

# MIRROR PRODUCTION

*of*

## “The Rights of Animal Persons”<sup>1</sup>

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### **Introduction**

There are three main claims to animal liberation: (1) animal rights, (2) utilitarianism, and (3) the feminist ethics of care. All three versions claim to combat *speciesism* in the world of intellectual ideas. It will be interesting to see if those who defend these philosophies successfully guard against speciesism. However, a prior question is necessary to ask and answer first.

### **Does Speciesism Exist?**

Interestingly, almost all philosophers who oppose animal liberation admit that speciesism—arbitrary and harmful discrimination on the basis of species or species characteristics—is morally wrong. How can one agree that speciesism is wrong while still opposing animal liberation? The answer is that in the views of these thinkers, they do not discriminate on the basis of species at all. Rather, they claim that animals are treated as they are because they have, for example, less rationality, moral capacity, or language abilities. So this is not discriminating, they would say, on the basis of species, but rather, say, on the basis of rationality. This is actually the most common way of seeking to evade the accusation that one is a speciesist: by discriminating on the basis of other characteristics. It is also the most

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widespread way of trying to justify the way animals are traditionally used by humans for food, experiments, clothing, and so on.

However, we can test whether these thinkers impartially treat animals according to, say, their rationality (in fact we will use rationality as an example, since it is the most commonly cited characteristic in this context) by considering humans who also have less rationality than the average human: the mentally disabled. These humans may be mentally challenged from birth, comatose, senile, deranged, or they may have had a stroke. Let us now try to analyze the harmful discrimination associated with oppression such as racism and sexism, ranging from the least harmful to the most harmful. Then we will see how animals and mentally disabled humans fit into this scheme:

**Level 0 – No Harmful Discrimination**

**Level 1 – Minor Harmful Discrimination** (e.g., insults)

**Level 2 – Major Harmful Discrimination** (e.g., inferior food or clothing)

**Level 3 – Very Major Harmful Discrimination** (e.g., can be used to make food or clothing, but ONLY on the condition that such use is kept “humane” or without “unnecessary suffering”)

**Level 4 – Extreme Harmful Discrimination** (e.g., same as 4, but no requirement to treat “kindly” or “without cruelty” as in Level 3)

Now I make what I call the “presumption of equality.” That is, I assume that both animals and mentally disabled humans should be treated with equal respect unless a clear and convincing reason can be given to the contrary. For since these beings are alike capable of feeling pleasure and pain, they can equally be benefited or harmed, roughly speaking. However, what we find, when we look at mentally disabled humans and animals, are very different forms of treatment. We are supposed to treat mentally disabled humans at Level 0, or without harmful discrimination (that is the cultural ideal; in practice, the disabled often get short-changed). However, animals are considered by most people to be fit to treat according to Level 3, since they are used in the ways that are outlined at that level.

Most commonly, in fact, animals are treated at Level 4. That is because most animals who die at human hands are “farmed,” and most “farmed” animals are treated according to the non-existent mercies of “factory farming.” These animals are kept confined in stifling, dark, crowded and disease-ridden conditions since that costs less rent, fed antibiotics so they stay healthy enough, are not permitted exercise so their flesh remains tender, are kept in filth since it costs more to clean, are fed awful food since that is cheaper, are not given health care since that is cheaper, and the same of course goes for amusements or being given beds of straw which are virtually non-existent on modern “factory farms.” In other words, animal treatment is very much at odds with the “presumption of equality,” according to which animals too ought to be treated at Level 0. Such treatment, in fact, is part of what animal rights advocates seek. But traditional thinkers do not after all sort out beings on the basis of, say, rationality, otherwise the animals and mentally disabled humans would be treated the same. However, they are not.

Still, philosophers have tried to provide “special reasons” why animals and mentally disabled humans should be treated so differently. For example:

(1) *Humans are normally rational, so the mentally disabled ones should be treated as if they are rational too.* On this logic, if most students pass an exam, everyone should be marked as successful. In other words this sort of reasoning does not seriously sort according to “rationality.”

