbens-Leenes et al. 2002).

b) Consumption of fossil fuels

Factory-farming consumes huge amounts of fossil fuels (de Haan et al. 1998; Gellatley 1996, p. 182; Pimentel 1975; Singer 1993, p. 287; Southwell and Rothwell 1977). For instance, beef takes 15 times more fuel as producing corn (Heitschmidt et al. 1996).

c) Pollution: Greenhouse gasses

Carbon dioxide

Producing plant foods creates a lot less CO2 because it requires a lot less fuel.

Methane

Methane is 20 times more effective at warming the globe than CO2. The US Environmental Protection Agency says livestock are responsible for 26% of methane.

Nitrous Oxide

Nitrous oxide comes from chemical fertilisers used to grow animal feed (Singer 1993, p. 287). Nitrous oxide is 150 times more damaging than CO2 (Boyle and Ardill 1989, p. 29). Manure is thought to be responsible for 7% of nitrous oxide.

d) Deforestation

It is estimated that the growing use of land for agriculture accounts for more than 60% of worldwide deforestation (Goodland and Pimentel 2000).

It is not only rainforests that are destroyed by farming. Roughly a quarter of the forests of central America have been destroyed between 1960 and 1993 (Singer 1993, p. 287).

e) Desertification

Cutting down trees and over-grazing contribute to desertification. When the forest cover is removed the delicate layers of topsoil are put at risk and often washed away.

The UN has estimated that over 250 million people are affected directly by desertification. One billion people are at risk of malnutrition and famine because of desertification.

f) Consumption of water

Only 2.53% of the earth's water is fresh and most of this is inaccessible - two-thirds is captured in glaciers and permanent snow. The remaining fresh water is almost entirely made up of groundwater.[350]

Meat and dairy production is extremely inefficient in turning water into food. In the US nearly half of water consumed is used to grow food for livestock (Rifkin 1992). Producing beef uses over thirty times the amount of water needed to produce the same amount of wheat (Beckett and Oltjen 1993). Some estimates suggest the difference could be even greater.[351]

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[350] Water for People, Water for Life, Executive Summary, The UN Water Development Report, World Water Assessment Programme, 2003

[351] Goodland and Pimentel 2000; the New Scientist Global Environmental Report says producing 1kg of beef uses approximately 100,000 litres of water

It has been estimated that a vegan diet requires only one tenth of the water required for a meat eater. 15,000 litres of water are required to produce one day's food for a meat eater, vegetarians only require 5,000 litres and vegans only 1,500 litres.

g) Pollution of water

Clean water is an increasing problem. According to UNICEF nearly a sixth of the world's population do not have access to clean safe water. But clean water is not only a problem in the developing world. Drinking water "frequently fails to meet the statutory levels and the *Friends of the Earth* estimate that four to five million Britons sometimes drink water containing nitrate pollution higher than the EC safety standards" (Gellatley 1996, p. 174). Production of meat, eggs and dairy products is a major contributory factor to nitrate in the soil. Animals excrete nitrate and phosphate and this can and does lead to contaminated water supplies (Gellatley 1996, p. 176). Two hundred million tonnes of animal manures are used as fertiliser every year. These can leak into the local rivers and cause the growth of algae that use up all the oxygen thus killing the fish. The ammonia in slurry contributes to acid rain.

Animal slurry can be up to 100 times more polluting than untreated domestic sewage. Silage effluent (the liquid produced when preserving crops harvested while they are still green so that they can be kept for fodder) is up to 200 times more polluting.[352]

h) Wild animals

Industrial livestock production contributes to species loss (de Haan et al. 1998). Similarly aquaculture exacerbates the problems of over-fishing (Naylor et al. 2000). In its assessment of wild salmon, grilse and sea trout numbers, the Scottish Executive states "[d]isease and water pollution in particular may be partially attributed to fish farming practises".[353]

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[352] DEFRA, 'Farm Waste and Manures' www.defra.gov.uk/environ/pollute/farmwaste.htm, accessed 29/1/03

[353] Scottish Executive, Scottish Environment Statistics Online: Wildlife, Catches of wild salmon, grilse and sea trout: 1986-2001 - commentary, www.scotland.gov.uk/stats/envonline

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