

## The Rights of Animal Persons

By David Sztybel, PhD†

*Abstract: A new analysis in terms of levels of harmful discrimination seems to reveal that the traditional debate between “animal welfare” and animal liberation can more accurately be depicted as animal illfare versus animal liberation. Moreover, there are three main philosophies competing to envision “animal liberation” as an alternative to traditional animal illfare—rights, utilitarianism, and the ethics of care—and it is argued that only animal rights constitutes a reliable bid to secure animal liberation as a general matter. Not only human-centered ethics but also past attempts to articulate animal liberation are argued to have major flaws. A new ethical theory, best caring ethics, is tentatively proposed which features a distinctive alternative to the utilitarian’s commitment to what is best, an emphasis on caring, and an upholding of rights. Finally a series of arguments are sketched in favor of the idea that animals should be deemed persons and it is urged that legal rights for animal persons be legislated.*

### I. Introduction

A movement to articulate and advocate “animal liberation” as an alternative to the traditional so-called “animal welfare” paradigm was effectively launched in 1975 with the publication of *Animal Liberation* by utilitarian philosopher Peter Singer.<sup>1</sup> Since that time, Tom Regan’s *The Case for Animal Rights* in 1983 was probably the most widely recognized attempt, among many, to articulate a defense of animal interests as based on a strong concept of rights, rather than only considerations of welfare.<sup>2</sup> Starting in the late 1970s, traditional ethical theory, dominated by rights and utilitarianism, came to be criticized by feminists with the suggestion of an alternative: the ethics of care.<sup>3</sup> This latter ethic was sometimes extended to animals, calling for their emancipation.<sup>4</sup> Competing with all three attempts to formulate animal liberation ethics—rights, utilitarianism, and the ethics of care—is the traditional so-called “animal welfare” view that animals do not need to be liberated, but only treated kindly.<sup>5</sup> Singer was the most eloquent writer who argued that traditional welfarist ethics is speciesist, although I will argue that, ironically, his own view is speciesist.

Before trying to develop an animal liberation ethic, I find that a clearer analysis is needed to provide evidence for the existence of speciesism in animal ethics, and I will endeavor to clarify this issue in the next three sections. I will also show that those who typically claim that they are “animal welfarists” are actually using misleading language, and the same is true of utilitarians and some ethics of care advocates who use the term “animal liberation.” What is needed, I argue, is a new “best caring ethics” which features animal rights at its core, even as it purports to reflect all of the strengths and none of the weaknesses of traditional rights theories, utilitarianism, the ethics of care, virtue ethics, as well as the two other major competitors in ethical theory: ethical egoism and skepticism. I explore my philosophy of best caring more fully and rigorously in my forthcoming book, *Animal Persons*, and indeed this essay is intended to account only for some of the main lines of argument in the book.

### II. Does Speciesism Exist?

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†David Sztybel did his doctorate in animal rights ethics at the Department of Philosophy, University of Toronto, Canada. He has lectured on ethics at University of Toronto and Queen’s University, and is the author of a range of essays on animal liberation ethics.

“Speciesism” is a term that was coined in 1970 by psychologist and philosopher Richard D. Ryder<sup>6</sup> and is now commonly used by philosophers who seek to articulate some form of animal liberation. Speciesism is intended to be analogous to forms of discriminatory oppression such as racism, sexism, homophobia, ableism, ageism, and discrimination on the basis of religion, creed, or nationality. The core idea is that all of these forms of discrimination involve harming others (or refusing to benefit them) on the basis of an arbitrary and irrelevant characteristic (e.g., skin color, sex, or species).

Interestingly enough, most philosophers who have written anti-animal liberationist essays and books acknowledge that speciesism is wrong and so they deny that they are speciesists.<sup>7</sup> These philosophers think of themselves rather as humanists or enlightened anthropocentrists, and they claim that they do not oppressively discriminate on the basis of species, but rather other characteristics, especially rationality, as stated in many classical works on ethics.<sup>8</sup> Criteria of moral standing,<sup>9</sup> however, are diverse: Richard Watson stresses both intelligence and reason,<sup>10</sup> Bonnie Steinbock cites intelligence and moral agency,<sup>11</sup> A. I. Melden also requires moral agency,<sup>12</sup> Carl Cohen posits moral agency and membership in a moral community,<sup>13</sup> Alan Holland favors autonomy, rationality, and self-consciousness,<sup>14</sup> L. B. Cebik focuses on the ability to claim rights, carry out obligations, and to have a self-concept,<sup>15</sup> and Ruth Cigman also points to self-awareness,<sup>16</sup> while Meredith Williams demands rationality and awareness of past, present and future as well as having a cultural life.<sup>17</sup> Some authors state that humans have richer lives than animals especially in psychological terms.<sup>18</sup> Interestingly, Michael Allen Fox, before he changed from a supporter of vivisection to a champion of animal liberation, had the second most extensive list of criteria of moral standing that supposedly excludes animals: critical self-awareness, the ability to utilize concepts in complex ways and to use sophisticated languages, and the powers to manipulate, reflect, plan, deliberate, choose, accept responsibility for acting, form a life plan, and self-actualize.<sup>19</sup>

Here we have a bewildering array of criteria of moral standing that animals allegedly fail, and I myself constructed a devil’s advocate version of anthropocentrism with fully 20 criteria that animals are commonly thought to exemplify less than humans who have average or greater mental capacities.<sup>20</sup> With such a wide spectrum of characteristics that animals supposedly do not have (to the same degree) in contrast to humans with average or greater mental capacities, we have an important move in response to the charge of speciesism in the history of the animal ethics debate. It is the most common sort of stratagem that is meant to parry the accusation of speciesism (since there is ostensibly discrimination on the basis of *other* criteria than species). Also, this move is by far the most widespread way of seeking to justify ordinary animal treatment in the animal ethics literature. This effort to avoid being charged with speciesism is brought on, I presume, by the recognition, at some level, that merely being different in species from humans does not logically give humanity a license to harm nonhumans.<sup>21</sup>

So far the critical response to this anti-animal liberationist move has been somewhat effective, but could be more so. For example, James Rachels calls it “unqualified speciesism” to discriminate solely on the basis of species, but deems it “qualified speciesism” to discriminate on the basis of qualities associated with the human species such as rationality.<sup>22</sup> However, rationality is *not* always associated with the human species. Some humans lack it. Furthermore, discrimination on the basis of rationality is again not sorting on the basis of species: so where is the speciesism? Singer states that those who discriminate on the basis of rationality use as “arbitrary” a characteristic as skin color.<sup>23</sup> However, humanists can reply that to lack rationality is to lack a potential good (although it is true that

rationality can be and often is misused or disused), and furthermore they can assert that nonrational beings are able to do less good for others, and therefore are less worthy of respect. I elaborate this perspective elsewhere,<sup>24</sup> and respond more fully to it in *Animal Persons*. However, I will show that surprisingly, humanists are not really discriminating on the basis of rationality or other characteristics at all.

Many thinkers have employed the argument from mental disability.<sup>25</sup> Essentially, this argument observes that we tend to give equal moral status to mentally disabled humans (e.g., those who suffer from congenital mental disabilities, brain damage, stroke, senile dementia, severe insanity, or coma) but deny equal moral respect to animals who may have psychological capacities that are comparable to these humans. This is an influential argument that can be useful, although it does not help us decide between competing moral theories, and does not rule out harsh treatment of *both* mentally disabled humans and animals. I will amplify this argument by seeking to demonstrate that mentally disabled humans and animals are indeed treated differently. I will clarify that discrepancy at a general level, and then debunk humanist ruses that are supposed to justify why mentally disabled humans should be treated so much better than animals.<sup>26</sup> Now all of the varied criteria cited by “humanists” above are lacking in many mentally disabled humans, so there is an opportunity to address all of these criteria of moral standing at once.

### III. Levels of Harmful Discrimination

Instead of vaguely referring to humans (mentally disabled or otherwise) being treated differently or better than animals, with a few examples here and there, I try here to be more systematic by introducing levels of harmful discrimination. Ideally there is the standard of:

#### *No Harmful Discrimination*

This is what opponents of sexism and racism have strived for, although only relatively recently in historical terms. Beyond this there are different levels of harmful discrimination:

*Level 1: Minor Harmful Discrimination.* Although provided with the necessities of life, targeted individuals may be regarded with contempt and perhaps insults. Many people will experience this as “major” but still the following category is worse.

*Level 2: Major Harmful Discrimination.* More than just verbal or “intangible,” this form results in materially inferior treatment (e.g., poor quality of food, clothing, or shelter).<sup>27</sup>

*Level 3: Very Major Harmful Discrimination.* One treated this way may be eaten, skinned, have body parts used in soaps or other products, be hunted down, be forced to perform to amuse others, or forcibly be subjected to experiments (some of which may be medical). However at this level one stipulated requirement is that the being used in these ways must be treated “kindly,” “humanely,” or with no “unnecessary suffering.”

*Level 4: Extreme Harmful Discrimination.* At this level, animals may be treated the same ways as on Level 3, but with no significant regard for well-being, humaneness or kindness. Animals on factory farms,<sup>28</sup> my relatives who perished in the Holocaust,<sup>29</sup> and runaway slaves who were whipped to death<sup>30</sup> all fell to Level 4 treatment. Now while more gradations of harmful

treatment could be added, there could not be fewer without losing a sense of the dramatically different degrees of harm involved.

My presumption is that since similar benefits and harms are at stake for mentally disabled humans and animals, these concerns should be considered equitably or on a par. So why is it that mentally disabled humans are treated at the level of No Harmful Discrimination (or at least that is the cultural ideal; mentally disabled humans are often short-changed in practice), whereas animals, especially in industry,<sup>31</sup> are generally treated at Levels 3 and 4? That is, animals are often subject to “very major” or “extreme” forms of harmful discrimination whereas mentally disabled humans are supposed to experience none. This usually hidden disparity proves, contrary to the frequent claims of anthropocentrist philosophers, that there is no impartial discrimination on the basis of rationality, moral agency, linguistic capacity, and so on, or both groups would be treated much the same. Clearly, the only difference here is rooted in species. That would mean speciesism is indeed at work unless some special reason(s) can be given to account for why mentally disabled humans and animals “should” be treated differently.

#### IV. “Special Reasons”

The following rationales have been proposed for why we treat animals and mentally disabled humans so differently. These rationalizations form a quiet, foggy background to the loudly proclaimed—and I hope in the last section debunked—ideas that we treat animals worse just because they are less “rational,” etc. In the following I will use rationality as an example:

(1) *Humans, including the mentally disabled, are normally rational, whereas nonhuman animals are not.* Actually some humans might not be rational at all, so it does not sincerely use the criterion of rationality to count these humans as rational. Humans on average are born with rational capacities. But by the form of reasoning used in this rationale, any student should get a “pass” in driving courses in which pupils “normally” succeed.<sup>32</sup>

(2) *It is a tragedy when mentally disabled humans lack rationality, but not so for animals.*<sup>33</sup> Anyone sensitive to tragedy would also presumably care about violence, which is always thought to be tragic when it happens to humans, and is preventable unlike, perhaps, most mental disabilities. We would consider killing a mentally disabled human to eat him or her violent—so it should be thought, without prejudice, to be both violent and tragic in the case of animals.

(3) *Mentally disabled humans look like other humans.* This is as unacceptably superficial as discrimination on the basis of skin color, or against those disfigured by accidents.

(4) *Many people care about mentally disabled humans.* Many care about animals too, and besides however people happen to care is not the basis of ethics, or slavery would have been right when people mostly “cared” to have it as a practice.

(5) *It is “natural” to prefer one’s own species just as it is to prefer one’s own family.* Granted that there is special consideration for family, one still does not deny rights to those who are not of one’s family, let alone treat them violently.<sup>34</sup>

(6) *If we discriminate against mentally disabled humans then other humans are next.* Evelyn Pluhar argues that humans can be “highly discriminatory” even when beings do not differ in significant ways,<sup>35</sup> and this seems to be true of the former Apartheid regime in South Africa. Also, female infanticide is practiced in China without endangering the general population.<sup>36</sup> However, if such fine distinctions can be put into practice, then we can even more “safely” discriminate (at least in a way that protects so-called “normal” humans) in cases in which the humans are very different from “us,” as mentally disabled humans are.

In short, there seems to be no “special reason” why all humans should be immune to harmful discrimination but animals should be treated at Levels 3 or 4.<sup>37</sup> There are however whole philosophies on which the rights of animals *and* mentally disabled humans may be in jeopardy. We will see that some utilitarians are willing to vivisect human and nonhuman animals from both of these groups. Also, ethical egoism and skepticism in ethics do not protect rights for these acutely vulnerable beings.<sup>38</sup> Yet I would venture that most people care at least somewhat about both mentally disabled humans and nonhuman animals, so issues of speciesist discrimination in treating the two groups differently are relevant to the majority of society.

## V. Animal Welfare or Animal Illfare?

“Animal welfare” can have a great many senses.<sup>39</sup> However, I would suggest that my foregoing analysis in terms of levels of harmful discrimination implies that it is speciesist even to allow the term “animal welfarist” for those who would treat animals at Level 3. An overriding concern with animal welfare or “wellness” suggests a concern with animals’ good above all. However Level 3 means not just minor but very major forms of harmful discrimination, where bad and not good things happen to animals in the end. All harms such as killing for food are falsely characterized by “welfarists” as “necessary.” Certainly such harmful treatments are not “necessary” for promoting animal welfare—quite the contrary. It seems inaccurate or misleading then to characterize Level 3 as overridingly being concerned with how “well off” animals are or with being “kind” to animals. We would *never* consider it kind to mentally disabled humans to eat them, hunt them down, wear their skins, etc., even though these humans may not know they are to be slaughtered and so on. Level 3 treatment considers it right to inflict very considerable harms in the name of trivial benefits such as enjoying the taste of flesh. So the old animal welfare versus animal liberation debate perhaps never existed except in the minds of those who adopt the speciesist label for Level 3. After all, someone who advocated the subjugation and enslavement of blacks could not be called a “black welfarist” or someone overridingly concerned with the good of blacks without being put to one side as a hypocrite or double-talker.