(2) *It is tragic if humans lack rationality, but not if animals do, since animals do not normally have rationality.* This objector is supposedly concerned about tragedy in a non-speciesist way. Yet it is always tragic to suffer violence, and animals suffer violence when they are killed for a taste of their flesh. Or certainly we call that violence if that were done to a human, and it would be speciesist not to apply the same description to animals who are killed for food. This objector should, in all consistency, oppose the tragedy of violence.

(3) *Animals do not look like humans.* This is as superficial as racism, or discriminating against people disfigured by accidents.

(4) *Many people care about disabled humans.* Many care about animals too. In fact ethics is not based on however people happen to care or slavery would have once been ideal.

(5) *It is “natural” to prefer those of one’s own species over others.* It is natural to prefer to assist members of one’s own family too, but that does not justify treating non-family-members with violence. We cannot justify violence against animals in this manner either.

(6) *If we harmfully discriminate against mentally disabled humans, then normal humans are next.* This idea ignores the fact that humans are adept at discriminating: under Apartheid in South Africa, a system of racist treatment, only the slightest skin color could radically affect one’s destiny. In China, female infants are killed without endangering the general population. It is also noteworthy that this reasoning is totally selfish and gives no respect to mentally disabled humans themselves except insofar as that might benefit “normal” humans. (There are other, no more convincing “special reasons” which I consider elsewhere.)

I conclude that speciesism exists since the only difference between treating the mentally disabled at Level 0 as a cultural ideal and animals very harmfully at Levels 3 or 4 is *species*. Moreover, the special reasons given in favour of such discrimination do not hold up to serious scrutiny, and do not even bring the presumption of equality into question, let alone do they imply that it should be overturned.

### **Animal Welfare or Animal Illfare?**

The levels of harmful discrimination outlined above have interesting implications for how we think about animals and ethics. What our culture calls “animal welfare” is actually Level 3: “very major” harmful discrimination. Animal “welfare” suggests that animals’ wellness or good should be championed above all. Yet animals killed for food or clothing suffer an ill fate. So this is animal illfare that we are talking about rather than animal welfare if we avoid any speciesist descriptions. Would we say that people who advocate a less harsh kind of black slavery are “black welfarists”? Nonsense. If a group of hikers were kidnapped by underground savages called “Morlocks,” and then enslaved for food purposes, skins, experiments, forced amusement, and so on, we would not say these people are doing “well.” We would say they are doing badly. It would not matter if the Morlocks tried to ensure that the humans were given comfortable rooms before slaughter. We would not say that a

mentally disabled woman in the group was fine because she did not know she was going to be killed. Sometimes animal “welfarists” refer to the suffering involved in killing animals for food as “necessary,” but certainly it is not necessary for animal *welfare*. We would never consider it kind, humane, etc. to eat mentally disabled humans, experiment on them for cures, etc.

We need to move beyond animal illfare, and speciesism in general, just as we need to overcome racism, sexism, homophobia, ableism, and other forms of harmful discrimination. So what form should animal liberation take? There are already a number of views on this subject.

### **Utilitarian Animal Liberation?**

Philosopher Peter Singer started the animal liberation movement when he published a book entitled *Animal Liberation* in 1975. The trouble is, Singer agrees that both animals and mentally disabled humans can be killed for medical research. Why does he think this? First it is important to understand what utilitarianism is. Utilitarians believe that it is morally right to maximize good and minimize bad overall. Usually they think of good as happiness and bad as suffering. So in other words, when it comes to animal research, they would say that it prevents the most suffering to develop endlessly repeatable cures by experimenting on a limited number of animals. This idea ignores the problems of predicting treatments that are safe and effective for human beings by subjecting animals to experiments. For example, sheep can consume gallons of arsenic without ill effect. When animals and humans are alike subject to a toxin, it cannot be predicted in advance, and that is the whole point of animal experimentation for medical purposes: to predict the results of treatments for humans by experimenting on animals. Such treatment of mentally disabled humans is contrary to the Nuremberg Code of 1947, enacted because of the Nazi experiments on humans during the Second World War. I argue that utilitarianism does not truly present a form of “animal liberation,” since that idea is meant to refer to liberating animals in general. However animals subjected to invasive studies in laboratories are hardly “liberated.” The most straightforward way to combat utilitarian overriding of individual dignity is individual rights which make individuals “inviolable.”

### **Traditional Rights Views**

The main problem with older rights theories is that they do not offer the kind of protection of individuals that is envisioned by rights theorists. The six main bases for rights that have been used are: (1) intuition, (2) compassion, (3) tradition, (4) Immanuel Kant’s theory, (5) John Rawls’ theory, and (6) Alan Gewirth’s theory. Briefly, an “intuition” is a fundamental view in ethics which is not justified by any reasoning, but is usually considered to be right nonetheless, perhaps because it is thought to be “self-evidently true.” Take, for example, the intuition that individuals have a kind of value or dignity that cannot be overridden by the utilitarian’s idea that we should maximize utility or happiness. The problem with intuitionism though is that utilitarians have their own intuitions. So do people who reject both rights and utilitarianism. Compassion also does not invariably lead to rights. Utilitarians would claim to “maximize” compassion by seeking the most happiness and least suffering overall. Traditions are also ambiguous: utilitarians and other moral thinkers each have their own traditions.

What about Kant's theory, and those of the most prominent neo-Kantians, Rawls and Gewirth? They have the same problem of adopting assumptions that do not uniquely lead to rights. Kant based ethics in "universalizability." That is, if a person can will a proposed action as universal for all rational beings, then it is morally acceptable. However, one can "universalize" utilitarianism too, or other views that do not respect strong individual rights.

John Rawls asks us to consider to be "just" whatever principles one would frame in what he calls "the original position." This position is an imaginary state. In a thought experiment, Rawls asks us to conceive ourselves as disembodied spirits who are not yet born. Whatever rules of justice the spirits frame in that position will be just, says Rawls, for the spirits cannot know if they will be born strong or weak, "black" or "white," intelligent or dim, male or female, rich or poor. Animal liberationists add that one would not know which species one will belong to. Therefore the spirits will surely give rights to everyone born in order to protect them? However, this does not necessarily follow. One can support utilitarianism too from the original position, or indeed any position that one can consistently will into effect, which is much the same problem as with Kant's "universalizability."

Finally, there is Alan Gewirth's theory. He claims that anyone, to do anything at all, needs a certain amount of freedom and well-being. Fine and well: someone who is completely chained up or very unhealthy could hardly do anything. However, from this, Gewirth infers that everyone should claim *rights* to freedom and well-being. Then, we should supposedly give the same rights to everyone else because of what Gewirth calls "the principle of generic consistency." This principle sounds complicated, but it is really very simple. "Generic" just refers to *genera* or kinds of things, and so the principle just means that *we should treat the same kinds of things in the same ways*. However, utilitarians treat like cases alike and so do other thinkers who reject strong individual rights.

Therefore, absurdly and worrisomely, traditional rights theories do not uniquely justify rights and the rejection of other views, such as utilitarianism, which threaten to override rights. Therefore we do not yet have a human/animal liberation theory that can protect animals or the mentally disabled from being "sacrificed" for vivisection if the benefits predicted are great enough to supposedly "outweigh" the suffering of the victims. Indeed, the same reasoning could be used to defend "sacrificing" so-called "normal" humans such as prisoners.

### **The Feminist Ethics of Care**

Recent feminist philosophers have tended to reject both rights and utilitarianism and to recommend instead a feminist ethics of "care," which claims that animal liberation should be based on caring relationships that involve sympathy and empathy. The ethics of care has some advantages in that it acknowledges the importance of emotions in ethics, which traditional ethicists, with their exclusive emphasis on reasoning, have been reluctant to admit. Caring also nicely accounts for moral motivation, since people only ever do what they care about and do not bother with what they do not care about. However this view suffers from problems of its own. One can be "caring," even with sympathy (say, wanting what someone else wants) or empathy (having a sense of someone else's point of view) and in the end side with aggressors by sympathizing with them. Or one can have a sense of

different points of view without any guidance as to how one should act. The ethics of care, moreover, does not seem to provide any sense of justification in ethics, which is one of the traditional goals of philosophy.