Consider more generally a thought experiment. Suppose a group of humans were hiking in the countryside and suddenly got abducted by Morlocks who live underground.<sup>40</sup> Some are enslaved to work or amuse, others are killed for their “meat” or “ingredients” or skins, or else are “sacrificed” in scientific experiments.<sup>41</sup> We would not say that these victims are faring well, but that they are faring badly. Anyone who suggested these unfortunates were doing well would be thought to be joking, deluded, or not paying attention. Overall, this is illfare we are talking about rather than welfare. We would not say that these humans are lucky just to have shelter, or that they are blessed that efforts are made to secure their comfort before slaughter, or that, say, a mentally disabled human in the party is fine because she has no idea about what is going to happen next.

Therefore the debate we are talking about is more animal liberation versus animal illfare rather than animal liberation versus animal welfare if we eliminate speciesist thinking. Denouncing the “animal welfare” label for how animals are commonly treated because it is misleading has barely been hinted at or discussed in previous animal ethics writing.<sup>42</sup> I do not deny that farmed animals, especially on “family farms,” are at times content, but merely insist that, in the big picture, they are part of a process called “meat-eating” which bodes an ill fate for these animals as an essential part of the practice.<sup>43</sup>

Speciesism is something that we have seen even anti-animal liberation philosophers generally reject, and I in turn reject these philosophers’ substitute forms of discrimination (on the basis of rationality or whatever), which we have seen do not hold true given what I have shown through the levels of harmful discrimination. I also reject as specious and logically irrelevant any proposed “special reasons” for harmful discrimination when it comes to mentally disabled humans and animals. It follows, if we are altruists<sup>44</sup> who go beyond speciesism in ethics then our moral philosophy needs to be animal liberationist. Let us then think about the three main types of philosophy used to articulate “animal liberation.” I will try to show that past forms of these three options have major flaws, and that therefore we need a new philosophy. The ethic I propose is called the “best caring ethics theory of rights.” But first, let us try to fairly assess older philosophies that purport at least to aim for animal liberation.

## VI. Utilitarianism

Most animal protectionists do not realize that Peter Singer, the author of *Animal Liberation*, is not a supporter of animal *rights*. Animal rights philosopher and attorney Gary Francione is upset that People for the Ethical Treatment of Animals (the largest animal “rights” group in the world) describes *Animal Liberation* as an animal rights book, exhorting: “If you only read one animal rights book, it has to be this one.”<sup>45</sup> Singer himself even regrets ever using the language of rights, observing that “it would have avoided misunderstanding if I had not made this concession to popular moral rhetoric.”<sup>46</sup>

More specifically, Singer is not an abolitionist, for it is the abolition of all animal exploitation that is the hallmark of animal rights philosophy. Although he seeks to end using animals for fur, hunting, cosmetics testing, and other “trivial” uses, he supports, for instance, certain forms of animal experimentation. He writes:

The knowledge gained from some experiments on animals does save lives and reduce suffering...[and if there are] strict conditions relating to the significance of the knowledge to be gained, the unavailability of alternative techniques not involving animals, and the care taken to avoid pain...the death of an animal in an experiment can be defended.<sup>47</sup>

It is also noteworthy that Singer explicitly adds that if animals are used for experiments, so humans should be used who have mental capacities that are comparable to those of animals used in laboratories.<sup>48</sup> Animal rightists use the argument from mental disability to protect both animals and mentally disabled humans alike from vivisection, but Singer’s use of the argument makes both parties more vulnerable to exploitation.<sup>49</sup>

In order to understand Singer’s position, we need to analyze his type of moral philosophy: utilitarianism. Utilitarianism consists of (a) a theory of value, and (b) a claim that any action is morally right that maximizes good and minimizes bad overall. The theory

of value is typically either hedonistic (in which case “good” means pleasure, and “bad” means pain) or what I call “preferentialist” (according to which “good” means what satisfies preferences, and “bad” means what frustrates preferences). The most famous hedonists were Jeremy Bentham and John Stuart Mill,<sup>50</sup> and Singer himself is probably the best known preferentialist in ethics.<sup>51</sup>

Utilitarianism, it should be noted, offers a number of advantages as a moral theory: (1) utilitarians can profess to fairness because they count everyone’s units of utility equitably; (2) the theory calls attention to the importance of results or consequences; (3) going purely by rules in ethics may lead to problems when we arrive at conflicts between rules, such as breaking a promise to meet someone for business in order to save a drowning child, and utility-maximizing provides a possible grounding both for rules and their exceptions; (4) utilitarianism is flexible and sensitive to different situations or contexts; (5) the theory gives a plausible reason for acting by promoting what is “best”; and (6) utilitarians are not afraid to “get their hands dirty” to do what “needs” to be done, even if it sometimes means breaking certain conventional moral rules.

However, utilitarianism is not self-evidently correct. “Most wicked deeds are done because the doer proposes some good to himself,”<sup>52</sup> as in murdering or stealing for some benefit. A good proposed to oneself can, I hasten to add, involve the good of others. So it is not clear that simply maximizing good will lead to moral rightness. Yet utilitarianism is “the most widely discussed, analyzed, criticized, attacked, and defended” moral theory,<sup>53</sup> and I expect that is because it features, at minimum, the advantages that I listed above.

Indeed, one can spend many years contemplating utilitarianism without coming up with objections that put any kind of serious dent in it, because it is a tough theory to refute. However, I argue that it can be refuted in the end. To illustrate utilitarianism’s ability to withstand objections, consider the following. Philosophers commonly object that utilitarianism is too willing to harm innocents in the name of “the greater good,” but J. J. C. Smart, a well-known utilitarian philosopher, chillingly replies that “[a]dmittedly utilitarianism does have consequences which are incompatible with the common moral consciousness, but ‘so much the worse for the common moral consciousness.’”<sup>54</sup> It is important not to simply beg the question against utilitarianism.<sup>55</sup> Samuel Scheffler, an expert in ethics, objects that utilitarianism invades individual autonomy, dictating what everyone should do,<sup>56</sup> but a utilitarian could reply that it generally maximizes happiness to allow people to do as they prefer. Some anti-utilitarians object that utilitarianism is too impersonal, but L. W. Sumner, himself a utilitarian, argues that friendship, love and loyalty help to form the happiest lives.<sup>57</sup> Critics of utilitarianism often object that one cannot measure “units of utility” such as pleasures and pains, but utilitarians would rebut that it obviously causes more suffering, for example, to torture a person than to steal their gum. Objectors to utilitarianism demand exact quantification of utility, but utilitarians can reasonably point out that if the best we can offer in the process of quantifying utility is an educated guess, then that is indeed the best we can do.

In another objection to utilitarianism, Regan pleads that animals are subjects of a life with inherent value, not mere things, and are not to be used as a mere means. Regan assumes that such a regard for animals is inconsistent with utilitarianism. However, Singer answers this objection by adopting Regan’s rhetoric albeit to support Singer’s own utilitarian views.<sup>58</sup> Although I have noted that Singer supports some vivisection, he would say that animals are still taken seriously as sentient beings, and are not used casually, but only because it accords with “the greatest good for the greatest number.” In other words, Singer would say that he uses animals as a means, but not a “mere” means. Many anti-utilitarians worry

along similar lines as Regan that utilitarianism does not take individuals seriously because the philosophy advocates that masses of utility should override individual rights. However, as Sumner points out, “utilitarians are committed to believing that it is a good thing (a gain) when an individual life goes well and a bad thing (a loss) when one goes badly.”<sup>59</sup>

All the same, utilitarianism poses a threat to individual rights as they are commonly understood. As Francione notes, the Nuremberg Code of 1947 and the Declaration of Helsinki by the World Medical Association in 1964 seek to ban the vivisection of humans, including those who are mentally disabled.<sup>60</sup> Not only does Singer unequivocally support vivisection on animals *and* mentally disabled humans, in the passage just cited, but so do other utilitarians such as anti-animal liberationist R. G. Frey.<sup>61</sup> Utilitarianism is also a threat to so-called “normal” humans. It can be rationalized that the good of all who might benefit from endlessly repeatable medical cures and treatments “outweighs” the harms of experimenting on *any* humans, especially vulnerable groups such as prisoners. Utilitarianism has also been used by Singer to justify certain forms of eating animals such as fish so long as they are “replaceable” by equally happy numbers of fish.<sup>62</sup> Julian Franklin also speculates that a rodeo could be justified by utilitarians if it is thought that the amusement of the multitudes outweighs the suffering of the animals used.<sup>63</sup> As a result of these treatments of animals, which are far from “liberating,” I do not call utilitarianism a variety of “animal liberation” in my usage since that phrase is intended to refer to *all* animals.<sup>64</sup>

Later in this paper I will voice some of my theoretical objections to utilitarianism once I have set out some of my own philosophical insights. However, we can now ask: do other theories which seek to articulate “animal liberation” (standard rights theories and the ethics of care) stave off utilitarianism’s very real threat to individual rights?

## VII. Standard Rights Theories

I hold that standard rights theories contain many flaws, but the one that I shall focus on here is a single type of problem that repeats itself in different guises: none of these theories, even granted their assumptions, logically entail individual rights that would protect someone from being vivisected. Keep in mind that I am not denying that rights philosophers *assert* such rights. I am merely indicating that they do not provide logical *justifications* for these rights. The result is that we cannot simply extend older theories of rights to animals—as has already been done—if we are to provide a speciesism-free ethics that fends off the threat of exposing individuals to vivisection.

There are six main justifications for rights. No one hitherto has identified the logical flaw which I have alleged, nor has anyone fully pointed out how existing animal rights theories run so closely parallel to traditional human-centered rights theories. The six most influential frameworks for justifying rights are: (1) intuitionism, (2) traditionalism, (3) compassion, (4) Immanuel Kant’s theory, (5) John Rawls’ theory; and finally (6) Alan Gewirth’s theory. I cannot attend to all of the merits and problems with these theories but will use this limited space to focus on the criticism I have mentioned.

(1) Intuitionism bases rights generally on the “intuition” that individuals possess a special value or dignity that may not be violated for “the greatest good” as utilitarians propose. Tom Regan upholds “reflective intuitions,” which are views that one holds after a conscientious effort to be rational,<sup>65</sup> intuiting that animals are subjects of a life and are not to be treated as a mere means to human ends.<sup>66</sup> Martha Nussbaum insists on the intuition that



animals have a dignity<sup>67</sup> and are not to be used as a means even for a great social good.<sup>68</sup> Oddly, she then contradicts herself, stating that animals can be eaten if it is “useful” to do so,<sup>69</sup> and that vivisection is an “ineliminable” tragedy<sup>70</sup> even under the “best conditions”<sup>71</sup> — although evidently not the best conditions for animals. Other philosophers such as Ronald Dworkin<sup>72</sup> and Joseph Raz<sup>73</sup> offer intuitionist accounts of rights which only apply to human beings. I say that intuition does not logically entail individual rights simply because utilitarians, ethics of care proponents, virtue ethicists, ethical egoists, and skeptics in ethics each have their own “intuitions” which disagree with those of the rights theorists. And one cannot use intuition to rule out competing intuitions without utterly begging the question.

(2) Traditionalism, as I call it, tries to build a theory of rights on the liberal tradition which gave rise to them, as found for instance in the human-centered thinking of Joseph Raz.<sup>74</sup> Likewise, S. F. Sapontzis appeals to “everyday morality” or “common sense” as a basis for animal rights,<sup>75</sup> and animal rights defender Bernard Rollin also appeals to “common sense.”<sup>76</sup> Ironically, ethical egoist Peter Carruthers bases his defense of factory farming in common sense too.<sup>77</sup> Traditionalism (or that which, strictly within a given tradition, appears to be “common sense”) does not guarantee rights because non-rights theories also have their own traditions and respective versions of “common sense.”

(3) Compassion also does not dictate that we embrace a philosophy of rights for humans or other animals. David Hume bases his ethical view in sympathy,<sup>78</sup> as do Eastern moral philosophies found in the religions of Hinduism, Jainism and Buddhism. The ethics of care is another key player in this field. We have already seen that Level 3 (Very Major Harmful Discrimination) has been widely hailed as “kind.” Basing ethics on whatever compassion people happen to have (or lack) may leave the way open for egoists, or even skeptics who deny any moral rules that are valid for all moral agents. Utilitarianism would predictably claim to “maximize” compassion. So simple appeals to compassion then do not entail rights that protect against being vivisected.

(4) Immanuel Kant is often called “the father of rights.” Julian Franklin’s animal rights view has directly extended Kant’s moral theory to animals. Kant proposes a test for moral principles based upon *universalizability*, which means that any principle can be accepted as morally right if the agent can “universalize” it<sup>79</sup> so that any agent in the same position should do the same thing. For example, if one universalizes not keeping a promise, then one would not be able to rely on others’ promises; therefore one should universalize promise-keeping instead.<sup>80</sup> Franklin proposes the same universalizability test<sup>81</sup> but draws animal rightist conclusions. Animal rightist Gary Francione employs what he calls “the principle of equal consideration,” which just means treating like cases alike unless there is a reason to do otherwise.<sup>82</sup> Francione’s idea highly resembles universalizability in requiring a kind of rational uniformity. However, utilitarians, ethics of care advocates, ethical egoists, and skeptics in ethics might find nothing more agreeable than if everyone would “universalize” their views, so ideas such as Kantian universalizability do not stave off the vivisectionist threat either.

(5) John Rawls, in his classic, *A Theory of Justice*, asks us to imagine ourselves as spirits not yet born. We should consider to be just whatever principles we can create in this so-called “original position.”<sup>83</sup> We do not know if we will be born rich or poor, strong or weak, intelligent or otherwise, light-colored or darker, male or female. Therefore our principles of

justice would presumably rule out racism, sexism, classism, and other forms of oppression. Mark Rowlands extends this rights model to animal rights.<sup>84</sup> However one can self-consistently create utilitarian or ethics of care principles of justice in the original position, or indeed principles of “justice” that accord with ethical egoism and even skepticism in ethics. Unlike Rowlands, Rawls himself is a sort of egoist who claims that agents in the original position are “not conceived as taking an interest in one another’s interests.”<sup>85</sup> As for skepticism, one can be skeptical anywhere in this world as well as in Rawls’ imaginary world. So rights do not necessarily follow for Rawlsians.

(6) The last major rights approach is that of Alan Gewirth. Gewirth observes that for any given action, we need and so must value some degree of well-being and freedom.<sup>86</sup> There is some truth to his observation: anyone who is very unhealthy (unwell) or trussed-up (unfree) could hardly act. From this point, Gewirth quickly infers that everyone should claim rights to well-being and freedom,<sup>87</sup> and due to what he labels “the principle of generic consistency,” we should extend rights to all human beings. Now “generic consistency” simply means treating the same kinds of things in the same way, much like Kantian universalizability. Pluhar deploys virtually the same Gewirthian argument on behalf of animal rights.<sup>88</sup> All theorists can concede that we need a certain amount of freedom and well-being to act. However utilitarians seek to maximize well-being in general, ethics of care supporters base their ethics on sympathy with others’ good, egoists are only concerned with the well-being of themselves in the end, and skeptics would not infer any ethical principles at all from Gewirth’s observation about needing freedom and well-being for acting. Moreover, in keeping with Gewirthian “generic consistency,” even anti-rights theorists would happily treat all like cases alike.