### **Best Caring Ethics**

In this essay I propose a new ethics that has advantages of older theories but perhaps not their pitfalls. This new best caring ethics is based on the following ideas:

(1) *Sentient beings as ultimate ends in themselves.* We all act ultimately for someone or something. My point here is simply that we cannot do anything that benefits or harms a nonsentient thing. Nothing matters to a mere thing. We can change physical objects or even an idea but nothing matters to toasters or concepts. However, we can do something for or against a sentient being, who can feel pleasure and pain. Things matter to such beings. It seems to follow, logically, that one cannot do anything ultimately for units of utility: we cannot promote maximal utility “for its own sake” as utilitarians seem compelled to recommend.

(2) *Pursue what is best.* I agree with this goal of the utilitarian’s, because nothing is better than what is best, and indeed anything else is by nature inferior. However, I insist that utilitarians carry out a wrong execution of the right idea. What is “best” to a utilitarian are the most units of pleasure and the least units of pain overall. However, if I am right in my first point that sentient beings are ultimately ends in themselves, then what is best means what is best for you, me, this sentient being, that sentient being, and so on up to and including all of the sentient beings in a given context. “Best” occurs separately for each being because things are significant in relation to individuals, not in relation to any one thing such as the universe as a whole, or in relation to a sum of utilities. There is no such thing as what is best for utility-units, or “liberating” these units. What is best in general, then, includes the “bests” of each and every individual.

(3) *Best caring values.* Everyone agrees on values pertaining to what is useful or not. Logs do not cut bread very well, but knives might. What philosophers most disagree about are whether things can be good “in themselves,” that is, apart from what is useful (or good for obtaining *something else*). I agree with the traditional idea that happiness is a good and suffering is generally bad, but I do not agree with the utilitarians that all forms of happiness and suffering-avoidance are relevant for ethics. How can we have awareness of happiness as a good and suffering as bad for sentient beings? Through what I call “emotional cognition.” Cognition just means awareness of something, and I say that pleasures *feels good* and suffering *feels bad*. Traditionally, thinkers have denied that we could have cognition through feelings. Why that should be denied is a mystery. Perhaps it is because animals can feel too and we have seen that historically thinkers have been anxious to deny that animals have cognition or rationality. Whatever the reason, the tradition seems dead wrong. We can be aware of things through feeling. And we are not aware of, say, what feels good or bad through any other way of being aware, such as the five senses (sight, hearing, taste, touch, smell) or through intellectual thought by itself. Also, we cannot say that what feels good really feels bad, or vice versa, any more than we can honestly say that any of these things feel “indifferent.” There is a definiteness to clear cases of these feelings, and we can suppose that this goes beyond all cultures and languages since we can infer that things feel good or bad to other animals too.

(4) *Constitutive Values Mean That We Should Avoid Bad.* A traditional problem with utilitarianism is that it counts all forms of happiness including sadistic pleasures. However these are not best caring values. Ideally, what is best should always be promoted. What is best is ideally constituted by what is all-good. This logically implies that bad should be avoided whenever possible. However, this means we should choose to avoid aggression, such as that involved in sadistic values. So sadistic pleasures are not acceptable for the purposes of ethics. Also, it is one thing to contemplate “feeling good” or “feeling bad” as a recipient of an action, and quite another to think of how one’s feelings affect the way one acts. Anyone who felt good all the time would be perfectly comfortable with any atrocity. Some bad feelings, such as guilt, horror, regret, etc. help to ward off harming of others or oneself as surely as bodily pain can be an early warning system against physical injury. Therefore not everything that “feels good” is good for the purposes of best caring ethics.

(5) *Animals as persons.* Unlike Tom Regan, author of *The Case for Animal Rights*, I argue that sentient beings should be thought of as “persons.” There are several reasons for this conclusion. We call our own pleasures and pains “personal experiences,” and if we somehow could have an animal’s pleasures or pains, we would call these “personal experiences” too. It need not be truly possible to have another animal’s experiences: this is just a thought experiment like Rawls’ in order to test our concepts. So imagine I can somehow experience the joy of a dog whose human has just come home. It would be speciesist to call this a “personal experience” in the case of one’s imaginary self but not in the case of the dog whose feeling it originally was. Moreover, we cannot insist that persons are “rational.” Irrational feelings are also equally personal experiences.