Perhaps now the reader can agree that I was not exaggerating in my claim that standard rights theories do not succeed in fortifying our moral thinking against utilitarian vivisection. Indeed, the assumptions for supposedly justifying any of these rights views can happily be accepted by any ethical theorist, and so these rights ideologies, extraordinarily enough, do not even rule out competing ethical theories, even granted these rights theories’ own assumptions (which is always a lot to ask in philosophy). Can the last major conventional option, namely the ethics of care vision which some philosophers believe to be the best version of “animal liberation,” provide the protection in question? We need a balanced assessment of ethics of care beyond the above demonstration which appears to show that basing rights in compassion alone is like trying to right a heavy timber in nothing but sand.

## **VIII. The Ethics of Care**

This form of animal liberation is an important contender, and has considerable merits. However, the ethics of care also has serious flaws. I would only call “animal liberationist” those versions of ethics of care which seek to liberate all animals from oppression and exploitation. Having surveyed dozens of books and articles in the field, I can say with confidence that most ethics of care authors do not even mention animals, let alone take animal liberation seriously.<sup>89</sup> The feminist ethics of care emerged from Carol Gilligan’s critique of the “masculine” bias in ethics which she said is abstract, justice-oriented, and emphasizes the autonomy of individuals.<sup>90</sup> She criticized the work of moral psychologist Lawrence Kohlberg who saw an ethic of rational principle as the most mature form of

morality.<sup>91</sup> Gilligan, who had worked for Kohlberg as a research assistant, contended that the “feminine” voice in ethics has been neglected. Unlike the male orientation, the female approach to ethical development is situated in context, concerned with caring (compassion, sympathy, or empathy) rather than justice, and is not about separate individuals so much as relationships and interdependencies. As Josephine Donovan succinctly puts it, “sympathy, compassion, and caring are the ground upon which theory about human treatment of animals should be constructed.”<sup>92</sup>

Ecofeminist Marti Kheel observes that what “seems to be lacking in much of the literature in environmental ethics (and in ethics in general) is the open admission that we cannot even begin to talk about the issue of ethics unless we admit that we care (or feel something).”<sup>93</sup> Donovan and Carol J. Adams also speculate that rights theories “depend upon emotional intuition as to who is considered entitled to rights.”<sup>94</sup> Erik Brown writes that “sympathy for complete strangers is the direct ancestor of the impersonal view.”<sup>95</sup> In other words, our adherence to moral principles must be based partially in some kind of feelings. I agree with many ethics of care theorists that emotions are compatible with reasoning in ethics. As Kheel writes: “the emphasis on feeling and emotion does not imply the exclusion of reason. Rather, a kind of unity of reason and emotion is envisioned by many feminists.”<sup>96</sup> However, typical for this sort of view, Kheel at the same time rejects all attempts at universal reasoning<sup>97</sup> (with the possible exception of her jumping to the conclusion that we must reject all universal reasoning), and so appears to hollow out the chief aspirations of reasoning in ethics, which in many cases include universal rights.

The ethics of care presents several advantages as an outlook: (1) moral life is not perhaps lived according to abstractions so much as by navigating through a network of caring relationships; (2) individuals are not viewed in isolation but socially, in a web of relating to others; (3) people only do what they care about, so it connects well with moral motivation; (4) it is very flexible and sensitive to different situations and particulars (which utilitarianism also claims); (5) it bursts the stereotype of ethical theorists as “cold and unemotional,” and I would add a further point that (6) moral agents need to care about something or they would be catatonic, and they need to care in the right way or they could well be sociopaths.<sup>98</sup>

It should be noted that even traditional ethics are concerned with feelings at some level. Kant is notorious for writing that if someone does something morally right out of sympathy that act has no moral worth; actions can only have moral worth if they are done for the sake of duty.<sup>99</sup> Kant also expresses contempt for spontaneous feelings: “Inclinations...are so far from having an absolute value...that it must rather be the universal wish of every rational being to be wholly free from them.”<sup>100</sup> Many have thought Kant to be perhaps the most anti-emotional of philosophers as a result. However the Kantian moral agent depends on the feeling of reverence for the moral law: “*Duty is the necessity to act out of reverence for the [moral] law.*”<sup>101</sup> He wrote that reverence for the moral law is not a natural inclination but rather “having its objective ground in reason alone.”<sup>102</sup> Kant also admired how animals care: “The more we come into contact with animals and observe their behavior, the more we love them, for we see how great is their care for their young.”<sup>103</sup> Indeed, Kant valued kindness towards humans: “Tender feelings towards dumb animals develop humane feelings toward mankind.”<sup>104</sup> Surely humaneness represents a caring approach to ethics? Utilitarians for their part base their theory of the good on pleasure and pain which are feelings, or preferences which are also partially emotional. Ethical egoists such as Hobbes identify the good as the object of desire or preference. Virtue ethics concerns the character of agents which must include reference to attitudes and dispositions, and other emotionally-

laden states such as courage. So emotions do after all play a vital though unsung role even in traditional ethical theories.

However there are problems with the ethics of care. I will enumerate several:

(1) Notice how there is a tendency for care theorists to base their ethic on actual caring relationships rather than reasoning from abstract principles. These theorists generally do not make an abstract ideal even out of compassion (although points (4)-(10) below apply to those who idealize sympathy or empathy). But basing ethics on chance sympathies, then, is precarious: one might fail to sympathize with blacks, animals, or indeed anyone beyond ego. This is an insufficient basis to guarantee liberation for anybody.

(2) Some ethics of care theorists use motherhood as a role model, as Sara Ruddick does,<sup>105</sup> but not all mothers are good, and why not model ethics on a businessman or soldier?

(3) Some ethics of care theorists are irrational, as when Alisa Carse writes, “Moral judgment, even paradigmatic forms of moral judgment, can be generated by direct response to another, without any guidance or mediation of categorical considerations”<sup>106</sup>—or acting on principle. Erik Brown also proposes to “base arguments for the acceptability of the principle of equality [of persons] on appeals to persons’ spontaneous reactions,”<sup>107</sup> even though not everyone “spontaneously” favors equality.

(4) Moral agents might empathize or sympathize with aggressors as Adams notes in passing without offering any solution.<sup>108</sup>

(5) Empathy ethics replicates a point of view but does not tell us how to act. It reduces our viewpoint to subjectivism or relativism, or deadlocked differing views.

(6) Empathy often cannot reliably be achieved, even with intimates.

(7) Someone with substantial empathy or understanding of another’s position can abuse that other even more effectively at times by realizing weaknesses or by manipulation.<sup>109</sup>

(8) There is a potential bias towards ego with empathy because one’s own feelings are more vivid than imagined psychological states of others.

(9) Favoritism can result because people sympathize more with the like-minded, etc.

(10) Ethics of care often does not take justification in ethics seriously: Why care in the first place? If it is to promote what is good or what is best, should we not make that part of the basis of our ethics?

I do not know how either an ethic based on chance caring or even an ideal of caring can readily or otherwise overcome these objections without a radical reformulation of the view. These indeterminacies imply that the ethics of care cannot protect anyone from vivisection—or perhaps any destructive whimsy of anyone. Yet I cannot completely dismiss caring in ethics for the reasons given earlier, and it is impressive how much feelings are surreptitiously interwoven even into traditional ethical theories as I have reflected.

## IX. Best Caring Ethics as a New Basis for Animal Rights

The last section concludes our examination of the state of the existing animal liberation debate for the purposes of this essay. We seem to have arrived at a scene of disaster. In spite of dire speciesism, animal ethics thus far has not shone enough light to illuminate a way out. Utilitarians such as Singer threaten individuals with involuntary vivisection, standard rights theories are so logically empty that one can drive virtually any moral theoretical truck through their loopholes, and finally the ethics of care, which many have trumpeted to be our saving grace, is apparently mired in serious problems. Neither the rights theories nor the ethics of care protects anyone from the vivisector's knife. I recommend that we seek a new theory.

We cannot simply combine the three main forms of animal liberation. The norms of utilitarianism and strong individual rights are exactly at odds. Utilitarianism may trample rights at key junctures. And neither rights nor utilitarianism can be based on chance caring. As Francione has objected: "Our protection of...interests that are subject to claims of right should not depend on whether some group of people feels 'compassion' for those whose interests are at stake."<sup>110</sup> Francione's remark also applies, with suitable adjustments, to utilitarianism. Finally, the ethics of care itself, almost as a mirror image of the last observation, is wary of relying on abstractions for guidance such as rights and utility rather than, say, sympathy or caring. Still, Kheel noted that care theorists are not altogether closed off to reasoning (albeit she rejects universal reasoning), and as Gilligan herself noted, care theorists are not unconcerned with justice.<sup>111</sup> (It is another failing of the ethics of care nevertheless that its proponents do not put forward distinctive accounts of moral reasoning and justice.) This seems to put all of the traditional "animal liberation" theories logically at odds with each other (and with skepticism and egoism as well).

The ethical theory I propose does, I think, logically entail rights against utilitarian vivisection (unlike previous theories of rights), seeks the best in a very different way than utilitarians do, and draw on the strengths of care ethics while also providing a distinctive basis in reasoning. I hold that my "best caring ethics" does not succumb to the ten objections to the ethics of care that I posted above. Still, the ethic that I will sketch here is meant to open, not close, further debate. Indeed, even if I were able to write a volume accounting for every idea and objection that I know, I could never come close to anticipating the course of philosophical debate as a whole.

Answers are hard to come by in ethics. However I continue to believe that they may be possible.<sup>112</sup> I share utilitarianism's commitment to promoting the "best" outcomes of actions and policies (although I will show that my vision of the best is substantially different from that of the utilitarians), and I think a rational argument can be supplied for supporting what is "best." Ethics generally aims for the ideal. We can provisionally define the ideal as organized ideas of what is fitting or good to aim for. In the way that we speak, "more ideal" seems to mean *better* and "less ideal" seems to mean *worse*, comparatively speaking. Yet does this not imply that what is most ideal is *best*, since logically there cannot be anything better than what is best? Anything less than best is worse, or less ideal. This establishes what is best, in my mind, as a most pre-eminent ideal. Note that "best" does not simply mean perfection since that is often impossible, so the best that *can* be is generally restricted to the realm of the possible.<sup>113</sup>

However we need to clarify what is best because, say, utilitarian conceptions of the best are a threat to individual rights. Utilitarianism assesses good and bad from a single standpoint, adding and subtracting, say, everyone's pleasures and pains in one grand calculus.

It is because the good is added together in this way that individual rights can be overridden so easily. I do not propose simply merging rights and utilitarianism as Victor Grassian, S. F. Sapontzis, and L. W. Sumner do,<sup>114</sup> leaving animals thus vulnerable to vivisection and other forms of abuse from an individual rights perspective.

If we question the point of all of our actions we find that we ultimately act for certain ends, and other purposes are merely instrumental towards furthering what we are concerned to favor in the end: an “end in itself” (to use a Kantian phrase<sup>115</sup>). My own vision of what is best incorporates an insight that utilitarianism seems unable fully to digest, namely that ethical significance—what is good, bad, better, worse, best, worst, important, trivial, and more—must occur *ultimately* in relation to sentient beings or beings with minds. Mindless things cannot find anything to be of *any* significance. I can physically modify a painting but that physical significance itself means nothing to the painting. Physical significance by itself does not constitute value, but merely a change in the material universe. In fact, nothing is even utterly indifferent to a mere thing (or a nonsentient being), since only beings with minds can find things to be conceptually or emotionally indifferent. It is worth adding that in the universe, there are only beings with minds or mindless beings. This insight does not emerge clearly from traditional human-centered ethics since those views give moral standing to human sentient beings, but do not fully account for what is significant to other sentient beings. Other non-anthropocentric philosophers have expressed related insights,<sup>116</sup> but have not asserted the logical implications that I am about to outline. I am not stating that we should aim merely for what sentient beings happen to like, however, because that may well fall short of what is best for everyone. Still, we cannot even ultimately act for “the best” or “the good” as an ideal; i.e., we cannot do anything that is of any significance to an ideal. So what is best or good can be an end, but not an end in itself in the sense I am using—it must lead to what is of significance to sentient beings as ends in themselves.

However if I aim for what is best, and “best” is a form of significance that can *ultimately* have meaning only in relation to sentient beings, then inevitably the best has *separate* significance for each and every sentient being. That is because there is more than one sentient being, and each finds things to be significant quite separately. Thus what is best must mean what is best for you, me, this individual, that individual, and so on up to and including all individual sentient beings. We can call this the “constellation” theory of what is best—one that does not combine all goods and bads into huge aggregates or “lumps” but finds a plurality in what is best for all sentient beings.<sup>117</sup> We cannot act ultimately for any one nonsentient or mindless thing to try to come up with an inappropriately unified idea of what is best, i.e., the best as maximizing utility. We cannot do what is best for the world as a whole, for situations, for aggregates of utility, etc., as ends in themselves. However, these things may very well have important significance for individual sentient beings and play an important role in their intentional or incidental ends.<sup>118</sup>

This insight that we cannot ultimately act for mere things, by the way, I understand to rule out several forms of ethics: that we can *ultimately* act for the Earth, the biosphere, the ecosystem, groups such as species, nations or communities (conceived abstractly or over-and-above individual sentient beings), the law, duty, or nonsentient life forms as ends in themselves.<sup>119</sup> That said, we can do many things that promote an environment that is good for sentient beings—we cannot however do anything significant for the environment “in itself.” And we can act for or against a given group of sentient beings (which we can certainly do) only by affecting each individual separately. Only an ethic explicitly organized around something like the constellation theory of what is best can accommodate the insights

I have developed thus far. Utilitarianism cannot in principle invoke the constellation view and is both theoretically and practically at odds with it.