As well, animals literally have personalities: ways of acting, reacting, moving, feeling, etc. Mere things could only metaphorically be said to have any personality, for example, a judge’s “stern” mallet. However, nonhuman animals *literally* have personalities. Some animals are more patient or more compassionate than certain humans.

Finally, rights are typically awarded to persons and denied to non-persons, and I have defended the idea that sentient animals should be accorded rights. So there is a practical imperative to deem nonhuman animals as “persons” in order to facilitate their rights, so long as that idea is intelligible—as I have just argued nonhuman personhood is. Indeed, non-persons cannot intelligibly have personal experiences or personalities.

### **The Test Case of Vivisection**

Earlier I complained that utilitarianism results in rationalizing vivisection, and that traditional rights theories do not succeed in ruling out such harmful experiments. However, best caring ethics, unlike traditional rights theories, would forbid such experiments. That is because what is best on this new view respects what is best for each and every sentient being, and it is not “best” for anyone to be vivisected. Now it might be objected that vivisection is like a burning building scenario when one can choose to pull one person or a dog from the fire, but not both. However, vivisection is a different sort of case. One can choose not to inflict harm on animals in laboratories and also seek cures and treatments for humans who are ill or infirm. It is not a simple choice between harms because harming the animals violates their rights, and we do not morally have the choice to violate others’ rights when it is possible to

uphold them. That is because what is best in general means what is best for each and every person, not merely what is best for some and what is “worst” for others. By contrast, in the burning building case, someone’s right to life will not be upheld and that is an inevitable tragedy—even if we do our best and try to generalize good treatment as much as possible.

Ironically, I assert that Singer is not only not an animal liberationist in general, as I have already argued, but in fact I find that he is a *speciesist*, willing to vivisect animals because they are supposedly cognitively inferior. It might be objected that he is not a speciesist but an “ableist” because he is willing to subject mentally disabled humans to the same treatment. However although he is willing to vivisect mentally disabled humans, and that is ableist, it does not seem to be a case of ableism in the case of the animals. For it is not a case of “able” humans (the average or higher ones in terms of intelligence and so on) and “disabled” animals—the animals never had such a capacity for intelligence in the first place. Also a comparison with mentally disabled humans need not be involved in every case of using animals thus. Rather, a species characteristic is used as an oppressive rationalization for disregarding what is best for individual animals, even though they may be capable of great joy and suffering just as so-called “normal” humans. It is not “best,” in the best caring sense, to inflict avoidable violence. It is certainly not best for everyone, but just best for some—those who stand to benefit from such injustices.

Does best caring ethics succumb to the same objections as the ethics of care? I do not believe so. Someone might sympathize with aggressors or empathize with someone without knowing what to do, but best caring ethics rules out aggression and guides us to affirm what is best for all persons in any given context. Also, best caring ethics offers a theory of rational justification, as outlined above, unlike feminist caring ethics.

## **Conclusion**

Best caring ethics features its own justification. However it also compares favorably with other moral theories. The view defends strong individual rights unlike older rights theories, which do not even result in strong rights given their flawed methods of reasoning. Best caring subscribes to what is “best” without resulting in the atrocities of utilitarianism. Finally, best caring ethics is sensitive to feelings and relationships without the lack of guidance, and the potential for oppressive or abusive empathy and sympathy that can flow from the ethics of care.

It is not as though animal ethics constitutes another species of morality. The crisis in older rights theories noted here applies full well to “humanistic” ethics and theories of human rights, not just animal rights. Moreover, human rights are in jeopardy on old rights accounts in another way since mentally disabled humans, if we are logically consistent, must be shoved down to Levels 3 or 4 along with animals, since there is traditionally lesser standing for those, say, with less “rationality,” and there seems to be no morally relevant difference between animals and the mentally disabled. Animals and the mentally disabled could only both have strong rights if both are esteemed at Level 0, or without harmful discrimination. It is hoped that best caring ethics will serve as a partial guide to reasoning in favor of animal rights—which includes human rights—on the long road towards the liberation of animal persons.