Singer quotes fellow utilitarian Henry Sidgwick: “The good of any one individual is of no more importance, from the point of view (if I may say so) of the Universe, than the good of any other.”<sup>120</sup> Yet I hold that Sidgwick may *not* say so correctly, since the universe presumably has no point of view. As John Holmes wrote, “The universe is not hostile, nor yet is it friendly. It is simply indifferent.”<sup>121</sup> As I pointed out, it is probably even going too far to say that anything is indifferent to any given nonsentient thing. It follows that the utilitarian idea of one center of good and bad in the universe is a myth. If something is significant to Mary, it is not significant to the universe as a whole, but only to that part of the universe who is Mary (and perhaps, indirectly, to other beings with minds who are suitably aware of and care about Mary in some way). In general, benefit to one sentient being is not a benefit to another, although the same action may simultaneously impact on several sentient beings. Thus the individualism (which is not to say egoism, or a lack of a social ethic) of rights views is preserved by ruling out acting ultimately for any nonsentient thing or indeed any one sentient being alone.<sup>122</sup>

Returning to what is best, ideally does that not mean what is *all good*? Who would deliberately introduce an element of badness without just cause in a bid to create what is best? If that is the case, it seems to follow that needless bad is generally alien to what is ideally best. Normally, I take it this logically entails an ideal of elimination of harm towards all individuals if possible. If one cannot eliminate bad then one must choose the lesser of evils (either of two different evils, or a less evil form of the same harm such as an illness). Thus *non-violence* is the norm on my form of rights reasoning, and I assert that this follows logically. If one objects that what is best full-out is too demanding, it should not be too taxing to insist on that minimal component of what is best or ideal which is not-harming,<sup>123</sup> as we generally require when human interests are at stake. Interestingly, I have suggested that we would call using mentally disabled humans for meat, skins, or experiments “violent,” but the only standard justification for violence is defense, and we do not defend ourselves against animals when we use them in these very ways. No one has thought of a brilliant alternative justification for violence besides defense in the case of animals. Speciesists are hard-pressed to justify their violence in *any* way. Just because animals are different from humans does not give us a license to harm these other creatures. I also argue at length in my book that in addition to being rightfully entitled to non-violence, sentient beings have rights to respect, life, welfare, and freedom since these are important goods for all sentient beings.<sup>124</sup>

We can all unite in rejecting avoidable harms then as contrary to what is best, or even good, but it is more difficult to negotiate the pursuit of the good since many pursuits of goods are private or semi-private parts of specific personal or professional relationships or projects, and we all have unique interests, choices, and life-paths. Thus it is difficult to make generic duties pertaining to the good more than it is to posit duties to abstain from harming.<sup>125</sup> Utilitarianism, as I understand it, does not make this crucial distinction pertaining to benefiting and not-harming since it lumps together all benefits and harms and may easily propose to harm for some benefit—unlike best caring ethics.

I chose “caring” as a key concept since by contrast good will only emphasizes the good and not offsetting the bad; traditional virtue ethics focuses only on character; consequentialism only on outcomes; deontology only on duties or rights; and justice does not necessarily address empathy or special obligations of love and friendship. Note that I am not excluding any of these other ideas but rather implying that they can be encompassed

by best caring ethics, although none of these other ideas alone, I think, encompasses all of the concerns of best caring ethics. Respect is key and, to my understanding, flows from optimal caring, but I am less confident about the reverse: one can respect someone's good by not harming them but best caring agents sometimes do more to promote the good than that. I do not need any neologism since caring is so comprehensive and holistic a term. One should ideally care about (1) sentient beings, (2) what they find intrinsically valuable that is consistent with best caring,<sup>126</sup> and (3) what is useful for sentient beings (including, one could argue, rights, duties, virtues, a vibrant environment and ideally, the best states of affairs). Caring has not traditionally been recognized as an umbrella concept in ethics because sexist ideas of care are so rampant in cultures around the globe.

Indeed, when Gilligan emerged with the ethics of care even she stereotyped the "care" approach to ethics in an ironically sexist manner, describing "care" ethics as feminine, emotional, at home in the realm of private relationships, etc. However, we ordinarily speak of men taking care with reasoning, calculations, scientific instruments, public issues, etc. These contemplations point to care having rational, sexless, and public dimensions. Gilligan contrasts the care approach with the justice approach,<sup>127</sup> whereas best caring for all sentient beings would justly make them equal before the law, and the constellation view of the best is, I argue, conducive to a fair or just consideration of all individuals. Best caring, then, may be as encompassing of ethical concerns as it needs to be. Note that unlike "the ethics of care" my "best caring ethics" can simply be called "best caring," at times, since I believe the latter ideal is necessarily ethical for human moral agents, so it would be redundant to use the word "ethics" at every turn.

Now what about the test case of vivisection? The constellation view of what is best considers what is best in general to be the conjunction of what is best for each and every individual sentient being. Vivisection however is not best for any sentient being who is subjected to such treatment, and is contrary to the principle of non-violence. Therefore vivisection is not consistent with what is best in general given best caring ethics. So thus far, my ethical view mirrors the strength of utilitarianism in appealing to what is best while avoiding its weakness of overriding individual concerns. My theory of rights also logically entails a right not to be vivisected unlike, surprisingly enough, standard theories of rights.

It will be objected that we cannot always uphold what is best for everyone. Suppose we can only pull one sentient being—a human or a dog—from a burning building.<sup>128</sup> It is indeed preferable or best in general to uphold or respect what is best for *all* sentient beings. However sometimes one must tragically choose the good of one being or another but not both. One may still try to choose what is best in the situation, although the rights of someone will be overridden. Here I distinguish between *rights reasoning*, simply judging according to everyone's rights, and *non-rights reasoning*, or moral reasoning that requires a departure from coming to conclusions based on equal rights for all. A prominent form of non-rights reasoning is rights-overriding reasoning.<sup>129</sup>

Now rights reasoning tends to be *egalitarian* especially in the aspect of not-harming, and non-rights-reasoning, when rights need to be overridden, tends towards *inegalitarianism* by contrast. There is no inconsistency in the philosophy here; the difference between egalitarianism in the first case and inegalitarianism in the second owes to a common or consistent idea of doing the best one can in different contexts. It is best for everyone to be equally strict about not harming anyone *whenever that is a possibility*—and in most cases it is. Mostly, everyone receives equal protection against harm on my ethic. However, when rights-overriding reasoning is needed there is no possibility of this ideal best-case-scenario: doing what is best for everyone. In such tragedies where beings suffer no matter what one



does the best is only salvaging some good instead of another and then it makes sense to favor what will have the best—i.e., most good and least bad outcome—all things considered. It is perhaps best in such dilemmas, when one *has* to choose between sentient beings, not to be deadlocked due to equal regard for everyone when unequal goods and harms are in fact at stake. Therefore we find consistency here, through the use of different forms of reasoning when they are relevant, doing the best that we can in both kinds of cases. Can we then apply rights-overriding reasoning to vivisection and thus rationalize using animals, human or nonhuman, after all?

I do not believe so. The burning building case does not permit rights reasoning, or simply deciding according to everyone's rights. It requires rights-overriding reasoning to salvage as best one can from a less-than-ideal situation. Using rights-overriding reasoning without necessity however is simply an affront to rights. Note that I have construed moral necessity above as including a restriction against avoidable harm. I argue that it is best in general, or for *all* sentient beings, to support what is best for each and every sentient being. By contrast, if one infringes on rights, that is only best for the infringer or some beneficiary, never best for the victim, and so is not *best for everyone*. If justice is an ideal or best distribution of benefits and burdens to sentient beings, then it seems inherently unjust to favor what is best only for some and not for all. Now researching in medicine without infringing animals' rights and without infringing human rights is not only possible, by at minimum harming neither; it is the only morally acceptable path. No one has the right routinely to override anyone else's rights, including those of animals. One must act in everyone's best interests as much as possible. One also cannot dismiss animals' concerns as unimportant. If all nonphysical significance only occurs ultimately in relation to individual sentient beings as ends in themselves, this applies to importance too, and life, freedom, and welfare are indeed important in the lives of all nonhuman sentient animals.

Does best caring ethics succumb to the ten objections to standard ethics of care views? I do not think so. Considered in order, best caring: (1) is not contingent on chance sympathies but rather cares for what is best for everyone; (2) does not mimic any one role such as motherhood; (3) does not reject rationality in favor of totally whimsical behavior; (4) rules out sympathy for aggressors as contrary to what is best; (5) does not merely seek to replicate points of view through empathy but does consider different standpoints with a view to promoting what is best; (6) does not always require accurate empathy, although that can be helpful to awareness, motivation or adjusting of behavior; (7) is closed to abusive empathy; (8) rejects bias towards self; (9) avoids nepotism, and (10) seeks to take justification in ethics very seriously.

Do my meditations on ethics thus far surreptitiously rely on “intuitions”? It is not an intuition that nothing is significant in the way of being good or bad to a mere thing as an ultimate object of concern. It seems to me a fact that only beings with minds can find things to be significant. This view is also not merely a personal or cultural opinion, or so I would urge in defiance of skeptics. That this insight, suitably applied, rules out the rationality of acting ultimately for units of goodness or a centralized idea of what is best as on utilitarianism is also apparently a matter of logic rather than intuition. I have also not intuited favoring the ideal of what is best in the first place but have provided a rational argument for that ideal. Preferring what is best because it is more good and less bad (or *better*) than alternatives is not merely favoring something intuitively. All of these moves might involve intuition, however, if I merely “intuit” the existence of good and bad themselves, at the bottom of all of my reflections. However, in the next section I will try to show that I do not rely on intuiting good and bad to be real.

## X. A Best Caring Theory of Value

I maintain that speciesism has resulted in a skewed consideration of the emotions in ethics. I conjecture that is because if every positive or negative feeling were acknowledged as significant we would have to treat animals very differently, i.e., without speciesist exploitation. Noncognitivist theories from the early to mid-twentieth century simplistically accounted for ethics using emotions and attitudes, while denying that there is any such thing as a “real” moral obligation. For example A. J. Ayer maintained that “good” means the equivalent of “yay!” and “bad” much the same as ‘boo!’<sup>130</sup> and C. L. Stevenson saw moral judgments merely as evidence of pro-attitudes towards something.<sup>131</sup> I argue however that morality and the emotions are more complex than that, and that there is such a thing as morally relevant “emotional cognition” as against noncognitivism, which maintains that we can have no cognition of significant moral truths. Contrary to tradition, I hold that feelings occur as a result of a specific mode of awareness or cognition, otherwise I suppose we would not be *aware* of feeling anything.

Using emotional cognition or emotional intelligence, I know when I have a headache. Panyot Butchvarov, an epistemologist, claims that he cannot possibly be mistaken when he has a headache.<sup>132</sup> This is because a feeling of pain cannot possibly be other than what it is to the sufferer. I assert in a related way that I absolutely know that pleasure feels good and that pain feels bad. I am not appealing to intuition here but rather to how things feel to sentient beings. Again, these ideas seem to me to be a matter of fact, not personal or cultural opinion. No one can rightly say that pleasure feels bad or pain feels good, or that paradigm cases of pleasure or pain feel “indifferent.” This is something that I think goes beyond all of the world’s cultures and holds true for other animals too.

Now others’ pleasures do not automatically feel good to oneself, any more than their sufferings necessarily feel bad to oneself. Such corresponding emotions only reliably seem to occur through a sympathetic variety of empathy.<sup>133</sup> However, I argue that only through such empathy can we acquire a realistic awareness of others’ suffering in its essential form: something that feels bad from a particular point of view. By objectifying others and viewing them without sympathetic empathy as a psychopath does, we can apply the bare concept of pleasure or pain to others, but arguably do not fully have any substantial or realistic sense or awareness of that pain, or what is really like: something that feels bad. Whether we have others’ pain indirectly before us through empathy, or our own pain directly before us through injury, emotional cognition allows us to be aware that it is something bad in itself due to its very nature as a feeling.<sup>134</sup> If we do not have so vivid a sense of others’ pain it is arguably to that extent a rather unsuccessful form of empathy.<sup>135</sup> Why should we have a realistic view in this case? It is consistent with best caring to be forthrightly aware of what is emotionally bad and to avoid it; there can only be “less caring” reasons for deriding, dismissing, diminishing, or devaluing others’ pain such as sadism, selfishness, domineering, laziness, etc. Best caring practices conduce to the most good and least bad that we can know; worse caring practices, by contrast, conduce to an inferior standard.

We must not confuse here feeling badly *about* a guilty pleasure, or feeling good *about* being slapped, since there is a risk of running together different feelings. A masochist, for example, would not feel good in response to being pleased, only to being pained, so there really needs to be a distinction between the original feeling and the emotional reaction to it. Again, emotional cognition is not easily admitted under speciesism not because of such

potential confusions, but mostly because such cognition would entail going beyond an oppressive insensitivity to the concerns of all but elite sentient beings.<sup>136</sup>

What feels good and bad is just one side of the coin for my theory of value. The other side is causal good or what is effective. Knives are useful for cutting bread unlike logs. Again this is not a matter of intuition or opinion but is in the realm of scientific fact and is the least controversial kind of value: instrumental value. If I stopped right here, that might leave us with mere hedonism. Or if I built into the good the idea of being informed of options, that might entail preferentialism. Yet these value theories I argue are incompatible with best caring. “Best” I have argued means the most good and least bad in relation to the constellation of sentient beings. Merely seeking to feel good or bad is not what agents can rationally aim for since that is infantile: simply wanting what one wants. At the very least, even an egoist should be prudent about what is effective, rewarding enough, healthy, etc. Furthermore I would say that on best caring ethics, unlike hedonism and preferentialism, sadistic or masochistic values do not count because they conduce towards avoidable harm, which I have ruled out as contrary to what is best on my ethics (see above). Best caring also favors the best goods we can aim for.

This theory of value is moderately pluralistic since it recognizes that things can be of variable significance to individuals, e.g., some are more interested in friendship than others. However it is not radically pluralistic such that “anything goes.” I am also not saying that friendship, art and knowledge-acquisition each lead to the exact same “good feeling,” although to use a Wittgensteinian term, there seems to be a “family resemblance”<sup>137</sup> among all forms of good feelings. Feeling-significance also does not require language. If I am in pain, yelling “Ow!” does not make the pain significant, but is mainly of possible communicative value.

The best caring theory of value rejects not only hedonism and preferentialism but also Aristotelian and Thomistic conceptions that the good is simply what we find intrinsically valuable.<sup>138</sup> Some find cruelty to be good in itself, regardless of what it leads to. We should avoid overly general lists of “goods” as in this tradition: some forms of friendship based only in gay-bashing are vicious, some forms of play are sadistic, and some curiosity (or knowledge-seeking) is morbid as in vivisection for so-called “pure” research purposes. This seems to me a decisive point in favor of contextually-sensitive ethical judgments where the good that is aimed for should not be overly abstract or general.

Indeed, any list of goods which is claimed to be *known* only by “reason” in the narrow sense of the intellect by itself does not seem right to me. For severely depressed people can experience anhedonia or the inability to experience pleasure from normally pleasurable activities (although they may suffer, or feel numb at times). Yet these unfortunates are still quite capable of intellectual judgments. So if friendship activities for example are suggested by a list of intrinsic goods they may seem barren of interest or not desirable, etc. to an anhedonic, which is evidently not a suitable state for knowing something as “intrinsically good,” although they should be able to know this if it is purely a matter of intellect. Should anyone wish to say that they find something to be undesirable or without interest and yet they find it to be “intrinsically good”? The emotions, then, seem prominently to figure into sentient beings genuinely finding or perhaps knowing things to be actually or potentially intrinsically good. Indeed, without connection to positive value, nothing would even seem “useful.” Things would just happen in the life of an anhedonic person, some things leading to others, everything seeming useless or futile. As for the Platonic idea of the Good existing beyond space and time as an eternal Form,<sup>139</sup> I cannot disprove this but I find no evidence for it either and so I set it aside from present

consideration. Here, then, we have an outline of a new basis for a theory of animal rights, which argues, against skepticism, that some things really are intrinsically and instrumentally good and bad for sentient beings and that we can have clear enough awareness of these goods and bads. I will now go on to argue that all sentient beings are properly to be considered persons, so I am really upholding a variant of personal rights—or animal person rights.<sup>140</sup>

## **XI. Animal Persons**

It should not be too controversial to say that animal persons exist since humans are animal persons.<sup>141</sup> Are other animals persons? The question is chiefly of relevance because legal personhood has been at the core of discussions of extending rights. Dictionaries partly define personhood in terms of being human,<sup>142</sup> but that may just be a result of overt speciesism. There are arguments that animals are persons. Francione contends that any right-holder with interests is a person<sup>143</sup>—but perhaps sentient beings are not persons? Francione is begging the question. Joan Dunayer argues that in grammar a noun is a person, place or thing and since animals are not places or things they must be persons.<sup>144</sup> This is again inconclusive since sentient beings might be neither persons nor mere things. Very few ethicists put up any argument that animals are persons. I offer four new arguments in the affirmative:

(1) We identify our personhood with our minds. If my psyche inhabited another's body (of course this is merely a thought experiment such as Rawls uses with his original position) that would still be "me." If I lose a limb I am still me. If my soul or psyche survives my death that is perhaps essentially me. Before I was conscious the body I would one day awake to was without personality and after I die the corpse will be devoid of personality. Yet other animals also have minds which may equally serve as a core to personhood in these sorts of ways.

(2) If I use another thought experiment to imagine myself having a dog's joy when "his human" comes home, I would call that a "personal experience" on my part.<sup>145</sup> So why not call it a "personal experience" for the dog too? Only the species of the experiencer would be different in this case: the experience itself would be exactly the same. So would it not be speciesist to call the experience "impersonal" in the case of the dog and "personal" in the case of the human? I would not need to reflect rationally on the feeling for it to count immediately as a personal experience in my own case, so speciesists cannot try to insist that persons are necessarily "rational." Sometimes humans are downright irrational. If perceptions and feelings are deeply personal experiences in us, why not in other animals? We should not waver between "sentient being" and "person" after all if we find sentience (feelings, perceptions) in ourselves to be utterly personal. If we do not grant this then we depersonalize a huge and intimate part of our biographies, perhaps most of what we experience, and our personhood—if it is only "rational"—is reduced to a wispy, interrupted and variable strain in our progression of existence. If persons must be "moral" then psychopaths are not persons which almost no one maintains. A less moral person is not only "partially" a person. It cannot decisively be objected that my notion of personhood is contrary to the dictionary, since lexicons only record cultural thoughts. Victorian dictionaries may once may have listed phlogiston as a real substance though dictionaries say this no longer.<sup>146</sup>

(3) Animals, I find, literally have *personalities* or characteristic ways of acting, moving, preferring, choosing, reacting, temperament, character, strengths and weaknesses, etc. Mere things only metaphorically have personalities (e.g., a judge’s “stern” gavel). Animals literally can be patient, or wait and endure without much fuss, but not things.

(4) Sentient beings deserve moral and legal rights, or so I have argued. Since the law most unequivocally accords rights to persons, and typically denies rights to nonpersons, then practically, there is an imperative to deem sentient animals to be persons. My deliberations above show that there is nothing standing in the way of thinking of sentient beings as persons. Quite the contrary, there is seemingly more theoretically to encourage thinking of sentient animals as persons rather than the opposite. It seems to me, in the end, that for the most part only those who do not wish to facilitate rights for nonhuman sentient beings would object to such a usage, and that reluctance would be speciesist as I have argued. Blacks and women used to be considered non-persons too, and that was a form of oppressive discrimination. It seems only to be a result of tyranny that animals are viewed impersonally as mere things. Such a world view leads us to believe that animals are mere resources rather than ends in themselves.

## XII. Conclusion

When Peter Singer’s misleadingly entitled *Animal Liberation* was first published it carried the sub-title, *A New Ethic for Our Treatment of Animals*. It was indeed relatively new to insist against speciesism, a term that was then only five years old. However, utilitarianism is no innovation, nor are the mirrorings of old rights theories by animal rights philosophers. Also, I would venture to say that Singer is a speciesist to propose to vivisect nonhuman animals because they are supposed to be cognitively inferior.<sup>147</sup> Even the ethic of care was something new mostly in name only, since compassion is as old as the hills, as is ethics which considers relationships and specific contexts. Best caring ethics itself is perhaps only new in a recombinant way, a weaving together of ancient though often latent strands of insight. However it offers at least levels of harmful discrimination, a rethinking of traditional animal welfare as animal illfare, a revised theory of ends in themselves, a distinctive theory of what is best, a theory of emotional cognition, and a set of arguments for animal personhood.

I have tried to outline a justification for best caring ethics. As well, best caring ethics may be judged to compare favorably with other ethical theories. Competing theories have several advantages as well as disadvantages (i.e., objections that I do not see as having any satisfactory answer). The following table summarizes how best caring ethics may embody the advantages of the following major ethical theories<sup>148</sup> but not their disadvantages:

Ethical View(s)	Advantages (Best Caring Ethics Shares)	Disadvantages (Best Caring Ethics Avoids)
<b>Standard Rights Theories</b>	Protects individuals (as standard rights theories are <i>supposed</i> to do); offers an idea of rights-holders as “ends in themselves”	Does not leave way open for vivisection and does rule out competing moral theories as standard theories of rights- justification fail to do
<b>Utilitarianism</b>	Appeals to what is best; fair; emphasizes importance of consequences; justifies both rules and exceptions; flexible and	Does not override individual rights; does not act for mere things such as aggregates of utility, the situation, etc. but rather acts for what is best for each and every sentient

	sensitive to context; considers emotions in the theory of value	being; does not have corrupt value theories that can promote sadism; does not neglect virtues and vices of moral agents
<b>Ethics of Care</b>	Does not reduce ethics to mere abstractions or isolated individuals but considers social relationships; helps account for moral motivation; flexible and sensitive to situations; not “cold and unemotional” unlike many ethical theories; people need to care somewhat to act at all and to care in certain ways to be moral agents of any kind; even traditional ethics depends on feelings in different ways	Not victimizing of others due to lack of sympathy; does not use questionable models for all morality such as motherhood; not irrationalist like some care theories; does not sympathize with aggressors; does not reduce to a deadlock between standpoints that are empathized with; does not over-rely on empathy which is often inaccurate; closed off to abusive empathy; does not feature bias towards ego in empathy; rejects nepotism stemming from sympathies with familiars; takes justification in ethics seriously
<b>Virtue Ethics</b>	Focuses on the nature of moral agents, since people will not promote what is best unless they themselves are operating at their personal best, exemplifying classical virtues such as patience, perseverance, etc. and avoiding conventional vices such as greed, arrogance, etc.	Is not ambiguous as to moral theoretical approach; does not allow virtually any moral theory to lay claim to the best kinds of virtues and vices
<b>Ethical Egoism</b>	Provides for selfish people to follow moral rules with legal punishments and incentives; does not assume all people are sympathetic to others	Does not have to claim that selfishness is “best”; does not have to justify ego as “special” or selfishness as “virtuous”; does not allow abuses of vulnerable beings, confuse the vividness of ego’s concerns with their being “special,” and does not confuse any lack of psychological compulsion to consider others’ good with a lack of moral obligation to do so
<b>Skepticism in Ethics</b>	Helps to explain and allow for diversity in ethics (in the case of best caring ethics, due to different interests, personalities, creativity, different linguistic and cultural habits, and erroneous ethical ideas); rightly suggests we should be skeptical of many moral theories and ideas; refuses to be dogmatic and insists on reasoning in ethics; lets individuals decide for themselves	Does not hold that everything in ethics is a matter of opinion; does not reduce to the dangers of “Anything goes”; does not fail to provide any moral guidance

I emphasize that I am not a radical pluralist or syncretist who simply throws different philosophies together which I have argued are logically incompatible. Nor do I conveniently pick and choose ideas when I practically deliberate as would an eclectic. If the strengths and not the weaknesses of the other theories I have mentioned emerge in best caring ethics, it is from an attempt at moral reasoning rather than running a shopping cart through the history of moral philosophy.

Traditional ethicists say they champion animal welfare but really, as I have argued,

promote animal illfare. In addition, I have found that speciesist ethics is a threat to human rights itself, because rights theories from the “humanistic” tradition do not safeguard the rights protections of Nuremberg and Helsinki against utilitarian vivisection for any human being. Also, traditional ethics leave mentally disabled humans especially vulnerable. For if speciesists were ruthlessly consistent, they would treat mentally disabled humans at Levels 3 and 4 of harmful discrimination, as they now treat animals, and only if animals were to be liberated could society consistently treat mentally disabled humans at the level of No Harmful Discrimination.

Where traditional moral thinking fails to be reasonable and compassionate, the animal rights movement will endure and hopefully grow radically. We need yet another revolution—or perhaps an evolution—in our thinking about animals, shifting beyond the old narrow paradigms. Yet most animal liberationists are not moral philosophers, and most ethicists are not animal liberationists. So for a while at least we may only have what my country’s Quebecers call a “Quiet Revolution” among certain people who engage in anti-speciesist forms of moral reasoning. Quietism is not preferable but is simply difficult to overcome. Indeed that hardship occurs because the sounds of extended, civilized dialogue are almost as structurally stifled by our society as are literally billions of cries of protest from unheeded animals.

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<sup>1</sup> Singer, *Animal Liberation: A New Ethics for Our Treatment of Animals* (New York: Avon Books, 1975). A revised 2d ed. simply called *Animal Liberation* was published in 1990 with Avon Books. Singer first caused a stir when he released an essay entitled “Animal Liberation” in the *New York Times Review of Books*, April 5, 1973 which a few years later grew into his famous book.

<sup>2</sup> In chronological order, the major animal rights ethics books are: Bernard Rollin, *Animal Rights and Human Morality* (Buffalo: Prometheus Books, 1981), rev. ed. 1992; Regan, *The Case for Animal Rights* (Los Angeles: University of California Press, 1983); S. F. Sapontzis, *Morals, Reason and Animals* (Philadelphia: Temple University Press, 1987); Evelyn B. Pluhar, *Beyond Prejudice: The Moral Significance of Human and Nonhuman Animals* (Durham: Duke University Press, 1995); Mark Rowlands, *Animal Rights: A Philosophical Defence* (London: Verso, 1998); Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog?* (Philadelphia: Temple University Press, 2000); Julian Franklin, *Animal Rights and Moral Philosophy* (New York: Columbia University Press, 2005). An earlier account of animal rights, which was largely ignored by scholars until republished, is Henry S. Salt, *Animals’ Rights: Considered in Relation to Social Progress* (Clarks Summit: Society for Animal Rights, 1980), originally published in 1892 with revised editions in 1905 and 1922. It was Salt who influenced Mohandas Gandhi to become an ethical as opposed to merely traditional vegetarian.

<sup>3</sup> Carol Gilligan, *In a Different Voice: Psychological Theory and Women’s Development* (Cambridge: Harvard University Press, 1982) started a small industry of scholarship. The latter book brought her views into prominence but see also Gilligan, “Concept of the Self and of Morality,” *Harvard Educational Review* 47 (November 1977): 481-517.

<sup>4</sup> Carol J. Adams, *The Sexual Politics of Meat: A Feminist-Vegetarian Critical Theory* (New York: Continuum, 1990) first brought feminist ethics prominently to bear on animal liberation issues. However arguably the single most important work is Josephine Donovan and Carol J. Adams (eds.), *Beyond Animal Rights: A Feminist Caring Ethic for the Treatment of Animals* (New York: Continuum, 1996), a collection of previously published papers.

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<sup>5</sup> Another strain of ethics used for animal advocacy is virtue ethics, which I discuss in *Animal Persons*. Briefly, virtues refer to character traits such as courage, honesty and patience, and vices refer to dispositions such as greed, stinginess and callousness. Virtue ethicists often follow Aristotle's *Nicomachean Ethics*. I agree that virtues are helpful and vices are destructive in general. However one limitation of basing ethics in virtues (as opposed to having an ethic with another basis that still includes virtues) is that virtue ethics is too vague, since any ethical theorist, even an ethical egoist, can list her own virtues and vices. So virtue ethics does not decide among theories of animal advocacy ethics. Rosalind Hursthouse, *Ethics, Humans, and Other Animals: An Introduction with Readings* (London: Routledge, 2000), p. 161 stresses that the virtue of kindness may stop people from fox hunting, although others might argue that the practice exemplifies the virtue of courage. Zoe Weil, *The Power and Promise of Humane Education* (Gabriola Island: New Society Publishers, 2004), p. 5, plausibly lists the best qualities of human beings as: (1) kindness, (2) compassion, (3) honesty and trustworthiness, (4) generosity, (5) courage, (6) perseverance, self-discipline, and restraint, (7) humor and playfulness, (8) wisdom, (9) integrity, and (10) a willingness to choose and change. However rights, utilitarian and care ethics proponents could all lay claim to these virtues, as can traditional animal welfarists who favor animal exploitation, so this list of virtues is too logically ambiguous to be decisively in favor of animal liberation, or so I argue in *Animal Persons*.

<sup>6</sup> Ryder notes this autobiographical fact in "Speciesism," in *The Encyclopedia of Animal Rights and Animal Welfare*, ed. Marc Bekoff (Westport: Greenwood Press, 1998), p. 320.

<sup>7</sup> R. G. Frey, "Animal Parts, Human Wholes," in *Biomedical Ethics Reviews—1987*, eds. James M. Humber and Robert F. Almeder (Clifton: Humana Press, 1987), p. 105; Michael P. T. Leahy, *Against Liberation: Putting Animals in Perspective* (New York: Routledge, 1991), p. 203; Peter Carruthers, *The Animals Issue: Moral Theory in Practice* (Cambridge: Cambridge University Press, 1992), p. 52; Michael Allen Fox, *The Case for Animal Experimentation: An Evolutionary and Ethical Perspective* (Berkeley: University of California Press, 1986), p. 89. Fox has since crossed over to the animal liberation side.

<sup>8</sup> Aristotle, *The Nicomachean Ethics* (Harmondsworth: Penguin, 1976), p. 75; Thomas Aquinas, "Differences between Rational and Other Creatures," in *Animal Rights and Human Obligations*, 2d ed., eds. Tom Regan and Peter Singer (Englewood Cliffs, New Jersey: Prentice-Hall, 1989), p. 6.; Immanuel Kant, *Groundwork of the Metaphysic of Morals*, trans. H. J. Paton (New York: Harper & Row Publishers, Incorporated, 1964), p. 96; G. W. F. Hegel, *Reason in History: A General Introduction to the Philosophy of History*, trans. Robert S. Hartman (New York: Macmillan Publishing Company, 1953), p. 45.

<sup>9</sup> "Moral standing" has generally come to mean in ethics a status of being accorded basic practical respect. However, the term is not biased in favor of any given ethical theory and someone with moral standing may have due to them certain rights, or be entitled to utilitarian consideration, or be part of a network of relationships of caring.

<sup>10</sup> Richard A. Watson, "Self-Consciousness and the Rights of Nonhuman Animals and Nature," *Environmental Ethics* 1 (Summer 1979): 115.

<sup>11</sup> Bonnie Steinbock, "Speciesism and the Idea of Equality," *Philosophy* 53 (April 1978): 247.

<sup>12</sup> A. I. Melden, *Rights in Moral Lives: A Historical-Philosophical Essay* (Berkeley: University of California Press, 1988), p. 54.

<sup>13</sup> Carl Cohen, "The Case for the Use of Animals in Biomedical Research," *The New England Journal of Medicine* 315 (October, 1986): 865-66.



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<sup>14</sup> Alan Holland, "On Behalf of a Moderate Speciesism," *The Journal of Applied Philosophy* 1 (1984): 286. Holland does not disavow speciesism.

<sup>15</sup> L. B. Cebik, "Can Animals Have Rights? No and Yes." *The Philosophical Forum* 12 (1981): 252, 253, 257, 258.

<sup>16</sup> Ruth Cigman, "Death, Misfortune, and Species Inequality," *Philosophy and Public Affairs* 10 (Winter 1981): 60.

<sup>17</sup> Meredith Williams, "Rights, Interests, and Moral Equality," *Environmental Ethics* 2 (1980): 153, 154.

<sup>18</sup> R. G. Frey, "Animal Parts, Human Wholes," pp. 89, 91-3; Peter Miller, "Do Animals Have Interests Worthy of our Moral Interest?" *Environmental Ethics* 5 (Winter 1983): 332; Peter Miller, "Value as Richness: Toward a Value Theory for the Expanded Naturalism in Environmental Ethics," *Ethics* 4 (Summer 1982): 112.

<sup>19</sup> Michael Allen Fox, "Animal Experimentation: Avoiding Unnecessary Suffering," in *National Symposium on Imperatives in Research Animal Use: Scientific Needs and Animal Welfare* (Washington: National Institutes of Health, 1984), p. 112.

<sup>20</sup> David Sztybel, "Taking Humanism Seriously: 'Obligatory' Anthropocentrism," *Journal of Agricultural and Environmental Ethics* 13 (2000): 188.

<sup>21</sup> I have clarified elsewhere that there is no logical link in general between being different in some specified way and having a license to harm the one who is different. David Sztybel, "Can the Treatment of Animals Be Compared to the Holocaust?" *Ethics and the Environment* 11 (Spring 2006): 100; Sztybel, "Empathy and Rationality in Ethics" (Ph.D. diss., University of Toronto, 2000), 96-99.

<sup>22</sup> James Rachels, *Created from Animals: The Moral Implications of Darwinism* (Oxford: Oxford University Press, 1990), pp. 181-94.

<sup>23</sup> Singer, *Animal Liberation*, 2d ed., p. 9.

<sup>24</sup> See Sztybel, "Taking Humanism Seriously."

<sup>25</sup> Singer, *Animal Liberation*, 2d ed., p. 18; Regan, *The Case for Animal Rights*, pp. 186-89; Regan, *The Struggle for Animal Rights* (Clarks Summit: International Society for Animal Rights, Inc., 1987), p. 75; Rollin, *Animal Rights and Human Morality*, 1<sup>st</sup> ed., p. 35; Pluhar, *Beyond Prejudice*, chs. 1-2. Traditionally, this has been known as "the argument from marginal cases." I think the term, "marginal humans" can carry unwelcome connotations that mentally disabled humans are either only marginally human or else only of marginal ethical concern. However I think the term was originally meant to refer to those who are *marginally rational* (or marginal in terms of manifesting other mental capabilities) compared to average human beings, which does not necessarily imply that the mentally disabled are any less human or less deserving of respect. Therefore I do not take offense anytime someone such as Pluhar uses the term "marginal cases." Still, for connotative reasons the term "marginal" might well be avoided, especially since the relevant clarifications seem never to be offered wherever the term is used. "The argument from mental disability" may be used as a simple, relatively inoffensive substitute in the context of animal ethics.

<sup>26</sup> I also note in passing that the argument from mental disability has helped to defuse one of the primary objections to animal rights, namely that animals are not ethical towards us so we have no obligation to be ethical towards them (notice how many "humanists" noted above used the criterion of moral agency). The problem is that many mentally disabled humans cannot be ethical towards us either, but they typically receive full moral standing, so unless we extend the same benefit to animals, this seems to be a pattern of speciesist

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discrimination—unless anthropocentrists can account for why animals and mentally disabled humans are treated so differently.

<sup>27</sup> A note about ranking Level 1 insults versus Level 2: most people would prefer verbal slights to starvation, not least of all because the latter is more dangerous.

<sup>28</sup> For a detailed account of factory farming see Singer, *Animal Liberation*, ch. 3 and Jim Mason and Peter Singer, *Animal Factories* (New York: Crown Publishers, 1980), or visit <http://www.factoryfarming.org>. These sources impartially draw their facts from agricultural journals.

<sup>29</sup> See Sztybel, “Can the Treatment of Animals Be Compared to the Holocaust?” and Charles Patterson, *Eternal Treblinka: Our Treatment of Animals and the Holocaust* (New York: Lantern Books, 2002) for a comparison between standard forms of contemporary animal treatment and the Holocaust.

<sup>30</sup> For a comparison of how animals are treated and black slavery see Marjorie Spiegel, *The Dreaded Comparison*, revised edition (New York: Mirror Books, 1996).

<sup>31</sup> Are animal companions exempt from harmful discrimination? Millions of animals bred as “pets” in speciesist society are killed for want of a home, and a great many who have homes are subject to neglect, squalor, deprivation and cruelty. Is there no harmful discrimination when “pets” are treated well by speciesists? In that case there is arbitrary and harmful discrimination against *other* animals who are treated poorly, e.g., in agriculture. People often only focus on one part of the harmful discrimination equation, namely those who are arbitrarily disfavored; however another side of the equation consists of who is arbitrarily favored, such as many dogs and cats.

<sup>32</sup> See also Evelyn B. Pluhar, *Beyond Prejudice: The Moral Significance of Human and Nonhuman Animals* (Durham: Duke University Press, 1995), pp. 136-37. Pluhar discusses the idea that humans normally have qualities such as rationality and complains that it is “outrageously unfair” that one be treated as if one possesses abilities that are normal for one’s species rather than according to one’s actual abilities. Presumably it would be unfair because a mentally disabled human might, for example, be expected to perform successfully in normal schooling?

<sup>33</sup> See Pluhar, *Beyond Prejudice*, p. 156. Pluhar objects, p. 158 that what she calls the argument from misfortune is circular because it assumes that some humans already have moral standing and are entitled to distributive justice. I agree that a theory defending rights for these persons is needed, but my point of objection is different from Pluhar’s.

<sup>34</sup> This objection is noted in Pluhar, *Beyond Prejudice*, p. 162.

<sup>35</sup> *Ibid.*, p. 90.

<sup>36</sup> *Ibid.*, p. 95.

<sup>37</sup> Other “special reasons” I discuss in my book are that animals lack a human genotype, are not born to human families, lack souls, are not institutionally supported as mentally disabled humans often are, are not members of society unlike mentally disabled humans (who are often no more substantially functioning members of society than animals really), and none of these reasons (anymore than the ones considered in the main text) implies anything about why we should count benefits or harms to animals differently than those pertaining to mentally disabled humans. They are, in short, logically irrelevant to the issue at hand.

<sup>38</sup> I reserve discussion of egoism and skepticism for the book for reasons of avoiding excessive length; however see the table in the conclusion of this essay.

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<sup>39</sup> Technically, “animal welfare” is ambiguous, and I identified six different senses in my article, “The Distinction between Animal Rights and Animal Welfare” in *The Encyclopedia of Animal Rights and Animal Welfare*, ed. Marc Bekoff (Westport: Greenwood Publishing Group, 1998), pp. 43-45. Here I distinguished between (1) *animal exploiter’s animal welfare* which might be deceptive and validate factory farming for instance, (2) *common-sense animal welfare* which is a fluid idea encompassing the average citizen’s concern with kindness or anti-cruelty; (3) *organized humane animal welfare*, usually more disciplined and principled, e.g., as professed by humane societies and other institutions; (4) *utilitarian animal welfare* such as Peter Singer’s, which is supposed to be “animal liberationist”; (5) *New welfarism*, a characterization of Gary Francione of any self-professed animal rightist who accepts animal welfare reforms in the law; and (6) *animal welfare-animal rights views*, such as Richard Ryder’s notable opposition to all animal experimentation while noting in Ryder, “Painism: The Ethics of Animal Rights and the Environment,” in *Animal Welfare and the Environment*, ed. Richard D. Ryder (London: Gerald Duckworth & Co. Ltd., 1992), p. 197, that animal rights and animal welfare alike “denote a concern for the suffering of others.” I am considering the term “animal welfare” here as it is used conventionally, opposed to animal liberation (which is in keeping with (2) and (3) above). “Animal welfare” is usually taken to mean: accepting the use of animals for food, leather, fur, entertainment, vivisection, hunting, zoos, and so on so long as the treatment is “kind.” [*sic*] I believe that a seventh sense of “animal welfare” needs to be added as a result of the arguments I am about to present, namely “animal welfare” as a completely misleading euphemism for how we treat animals conventionally—and not just in factory farming or the worst kinds of vivisection as in sense (1), but also in terms of standard Level 3 treatments.

<sup>40</sup> Morlocks are humanlike creatures adapted to living underground, as invented by H. G. Wells for his classic science fiction novel, *The Time Machine*, originally published in 1895.

<sup>41</sup> The last point is a bit of a departure from Wells, since the Morlocks are “savage.” However I do not imply that civilized people vivisect others. Quite the contrary.

<sup>42</sup> Francione, *Introduction to Animal Rights*, p. 50 refers to our culture’s “schizophrenic” profession of animal welfare while widely using for example factory farming, etc. (what I call Level 4 treatments). I am going farther and stating that even if Level 3 treatment were universal as “welfarists” hope, the label “animal welfarist” still is not apt. Joan Dunayer, *Animal Equality: Language and Liberation* (Derwood, MD: Ryce Publishing, 2001), p. 121 notes that vivisectors nullify the welfare of animals while calling themselves animal welfarists, and pp. 133-34 notes the same contradiction exists in standard factory farming practices. So she makes a similar observation but in a more limited way.

<sup>43</sup> It is noteworthy that most animals who are killed for human use—about 95%—are “farmed,” according to the Humane Society of the United States. See [http://www.hsus.org/farm\\_animals/factory\\_farms/](http://www.hsus.org/farm_animals/factory_farms/). This figure does not include the estimated ten billion aquatic animals killed for human consumption. Now the vast majority of these animals are “factory farmed” (see note 28) so they are not even treated according to the ideology of wrongly so-called “animal welfare,” but rather according to the non-existent mercies of Level 4. This descent into currently widespread hellish treatment of animals seems superficially contrary to the logic of so-called “animal welfare,” and therefore anomalous, but it is not when you realize that human interests—virtually *any* human interest such as the taste of flesh or financial profit—takes priority over the most important animal interests—even life itself—on what many people call “animal welfare” (*sic*—animal illfare).

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It is usually thought that there is more money to be made in confining animals by cramming them into minimal spaces (less rent), in feeding them awful food (which is cheaper), keeping them in filth (rather than paying for cleaning), letting them suffer stifling, toxic air and extremes of hot or cold (rather than pay for regulation of the atmosphere in factory farms, transport vehicles, or stockyards), and transporting and killing them forcefully and hurriedly (because workers after all are paid by the hour). Such is the logic of so-called “animal welfare.”

<sup>44</sup> Here I defer treatment of egoists and nihilistic skeptics who are not especially associated with altruism.

<sup>45</sup> Gary L. Francione, *Rain without Thunder: The Ideology of the Animal Rights Movement* (Philadelphia: Temple University Press, 1996), p. 53.

<sup>46</sup> Peter Singer, “The Fable of the Fox and the Liberated Animals,” *Ethics* 88 (January 1978): 122.

<sup>47</sup> Peter Singer, “Animals and the Value of Life,” in *Matters of Life and Death*, ed. Tom Regan (NY: Random House, 1980), p. 254.

<sup>48</sup> *Ibid.*

<sup>49</sup> In fairness, Singer probably thinks that people will be more reluctant to use animals if humans must also be used at the same time, but the fact is that he allows and even defends the use of both sorts of sentient beings. People would be even more reluctant to use animals and mentally disabled humans if these beings were recognized to have a *right* not to be vivisected, which denounces rather than defends such a practice.

<sup>50</sup> Bentham in *The Principles of Morals and Legislation*, equated all kinds of pleasures, but Mill controversially distinguished between base and noble pleasures in his famous essay, “Utilitarianism.”

<sup>51</sup> There is a further distinction between act utilitarianism and rule utilitarianism. An act utilitarian seeks to choose the most good and the least bad in every single decision. A rule utilitarian, by contrast, uses utilitarianism mainly to justify broad rules for society which purportedly serve “the greatest good for the greatest number,” to use a phrase commonly invoked by utilitarians. Rules are preferred by some utilitarians because estimating maximal utility in every case may be too daunting, chaotic, or biased in that some people may seek to rationalize dire acts as being for “the greatest good.” We will see that rule utilitarianism is important for answering common objections to utilitarianism.

<sup>52</sup> Joseph Wood Krutch, *The Great Chain of Life* (Boston: Houghton Mifflin, 1956), pp. 147-48; cited in Spiegel, *The Dreaded Comparison*, p. 63.

<sup>53</sup> Antony Flew (ed.), *A Dictionary of Philosophy* (London: Pan Books Ltd, 1984), p. 113.

<sup>54</sup> J. J. C. Smart, “Integrity and Squeamishness,” in *Utilitarianism and Its Critics*, ed. Jonathan Glover (New York: Macmillan Publishing Company, 1990), p. 168.

<sup>55</sup> Moreover, rule utilitarianism can rule out many such abuses.

<sup>56</sup> Samuel Scheffler, *The Rejection of Consequentialism* (Oxford: Oxford University Press, 1982), p. 9.

<sup>57</sup> L. W. Sumner, in a course lecture at the University of Toronto, 1995.

<sup>58</sup> Singer, “Animal Liberation or Animal Rights?,” *Monist* 70 (January 1987): 6.

<sup>59</sup> L. W. Sumner, review of *The Case for Animal Rights*, by Tom Regan, *Nous* 20 (September 1986): 431-32.

<sup>60</sup> Francione, *Introduction to Animal Rights*, p. 92. If one looks up the Declaration of Helsinki which is readily available on the internet, one finds that it could permit vivisection of

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mentally disabled humans if a relative provides consent. I do not interpret that the earlier code features this loophole.

<sup>61</sup> R. G. Frey, "Animal Parts, Human Wholes," p. 89.

<sup>62</sup> Singer, *Practical Ethics*, 2d ed. (New York: Cambridge University Press, 1993), pp. 110-111, 125. I refer students of this argument to my book, *Animal Persons*.

<sup>63</sup> Mentioned in Franklin, *Animal Rights and Moral Philosophy*, in the ch. on utilitarianism, which is worth citing as a whole for its astute points pertaining to this theory.

<sup>64</sup> This is a verbal issue, but I think an important one. Now I would not argue that someone (unlike Singer) who targets "normal" humans for vivisection or rodeo abuses is truly aiming for human liberation as a general matter. Therefore I cannot consistently call utilitarianism an ethic that serves animal liberation. It is not enough that Singer has a goal in his own mind of "animal liberation," nor that he calls his seminal book by that name. For the label to stick he must seek to liberate animals—period—and this he fails to do. Rights advocates support the rights of all, not just some, and emphasize the rights of the vulnerable that are trampled by utilitarianism. One cannot emphasize such rights by simply *overlooking* the animals who are not liberated. I can grant that some animals or groups of them might be liberated on utilitarianism, but that seems insufficient for "animal liberation" as a generality. I owe the idea about animal rights being a true form of liberation for animals, in contrast to utilitarianism, to Steven Best who provided very helpful comments on this essay.

<sup>65</sup> Regan, *The Case for Animal Rights*, p. 134.

<sup>66</sup> *Ibid.*, chs. 7-9.

<sup>67</sup> Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, Mass.: Harvard University Press, 2006), pp. 70, 74, 82, 151.

<sup>68</sup> *Ibid.*, p. 63, 351.

<sup>69</sup> *Ibid.*, p. 393.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*, p. 404.

<sup>72</sup> Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), p. xv, calls a fundamental right to respect "fundamental and axiomatic," which may be called an *intuition* in the sense that I am using.

<sup>73</sup> Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), p. 157.

<sup>74</sup> Joseph Raz, "On the Nature of Rights," *Mind* 93 (1984): 194-214; 195.

<sup>75</sup> S. F. Sapontzis, *Morals, Reason and Animals* (Philadelphia: Temple University Press, 1987), p. 89.

<sup>76</sup> Bernard Rollin, *Animal Rights and Human Morality* (Buffalo, NY: Prometheus Books, 1981), p. 9. Rollin also refers to this as "consensus morality," or "social ethics for humans."

<sup>77</sup> Carruthers, *The Animals Issue*, p. 7 states moral theory must take a start in common sense and supports factory farming "without qualification" on p. 196.

<sup>78</sup> See generally David Hume, *An Enquiry Concerning the Principles of Morals* (Indianapolis: Hackett Publishing Company, Inc., 1983).

<sup>79</sup> Kant, *The Groundwork of the Metaphysics of Morals*, p. 105.

<sup>80</sup> It will be pointed out that Kant relies not only on universalizability as a "categorical imperative" as he terms it. Another categorical imperative for Kant, *The Groundwork of the Metaphysics of Morals*, p. 96 (italics his), is: "Act in such a way that you always treat humanity, whether in your own person or in the person of another, never simply as a means, but always at the same time as an end." However one need not universalize this principle. I would speculate that this Kantian

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doctrine of the end in itself is rather based on intuition, or a bedrock belief for which he offers no rational defense. This intuitionist interpretation is supported by a key passage which I found in Kant's own mature writing. In Kant, *Critique of Practical Reason and Other Writings in Moral Philosophy*, trans. Lewis White Beck (Chicago: University of Chicago Press, 1949), p. 157, the German philosopher states: "...the moral law is given, as an apodictically certain fact, as it were, of pure reason, a fact of which we are a priori conscious, even if it be granted that no example could be found in which it has been followed exactly. Thus the objective reality of the moral law can be proved through no deduction, through no exertion of the theoretical, speculative, or empirically supported reason; and even if one were willing to renounce its apodictic certainty, it could not be confirmed by any experience and thus proved a posteriori. Nevertheless, it is firmly established of itself." To consider his doctrine to be self-evidently correct and not supportable by reason sounds exactly like intuitionism, which I have already dealt with as a purported basis for rights. That said, I develop my own idea, hopefully grounded in reason, of sentient beings as ends in themselves in what follows.

<sup>81</sup> Franklin, *Animal Rights and Moral Philosophy*, p. 35.

<sup>82</sup> Francione, *Introduction to Animal Rights*, pp. xxxii, 82.

<sup>83</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), pp. 11-12.

<sup>84</sup> See generally Mark Rowlands, *Animal Rights: A Philosophical Defence*, but also Rowlands, *Animals Like Us* (London: Verso, 2002).

<sup>85</sup> Rawls, *A Theory of Justice*, p. 13.

<sup>86</sup> Alan Gewirth, *Reason and Morality* (Chicago: The University of Chicago Press, 1978), p. 61.

<sup>87</sup> *Ibid.*, p. 67.

<sup>88</sup> Pluhar, *Beyond Prejudice*, ch. 5.

<sup>89</sup> Even where animals are mentioned or hinted at in this literature, it is too often dismissively. Joan Tronto is a well-known ethics of care theorist, and author of *Moral Boundaries: A Political Argument for an Ethic of Care* (New York: Routledge, 1993), and on p. 103 defines care as "a species activity that includes everything that we do to maintain, continue, and repair our 'world' so that we can live in it as well as possible." She urges, p. 189, that we "take caring seriously" and engage in an exercise of "noticing boundaries" of care, to see who is included, and who is excluded from concern. Tronto apparently restricts care to the human species without justifying the exclusion of animals, who are not even mentioned in her index. Although she mentions the environment and the need for a "life-sustaining web," on p. 103, she does not seem to count animals as significant in themselves. Allison Jaggar, a prominent feminist, criticizes care theorists for the lack of attention to justification of ethical pronouncements in care theory, in her essay, "Caring as a Feminist Practice of Moral Reason," in Virginia Held (ed.), *Justice and Care: Essential Readings in Feminist Ethics* (New York: Westview Press, Inc., 1995), p. 189, but she does not justify her own exclusion of animals as beings to care about. Martin Hoffman worked on a theory of empathy for three decades but not once does he mention animals in his resulting book, *Empathy and Moral Development* (New York: Cambridge University Press, 2000), although p. 25 he claims to offer a "comprehensive theory." Lawrence E. Blum mentions animals in his essay, "Compassion," in the volume *Moral Perception and Particularity* (New York: Cambridge University Press, 1994), p. 173, but only to announce that he is "[b]ypassing the question of compassion for...animals....I will focus on persons as objects of compassion." Blum merely takes it for granted that sentient beings are not persons. But see Section XI of the present essay.

<sup>90</sup> Gilligan, *In a Different Voice*, pp. 18-19, 30, 44.

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<sup>91</sup> Lawrence Kohlberg, *Collected Papers on Moral Development and Moral Education* (Cambridge: Harvard University Laboratory for Human Development, 1973).

<sup>92</sup> Donovan, "Attention to Suffering: Sympathy as a Basis for Ethical Treatment of Animals," in *Beyond Animal Rights*, p. 147.

<sup>93</sup> Marti Kheel, "The Liberation of Nature: A Circular Affair," in *Beyond Animal Rights*, p. 26.

<sup>94</sup> Josephine Donovan and Carol J. Adams, "Introduction," in *Beyond Animal Rights*, p. 16.

<sup>95</sup> Erik Brown, "Sympathy and Moral Objectivity," *American Philosophical Quarterly* 23 (April 1986): 179-88; p. 184.

<sup>96</sup> Marti Kheel, "The Liberation of Nature: A Circular Affair," in *Beyond Animal Rights*, p. 11

<sup>97</sup> *Ibid.*, pp. 23, 31.

<sup>98</sup> A psychopath can claim to abide by ethics out of self-interest or to manipulate others, but I interpret that ethics require more than superficial physical behaviors: an ethic seeks to command belief and corresponding attitudes which those without empathy decidedly lack.

<sup>99</sup> Kant, *Groundwork of the Metaphysic of Morals*, p. 66.

<sup>100</sup> *Ibid.*, pp. 97-98.

<sup>101</sup> *Ibid.*, p. 68. Italics his. P. 69 Kant acknowledges that reverence is a feeling.

<sup>102</sup> *Ibid.*, p. 128.

<sup>103</sup> Immanuel Kant, "Duties in Regard to Animals," in *Animal Rights and Human Obligations*, ed. Tom Regan and Peter Singer, 2d ed. (Englewood Cliffs, NJ: Prentice-Hall, 1989), p. 24.

<sup>104</sup> *Ibid.*

<sup>105</sup> See Sara Ruddick, *Maternal Thinking: Toward a Politics of Peace* (Boston: Beacon Press, 1989).

<sup>106</sup> Alisa L. Carse, "Impartial Principle and Moral Context: Securing a Place for the Particular in Ethical Theory," *Journal of Medicine and Philosophy* 23 (April 1998): 153-69; p. 157.

<sup>107</sup> Brown, "Sympathy and Moral Objectivity," p. 183.

<sup>108</sup> Adams, "Caring About Suffering," in *Beyond Animal Rights*, p. 187.

<sup>109</sup> Kenneth Shapiro, "The Caring Sleuth: Portrait of an Animal Rights Activist," in *Beyond Animal Rights*, p. 134 notes that exploiters can use empathy to anticipate needs and wants.

<sup>110</sup> Gary L. Francione, *Rain Without Thunder: The Ideology of the Animal Rights Movement* (Philadelphia: Temple University Press, 1996), p. 44.

<sup>111</sup> Gilligan, *In a Different Voice* (1982), p. 174. She writes of "an ethic of justice" and "an ethic of care" that "both perspective converge" at least in the aspect of rejecting inequality and violence.

<sup>112</sup> It might be thought that the place to look for a dam against the overwhelming floodwaters of utilitarianism is deontology, or following duties "for their own sake," including a duty to refrain from vivisection. This is really a throw-back to Kant. However we would need certain rules and not others, and also exceptions to rules. It seems to me that deontology collapses into intuitionism or traditionalism unless it is based on promoting good and avoiding bad, but then deontologists fear that the specter of utilitarian maximizing of the good and minimizing of the bad returns to haunt us. Also we cannot purely follow a rule "for its own sake," since we cannot do anything for or against a rule in itself, and we cannot follow a rule just because it exists or is proposed. Perhaps then rules are significant to us because they protect against harms and promote benefits. However I find that rules themselves have a unique kind of value because they lend themselves to orderliness, firmness, dependability and predictability in the moral life. Thus rules may be much better than the apparent whimsy of acting according to chance caring or the atrocious choices of many act utilitarians.

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<sup>113</sup> There can also be “realistic perfectionism,” or aiming for as much perfection as is really possible. I do not advocate this either because we are so imperfect that insisting on the best possible is too much. Someone’s personal best will be fallible and that should be readily accepted, whereas a “realistic” perfectionist (who can argue to be a “truer” perfectionist since it is imperfect to expect the impossible) would not accept fallibility so compassionately.

<sup>114</sup> Victor Grassian, *Moral Reasoning: Ethical Theory and Some Contemporary Moral Problems* (Englewood Cliffs: Prentice-Hall, Inc., 1981), p. 113; Sapontzis, *Morals, Reason, and Animals*, p. xii and L. W. Sumner, “Animal Welfare and Animal Rights,” *Journal of Medicine and Philosophy* 13 (May 1988): 164. Sumner in this article and elsewhere explicitly supports vivisectioning animals for medical progress. In L. W. Sumner, *The Moral Foundation of Rights* (Oxford: Clarendon Press, 1987), however, it is denied that animals should have rights; see David Sztybel, “Animal Rights: Autonomy and Redundancy,” *Journal of Agricultural and Environmental Ethics* 14 (2001): 259-73 for a criticism of that denial. Sapontzis, in his book, pp. 209-16, rejects vivisection because animals do not consent. However, for a utilitarian, masses of utility still threaten to overwhelm the comfort any one individual takes in consent and any potential dismay on the part of that individual due to experiments occurring without consent.

<sup>115</sup> Kant himself did not dignify sentient beings as ends in themselves but only rational beings. And he did not offer my argument as to why they should count as ends in themselves, but claimed obscurely to “deduce” that rational beings should be considered ends in themselves from his universalizability principle, a version of the categorical imperative. Presumably he thought no one would want to be treated as a mere means, and universalized, this meant treating everyone the same way. However, technically, one could universalize treating sentient beings or rational beings as a mere means, or only treating oneself or a favored group as ends in themselves. Furthermore, although he called the idea that we should act on universalizable principles one *version* of his “categorical imperative,” and he claimed that treating rational beings always as ends in themselves and never as a means only is another *version* of his categorical imperative, scholars are generally mystified as to how these principles could be semantically or logically equivalent or different versions of the same thing. I believe my argument offers greater clarity about the meaning and rationale of an “end in itself” doctrine.

<sup>116</sup> Bernard Rollin, “Environmental Ethics and International Justice,” in *Earth Ethics* (Englewood Cliffs: Prentice-Hall, Inc., 1995), p. 117, proposes giving moral standing to sentient beings because “what we do to these entities matters to them.” Joel Feinberg, “Can Animals Have Rights?” in *Animal Rights and Human Obligations*, 1st ed., eds. Tom Regan and Peter Singer (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1976), p. 195 notes that mere things such as the Taj Mahal do not possess interests and so cannot have rights and we cannot have a duty to it. (Perhaps, against Feinberg, we can have an indirect duty to it, or a duty to care for it due to its importance to humans.) Singer argues in “The Concept of Moral Standing,” in *Ethics in Hard Times* (New York: Plenum Press, 1981), p. 33, that we cannot give rocks moral standing because they cannot be benefited since they have no point of view. Regan, “The Nature and Possibility of an Environmental Ethic,” in *All That Dwell Therein: Animal Rights and Environmental Ethics* (Berkeley: University of California Press, 1982), p. 187, by contrast, claims that nonconscious entities in the environment should have moral standing on any adequate environmental ethic, but he never offers a convincing argument for this idea in my opinion. Singer—although I believe that he is more insightful than Regan on this



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point—fails to see the implications of this family of insights for utilitarianism as I will try to show.

<sup>117</sup> Constellations additionally involve relationships between individuals and “local” groupings (although with stars, the etymological root of “constellation,” locality is very much a relative term), which we will see later are factors that are emphasized in best caring ethics.

<sup>118</sup> Utilitarians would object to my account that maximal utility is not something we pursue just for “it.” At the start utility is always assessed from individuals’ lives, and in the end maximum utility goes to the benefit of individual sentient beings. However, any theorist must say that any good their theory does is for the benefit of sentient beings, so that is a necessary but insufficient consideration for ethics. It does not necessarily follow that any given theory is *best* for sentient beings, especially since we have determined that what is best for sentient beings involves respecting separate “bests”—a respect which maximizing utility disallows or overrules. Utilitarianism allows the “best” or maximum realization of utilities, but again it must be emphasized that such a commitment may not really be best for each and every sentient being. We can act for “best utility” as a purpose, as one can set *any* purpose, but rationally, that sort of action in turn cannot be best for utilities as mindless things and is not best for the collection of all individual sentient beings. In between assessing individual utilities and distributing utilitarian “benefits” to individuals, then, there is a step of aggregation which I argue does not at all do justice to individual bests.

<sup>119</sup> This raises the issue as to whether plants are mere things. They have no nervous systems of brains. Some would say there are “plant spirits.” However vegetarians are responsible for the destruction of ten times fewer plants since they do not eat animals who are fed plants all their lives. Also, if plants are sentient, one would still have to choose between one’s own life and a series of plants, and most would choose their own lives. Although this seems best, I argue that even so, needlessly killing animals is not “best.”

<sup>120</sup> Henry Sidgwick’s *The Methods of Ethics* (1907) quoted in Peter Singer, *Animal Liberation* (New York: Avon Books, 1990), p. 5.

<sup>121</sup> From *A Sensible Man’s View of Religion* (1933), cited in the *Concise Oxford Dictionary of Quotations*.

<sup>122</sup> Note that by affecting one sentient being one can affect a whole community, but that is through considering the mentally separate impact on the one from the mentally separate points of view of others. The separateness is not necessarily because things which affect many sentient beings are separate, nor is it saying that sentient beings exist entirely separately, without extensive interdependencies, but above all because they end up affecting each sentient beings’ minds which are separate. In other words, these are all just different forms of ultimate significance, individually, in relation to sentient beings as ends in themselves.

<sup>123</sup> Minimal moral demands should perhaps be construed as what someone with minimal moral standards should abide by. Picture an unsavory character here. We cannot plausibly expect such a human to be charitable, but we should at least expect him/her to curb his/her aggression.

<sup>124</sup> However this does not by any means preclude the much more lengthy list of rights in *The Universal Declaration of Human Rights*, since that document also enumerates important concerns at least for humans. Notably, Singer points out in *Animal Liberation*, 2<sup>nd</sup> ed., p. 2, dogs do not need the right to vote.

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<sup>125</sup> There is another key question which I will treat in more detail in my book which applies to any philosopher who advocates what is “best.” Utilitarianism, with its common ideal of what is best, competes with another kind of consequentialism called “satisficing,” which accepts satisfactory performance from moral agents as satisfying duty. In the realm of rights reasoning that I am developing, there may be a corresponding debate between aiming for what is best for all sentient beings or what is satisfactory for all. Those who aim for what is satisfactory argue that we do not blame anyone who satisfies. What is satisfactory is therefore good enough then for the purposes of duty, or so the argument goes. Those who advocate the best would argue that aiming for satisfaction alone is a “sellout” and fails to inspire by aiming for mediocrity, and what is best becomes the exclusive preserve of saints, with the result that almost no one is aiming for personal excellence. This is a tricky question, and I can only begin to sketch a response here. Kant, e.g., *Groundwork*, p. 81, sometimes refers to a “holy will” as opposed to a merely good will, and how ethics would be irrelevant for someone with a holy will because that person would already behave ideally. In more secular terms, someone who is fully rational I think would, under ideal conditions, always choose to promote what is best as much as possible because it is always preferable. However this is not perfectionism, or insisting on some vision of what is “perfect.” So what is right in ideal terms is what is best, I take it. However people often do not aim for their personal best, perhaps because they are discouraged by being told they are failures, or they may face grinding poverty or oppression, or they may have a learning disability, or they may be employed in a manner that does not nearly tap their full potential, or any number of other reasons. So although it is right to prefer what is best, I argue we should be compassionate towards those who fall well short of their personal best. Also, our means of guessing at what is best may be quite limited. When we do not know what is best our efforts might be identical in results with someone is aiming for what is merely satisfactory. People need to be supported to realize their potential, not beaten down with blame and other negativity. I do not argue in favor of mediocrity as a standard, but rather championing persons who perform in a mediocre fashion in this or that respect. Excellence is developed. It is not merely decided upon and immediately realized. So what we judge “mediocre” in another might actually be their personal best. Indeed, people also may have inherent limitations to their abilities, or limits in their rate of learning to better their performance, which cannot be predicted in advance, and that is another reason to reserve judgment. Some are eager to judge “laziness,” but motivation is complex and often undiscovered even to the one who lacks motivation. Also, we should not evaluate merely in terms of right and wrong, in black and white terms, either praising highly or condemning wholly. We should also evaluate in terms of good or bad. An action might be wrong in ideal terms but be harmless, or even satisfactory. Advocating excellence does not prevent us from appraising what is satisfactory as such, as in school grades. By being accepting in this way we advocate sentient beings as ends in themselves to the best of our abilities. Impersonal standards of best and satisfactory must be deployed to serve *all* sentient beings in the best possible way rather than the other way around.

<sup>126</sup> We must not confuse what is intrinsically good for sentient beings, or what they find good in itself without necessarily leading to something else (e.g., the beauty of a sunset can be enjoyed in itself) with things ultimately having significance for sentient beings as ends in themselves. The enjoyment of sunsets is still only significant to sentient beings. So the enjoyment is not strictly speaking an end in itself, in my sense here, although it may be

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intrinsically valuable to sentient beings, because the significance does not stop with the enjoyment conceived as an abstract entity: that enjoyment as an end is pursued for the benefit of the sentient beings who—as ends in themselves—enjoy sunsets.

<sup>127</sup> Gilligan, *In a Different Voice*, p. 30.

<sup>128</sup> An example repeatedly used in Francione's *Introduction to Animal Rights*. It would be speciesist always to choose the human I think, and I am sure that Francione would agree with me from my reading of his work. After all, I ask, what if the human is a psychopathic murderer, someone about to die imminently, or seems to be irreversibly comatose?

<sup>129</sup> Another form of non-rights reasoning is giving a friend a gift. The friend does not have a right to the particular gift. Rather it is a privilege stemming from the particular relationship so long as it is carried on. There are other examples where universal rights are not the deciding factor in a given situation.

<sup>130</sup> See generally A. J. Ayer, *Language, Truth and Logic* (New York: Dover, 1952).

<sup>131</sup> See generally Charles L. Stevenson, *Ethics and Language* (New Haven: Yale University Press, 1944).

<sup>132</sup> Panyot Butchvarov, *The Concept of Knowledge* (Evanston: Northwestern University Press, 1970), p. 70.

<sup>133</sup> We can conceive of unsympathetic empathy, or poorly imagining what it is like to be another (empathy) without sympathetically finding their harmless pleasures to be a good thing and all the while feeling comfortable with even extreme suffering in others.

<sup>134</sup> This does not mean that the pain has no use, such as alerting us to an organ that is in trouble, or that the pain is not worth it, as it sometimes is in dentistry.

<sup>135</sup> We do not need to exercise empathy every time we use our judgment to affirm that pain is bad, any more than we need to think of units in aggregation constantly to confirm that  $2 + 2 = 4$ . However at some point such a perspective is useful for education, confirmation, motivation, and acquiring a vivid sense of things. Perspective is vital to acquire a good sense of anything, as astronomy and other areas of inquiry so amply teach us.

<sup>136</sup> It may be objected that I am just assuming that animals are sentient. However others have convincingly argued in favor of this idea. For example, Singer, *Animal Liberation*, rev. ed. (New York: Avon Books, 1990), pp. 11-13, cites analogous neural anatomy and pain-aversive behaviors such as running, hiding, crying, wincing, etc. If it is called “anthropomorphic” that animals have feelings, desires, communication, beliefs, perception, etc. then I have added a point to the debate that is intended to turn the tables: it is anthropomorphic, or projecting human traits onto the nonhuman world, to require a *human* form of mentality before any given mental phenomenon is “granted” to exist. See Szybel, “Empathy and Rationality in Ethics,” pp. 185-86 and Szybel, “Animal Rights: Autonomy and Redundancy,” p. 265.

<sup>137</sup> Ludwig Wittgenstein uses this term in his *Philosophical Investigations*. I am not here implying any other assumptions of Wittgenstein, including those adjacent to his discussion of this term.

<sup>138</sup> Aristotle, *Nicomachean Ethics*; see, for example, John Finnis' modern reprise of Aristotle's ancient idea of intrinsic goods, affirming that real goods ought to be desired in Finnis, *Fundamentals of Ethics* (Oxford: Clarendon Press, 1983), pp. 13-14, specifying following Mortimer Adler that a real good as an object of desire is not merely a want but a need, and a “natural” desire is “inherent in our common human nature.” Why he does not value desires that are not needs is never specified, nor is it defended why we should only value desires

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common to all of human nature (itself a controversial idea: severe masochists may not desire goods that the rest of us do). Crucially, he also never explains just how goods “inhere” in human nature.

<sup>139</sup> See Plato’s relating of this unique value theory in his dialogue, *The Republic*.

<sup>140</sup> “Animal person rights” is an awkward neologism however so “animal rights” may be a convenient shorthand. However, it may be, for all I know, that single-celled animals are not sentient in the sense that they cannot feel pleasure or pain. Then not all animals may deserve rights, but all animal persons (whom I argue are sentient) would.

<sup>141</sup> I realize that some religionists deny this claim which seems to me a biological fact. It is noteworthy that humans have animal structures and functions through all of their bodies. If we have souls, then we are animals with souls. Many religions such as certain aboriginal, Hindu, Buddhist or Jain spiritualities assert that other animals have souls too. The denial of our animality seems to be rooted not in any lucid comparison of ourselves and other animals but rather in speciesism. Speciesists thus make nonhuman animals a whole *other* class of beings who are not entitled to any ethical consideration that resembles the way most people respect human beings.

<sup>142</sup> See for example *The Oxford English Dictionary*, *The Funk and Wagnall’s Standard College Dictionary*, and so forth.

<sup>143</sup> Francione, *Introduction to Animal Rights*, pp. 100-101.

<sup>144</sup> Joan Dunayer, *Animal Equality: Language and Liberation* (Derwood, MD: Ryce Publishing, 2001), p. 7.

<sup>145</sup> We can see how this relates to the idea of minds as being at the core of our personhood. That is why we would consider experiences to be deeply “personal.”

<sup>146</sup> The phlogiston theory started in the 17<sup>th</sup> century and was widely believed through most of the 18<sup>th</sup> until refuted by Lavoisier. It was thought to be a substance without odor, color, taste or weight present in combustible materials, and given off when burning. The ash was thought to be the true material without the phlogiston.

<sup>147</sup> It may be thought that Singer is not a speciesist because he impartially finds that mentally disabled humans and animals can both be vivisected, so he is apparently discriminating on the basis of mental ability, not species. However, it used to be said that blacks and women should not have rights because they are cognitively inferior. I do not construe the above kind of racism and sexism as “ableist” and neither is Singer’s form of harmful discrimination. It was not true that women and blacks had lesser cognitive capacities and also not true, or so I have argued, that someone with lesser cognitive capacities may be routinely harmed for others’ benefit. Ableism requires the identification of one group that is able and another that is disabled, and discrimination against the latter group. However we are not talking about able nonhuman animals versus disabled ones, nor are we pointing to humans as able and nonhuman animals as disabled. One is not disabled if one never could have had an ability in the first place. Note that this point would apply to kinds of humans who were wrongly supposed to have lesser cognitive abilities too, for according to racist theories, blacks and women were not disabled but rather differently abled in an inferior way. A disability implies the negation of an ability that was formerly the case, or that is ordinarily the case. Singer judges that nonhuman animals are cognitively inferior and therefore may be harmed. That is an oppressive dogma against sentient beings of other species, and therefore a form of speciesism in my opinion.

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<sup>148</sup> The last three theories in this table I do not treat in detail in this paper for reasons of length but I include these ethics here merely suggestively.